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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2006–25714; Notice No. 07–01]

Unmanned Aircraft Operations in the National Airspace System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of policy; opportunity for feedback.

SUMMARY: This document clarifies the FAA's current policy concerning operations of unmanned aircraft in the National Airspace System.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Davis, Manager, Unmanned Aircraft Program Office, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 385–4636, e-mail: *kenneth.d.davis@faa.gov.*

Background

Simply stated, an unmanned aircraft is a device that is used, or is intended to be used, for flight in the air with no onboard pilot. These devices may be as simple as a remotely controlled model aircraft used for recreational purposes or as complex as surveillance aircraft flying over hostile areas in warfare. They may be controlled either manually or through an autopilot using a data link to connect the pilot to their aircraft. They may perform a variety of public services: Surveillance, collection of air samples to determine levels of pollution, or rescue and recovery missions in crisis situations. They range in size from wingspans of six inches to 246 feet; and can weigh from approximately four ounces to over 25,600 pounds. The one thing they have in common is that their numbers and uses are growing dramatically. In the United States alone, approximately 50 companies, universities, and government organizations are developing and producing some 155 unmanned aircraft designs. Regulatory standards need to be developed to enable current technology for unmanned aircraft to comply with Title 14 Code of Federal Regulations (CFR).

The Federal Aviation Administration's current policy is based on whether the unmanned aircraft is used as a public aircraft, civil aircraft or as a model aircraft.

Unmanned Aircraft Systems Operating as Public Aircraft

The most common public use of unmanned aircraft today in the United States is by the Department of Defense. U.S. operations in Iraq, Afghanistan and elsewhere have fueled a huge increase in unmanned aircraft demand. In Iraq alone, more than 700 unmanned aircraft are in use for surveillance and weapons delivery.

Other agencies have also found public uses for unmanned aircraft. For example, the Customs and Border Protection uses them to patrol along the US/Mexican border. In the future, unmanned aircraft could be used to provide first responder reports of damage due to weather or other catastrophic causes.

In response to this growing demand for public use unmanned aircraft operations, the FAA developed guidance in a Memorandum titled ''Unmanned Aircraft Systems Operations in the U.S. National Airspace System—Interim Operational Approval Guidance'' (UAS Policy 05–01). In this document, the FAA set out guidance for public use of unmanned aircraft by defining a process for evaluating applications for Certificate(s) of Waiver or Authorization (COA's) for unmanned aircraft to operate in the National Airspace System. The concern was not only that unmanned aircraft operations might interfere with commercial and general aviation aircraft operations, but that they could also pose a safety problem for other airborne vehicles, and persons or property on the ground. The FAA guidance supports unmanned aircraft flight activity that can be conducted at an acceptable level of safety. In order to ensure this level of safety, the operator is required to establish the Unmanned Aircraft System's (UAS) airworthiness either from FAA certification, a DOD airworthiness statement, or by other approved means. Applicants also have to demonstrate that a collision with another aircraft or other airspace user is extremely improbable as well as complying with appropriate cloud and terrain clearances as required. Key to the concept are the roles of pilot-in-command (PIC) and observer. The PIC concept is essential to the safe operation of manned aircraft. The FAA's UAS guidance applies this PIC concept to unmanned aircraft and includes minimum qualifications and currency requirements. The PIC is simply the person in control of, and responsible for, the UAS. The role of the observer is to observe the activity of the unmanned aircraft and surrounding airspace, either through line-of-sight on the ground or in the air by means of a chase aircraft. In general, this means the pilot or observer must be, in most cases, within 1 mile laterally and 3,000 feet vertically of the unmanned aircraft. Direct communication between the PIC and the observer must be maintained at all times. Unmanned aircraft flight above 18,000 feet must be conducted under Instrument Flight Rules, on an IFR flight plan, must obtain ATC clearance, be equipped with at least a Mode C transponder (preferably Mode S), operating navigation lights and / or collision avoidance lights and maintain communication between the PIC and Air Traffic Control (ATC). Unmanned aircraft flights below 18,000 feet have similar requirements, except that if operators choose to operate on other than an IFR flight plan, they may be required to pre-coordinate with ATC.

The FAA has issued more than 50 COA's over the past 2 years and anticipates issuing a record number of COA's this year.

For more information, Memorandum on UAS Policy (05–01) and other policy guidance is available at the FAA Web site: *http://www.faa.gov/uas.*

Unmanned Aircraft Systems Operating as Civil Aircraft

Just as unmanned aircraft have a variety of uses in the public sector, their application in commercial or civil use is equally diverse. This is a quickly growing and important industry. Under FAA policy, operators who wish to fly an unmanned aircraft for civil use must

obtain an FAA airworthiness certificate the same as any other type aircraft. The FAA is currently only issuing special airworthiness certificates in the experimental category. Experimental certificates are issued with accompanying operational limitations (14 CFR 91.319) that are appropriate to the applicant's operation. The FAA has issued five experimental certificates for unmanned aircraft systems for the purposes of research and development, marketing surveys, or crew training. UAS issued experimental certificates may not be used for compensation or hire.

The applicable regulations for an experimental certificate are found in 14 CFR 21.191, 21.193, and 21.195. In general, the applicant must state the intended use for the UAS and provide sufficient information to satisfy the FAA that the aircraft can be operated safely. The time or number of flights must be specified along with a description of the areas over which the aircraft would operate. The application must also include drawings or detailed photographs of the aircraft. An on-site review of the system and demonstration of the area of operation may be required. Additional information on how to apply for an experimental airworthiness certificate is available from Richard Posey, AIR–200, (202) 267–9538; e-mail: *richard.posey@faa.gov.*

Recreational/Sport Use of Model Airplanes

In 1981, in recognition of the safety issues raised by the operation of model aircraft, the FAA published Advisory Circular (AC) 91–57, Model Aircraft Operating Standards for the purpose of providing guidance to persons interested in flying model aircraft as a hobby or for recreational use. This guidance encourages good judgment on the part of operators so that persons on the ground or other aircraft in flight will not be endangered. The AC contains among other things, guidance for site selection. Users are advised to avoid noise sensitive areas such as parks, schools, hospitals, and churches. Hobbyists are advised not to fly in the vicinity of spectators until they are confident that the model aircraft has been flight tested and proven airworthy. Model aircraft should be flown below 400 feet above the surface to avoid other aircraft in flight. The FAA expects that hobbyists will operate these recreational model aircraft within visual line-of-sight. While the AC 91–57 was developed for model aircraft, some operators have used the AC as the basis for commercial flight operations.

Policy Statement

The current FAA policy for UAS operations is that no person may operate a UAS in the National Airspace System without specific authority. For UAS operating as public aircraft the authority is the COA, for UAS operating as civil aircraft the authority is special airworthiness certificates, and for model aircraft the authority is AC 91–57.

The FAA recognizes that people and companies other than modelers might be flying UAS with the mistaken understanding that they are legally operating under the authority of AC 91–57. AC 91–57 only applies to modelers, and thus specifically excludes its use by persons or companies for business purposes.

The FAA has undertaken a safety review that will examine the feasibility of creating a different category of unmanned ''vehicles'' that may be defined by the operator's visual line of sight and are also small and slow enough to adequately mitigate hazards to other aircraft and persons on the ground. The end product of this analysis may be a new flight authorization instrument similar to AC 91–57, but focused on operations which do not qualify as sport and recreation, but also may not require a certificate of airworthiness. They will, however, require compliance with applicable FAA regulations and guidance developed for this category.

Feedback regarding current FAA policy for Unmanned Aircraft Systems can be submitted at *http://www.faa.gov/uas.* (Scroll down to the bottom of the page and find *Contact UAPO.* Click into this link.)

Issued in Washington, DC, on February 6, 2007.

Nicholas Sabatini,

Associate Administrator for Aviation Safety.

[FR Doc. E7–2402 Filed 2–12–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD01–06–027]

RIN 1625–AA01

Anchorage Regulations; Port of New York

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the duration vessels are authorized to anchor in specific anchorage grounds within the Port of New York and New Jersey (PONYNJ). This action is necessary to facilitate safe navigation and provide for the overall safe and efficient flow of waterborne commerce. This action is intended to better facilitate the efficient use of the limited deep water anchorage grounds available in PONYNJ.

DATES: This rule is effective March 15, 2007.

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 (CGD01–06–027) and are available for inspection or copying at Waterways Management Division, Coast Guard Sector New York, 212 Coast Guard Drive, Room 321, 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 M. McBrady, Waterways Management Division, Coast Guard Sector New York at (718) 354–2353.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On November 16, 2006, we published a notice of proposed rulemaking (NPRM) entitled Anchorage Regulations; Port of New York in the **Federal Register** (71 FR 66708). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The Coast Guard is revising the duration that vessels are authorized to anchor in Federal Anchorage Grounds 19, 21–A, 21–B, 21–C, and 25 in the Port of New York and New Jersey (PONYNJ), 33 CFR 110.155 (c)(5), (d)(10)–(12), and (e)(1), respectively. These revisions are necessary due to the limited amount of deep water anchorage space available in the Hudson River, Upper and Lower Bay of New York Harbor.

In recent years, as the number of ships in port has increased and their sizes have grown, the anchorage grounds have frequently been filled to capacity. According to the Harbor Safety, Operations, and Navigation Committee of the Port of New York and New Jersey (HAROPS), which represents a broad spectrum of the local maritime industry, having adequate anchorage space is critical to the overall safety and economic vitality of the port. The limited availability of anchorage space has caused undue economic burden for ships that are forced to anchor outside

the port in the vicinity of Ambrose Tower, sometimes for days, while awaiting anchorage space. Vessels have been unable to complete their business, including re-supply, lightering, and bunkering, in a cost-efficient manner and sometimes have forgone obtaining services in New York because of the delays. The unavailability of anchorage space also increases safety risks by forcing ships to take on provisions while underway and potentially preventing ships from anchoring in an emergency.

The revisions increase the availability of anchorage space by reducing the amount of time that a vessel may remain at anchor. The revisions also limit the number vessels from loitering in the lower Hudson River, Bay Ridge, and Gravesend Bay anchorages.

Discussion of Comments and Changes

The Coast Guard received no comments on this rulemaking and no changes from the proposed rule have been made.

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.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This finding is based on our evaluation presented in the following two paragraphs:

This rule allows the Coast Guard to better manage the increasing and changing needs of commercial vessels and to make the best use of the limited available Anchorage Grounds. Vessels normally complete bunkering or lightering operations within the Anchorage Grounds within 48 hours. Additionally, due to security concerns at facilities, more vessels need to replenish supplies while at anchor, which normally takes no longer than 8 hours. This rule allows shipping lines, owners, agents, and others in the shipping industry to operate more efficiently in the Port of New York and New Jersey.

The current 30-day limit for vessels to remain at anchor is an inefficient use of the limited, extremely busy Anchorage Grounds within the PONYNJ since vessels not conducting port related operations could easily anchor offshore while awaiting pier space, supply deliveries, sailing orders, etc. Additionally, this rule allows the commercial vessel industry to more efficiently conduct final preparations for sea in a protected Anchorage Ground, as opposed to conducting preparations during outbound transit in the vicinity of the six vessel traffic lanes that converge on Ambrose Light (LLNR 720). This rule is in the interest of safe and efficient navigation.

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 might be small entities: The owners or operators of commercial vessels intending to anchor in a portion of the Hudson River, Upper New York Bay, or Lower New York Bay. This rule, however, will not have a significant economic impact on these entities for the reasons stated above in the Regulatory Evaluation section.

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. The Coast Guard received no requests for assistance.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This 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 might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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 and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation. This rule fits the category selected from paragraph (34)(f) as it revises the duration a vessel can anchor in a Federal Anchorage Ground.

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 110

Anchorage grounds.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1(g); and Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 110.155, add paragraphs (c)(5)(vi), (d)(10)(ii), (d)(11)(iii), (d)(12)(iii), and (e)(1)(iii), to read as follows:

§ 110.155 Port of New York.

* * * * *

(c) * * *

(5) * * *

(vi) No vessel may occupy this anchorage for a period of time in excess of 96 hours without prior approval of the Captain of the Port.

* * * * *

(d) * * *

(10) * * *

(ii) No vessel may occupy this anchorage for a period of time in excess of 96 hours without prior approval of the Captain of the Port.

(11) * * *

(iii) No vessel may occupy this anchorage for a period of time in excess of 96 hours without prior approval of the Captain of the Port.

(12) * * *

(iii) No vessel may occupy this anchorage for a period of time in excess of 96 hours without prior approval of the Captain of the Port.

* * * * *

(e) * * *

(1) * * *

(iii) No vessel may occupy this anchorage for a period of time in excess of 96 hours without prior approval of the Captain of the Port.

* * * * *

Dated: January 26, 2007.

Timothy S. Sullivan,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. E7–2454 Filed 2–12–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–06–041]

RIN 1625–AA09

Drawbridge Operation Regulation; 63rd Street Bridge, Indian Creek, Miami, Miami-Dade County, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the operating regulations governing the 63rd Street Drawbridge across Indian Creek, mile 4.0 in Miami-Dade County, Florida. This rule will allow the Drawbridge to open a single-leaf on the top of the hour from 8 a.m. to 5:59 p.m. and a double-leaf on the top of the hour between 6 p.m. and 12:10 a.m. At all other times this bridge will be closed to navigation.

DATES: This rule is effective from March 15, 2007 until June 19, 2007.

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 (CGD07–06–041) and are available for inspection or copying at Commander (dpb), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, Florida 33131–3050 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Seventh Coast Guard District, Bridge Branch, telephone number 305–415–6744.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 3, 2006, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; 63rd Street Bridge, Indian Creek, Miami, Miami-Dade County, FL in the **Federal Register** (71 FR 16529). We received two comments on the proposed rule. No public meeting was requested, and none was held.

The NPRM proposed an effective period of 8 a.m. on June 19, 2006 through 6 p.m. on February 5, 2007. Thus, this temporary final rule is effective from March 15, 2007 until June 19, 2007 because of contractor and the City of Miami Beach requests to balance the reasonable needs of vehicles and vessels while the bridge undergoes rehabilitation. Publishing another NPRM before this temporary rule would further delay meeting the immediate

safety concerns needed to protect local vessel and vehicle traffic from the temporary change in drawbridge operations.

Background and Purpose

The existing regulation of the 63rd Street Drawbridge, Indian Creek mile 4.0, Miami-Dade County, Florida, requires the draw to open promptly and fully for the passage of vessels when a request or signal to open is given.

The contractor representing the bridge owner (Florida Department of Transportation) requested that this drawbridge be placed on a restricted schedule to allow for the least amount of time that this work would influence both vehicle and vessel traffic. The contractor has been working directly with the City of Miami Beach and the local marina to balance the reasonable needs of both entities. The Coast Guard had reviewed the drawbridge logs for the 63rd Street Drawbridge and determined that there were limited nighttime openings.

Discussion of Comments and Changes

The Coast Guard received one response to the notice of proposed rulemaking (NPRM) and one response after the closure date of the NPRM. One comment requested that this bridge be closed to navigation during the daytime hours and one comment requested an exemption to the regulation or to allow no changes to the regulation so the drawbridge would open on demand. The request to close this bridge to navigation during daytime hours was determined to be unreasonable as this drawbridge is the only access for the local vessel owners and a marina located on the south side of the bridge. The request to leave this bridge on an on-signal schedule would unreasonably delay rehabilitating this bridge. For this reason the recommendation for an on-signal request was not approved.

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.

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 would affect the following entities, some of which may be small entities: The owners or operators of vessels needed to transit Indian Creek, persons intending to drive over the bridge, and nearby business owners. The revision to the openings schedule would not have a significant impact on a substantial number of small entities, although bridge openings will be restricted, vessel traffic will still be able to transit Indian Creek pursuant to the revised opening schedule.

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.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This 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 would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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, and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have 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 (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), 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 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); § 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Add Section 117.T293 to read as follows:

§ 117.T293 Indian Creek.

(a) The Drawspan of the 63rd Street Drawbridge, mile 4.0 across Indian Creek, Miami-Dade County, Florida will open a single-leaf on the hour from 8 a.m. to 5:59 p.m. and a double-leaf on the hour from 6 p.m. to 12:10 a.m. This Drawbridge will be closed to navigation at all other times.

(b) Effective date: This temporary rule is effective until June 19, 2007.

Dated: February 1, 2007.

D.W. Kunkel,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. E7–2345 Filed 2–12–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 020807B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of a closure; request for comments.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA) for 48 hours. This action is necessary to fully use the A season allowance of the 2007 total allowable catch (TAC) of pollock specified for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 8, 2007, through 1200 hrs, A.l.t., February 10, 2007. Comments must be received at the following address no later than 4:30 p.m., A.l.t., February 23, 2007.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- Mail to: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;
- Fax to 907–586–7557;
- E-mail to *open610pollock@noaa.gov* and include in the subject line of the e-mail comment the document identifier: ''g61plkro2'' (E-mail comments, with or without attachments, are limited to 5 megabytes); or
- Webform at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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.

NMFS closed the directed fishery for pollock in Statistical Area 610 of the GOA under § 679.20(d)(1)(iii) on January 22, 2007 (72 FR 2462, January 19, 2007). The fishery was subsequently reopened on February 5, 2007 and closed on February 7, 2007. The action filed with the Office of the **Federal Register** on February 5, 2007, and will publish February 9, 2007.

NMFS has determined that approximately 2,455 mt of pollock remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the A season allowance of the 2007 TAC of pollock in Statistical Area 610, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 610 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 48 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA effective 1200 hrs, A.l.t., February 10, 2007.

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 opening of pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 7, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for pollock in Statistical Area 610 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until February 23, 2007.

This action is required by § 679.25 and § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 8, 2007.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 07–638 Filed 2–8–07; 2:13 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 29
Tuesday, February 13, 2007

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

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AM35

Reasonable Charges for Medical Care or Services

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) medical regulations concerning ''reasonable charges'' for medical care or services provided or furnished by VA to certain veterans for nonservice-connected disabilities. We propose to change the process for determining interim billing charges when a new Diagnosis Related Group (DRG) code or Current Procedure Terminology/Healthcare Common Procedure Coding System (CPT/HCPCS) code identifier is assigned to a particular type or item of medical care or service and VA has not yet established a charge for the new identifier. This process is designed to provide interim billing charges that are very close to what the new billing charges would be when the charges for the new identifiers are established in accordance with the regulations. We also propose to change the regulations by removing all of the provisions for discounts of billed charges. This is expected to reduce or eliminate duplicate discounting and thereby prevent unintended underpayments to the government.

DATES: Comments must be received on or before March 15, 2007.

ADDRESSES: Written comments may be submitted by: Mail or hand delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; e-mail through *http://www.Regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AM35.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Romona Greene, Manager of Rates and Charges, VHA Chief Business Office (168), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 254–0361. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This document proposes to amend VA's medical regulations that were established under the authority of 38 U.S.C. 1729 and are set forth in 38 CFR 17.101 (referred to below as the regulations). The regulations establish methodologies for determining reasonable charges for medical care or services provided or furnished by VA to certain veterans.

Under the provisions of 38 U.S.C. 1729, VA has the right to recover or collect reasonable charges for such medical care and services from a third party to the extent that the veteran or a provider of the care or services would be eligible to receive payment for:

- A nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract,
- A nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services, or
- A nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations (no-fault) insurance.

However, consistent with the statutory authority at 38 U.S.C. 1729(c)(2)(B), a third-party payer liable for such medical care and services under a health plan contract has the option of paying, to the extent of its coverage, either the billed charges or the amount the third-party payer demonstrates it would pay for care or services furnished by providers other than entities of the United States for the same care or services in the same geographic area.

Except for charges for prescription drugs, the regulations were promulgated to contain methodologies to establish VA charges that replicate, insofar as possible, the 80th percentile of community charges (see 68 FR 56876). VA's methodologies to determine reasonable charges for prescription drugs are based on VA costs and contained in 38 CFR 17.102.

Charges When a New DRG or CPT/HCPCS Code Identifier Does Not Have an Established Charge

The methodology for certain charges is based on adjustments to average charges developed from a national data base for DRG codes and CPT/HCPCS codes. The current regulations at § 17.101(a)(8) provide for the development of charges when VA does not have an established charge for a new DRG or CPT/HCPCS code. We propose to revise § 17.101(a)(8) to make it more clear and accurate. The proposed changes are explained below.

The current regulations at § 17.101(a)(8), provide that when VA does not have an established charge for new DRG codes or CPT/HCPCS, then a charge would be developed by using the first option out of the five specified options for which a charge could be determined. Accordingly, if an applicable charge could be determined under the first option then that would be used without considering any other option. If a charge could not be determined under the first option but could be determined under the second option then the second option would be used, and so on.

We do not propose to change the substance of the first two options which would continue to be set forth at § 17.101(a)(8)(i) and (ii) (they are included in the text portion of this document with nonsubstantive changes for purposes of clarity). We also do not propose to change the substance of the last option (it would be moved from § 17.101(a)(8)(v) to § 17.101(a)(8)(viii) and is included in the text portion of this document with nonsubstantive changes for purposes of clarity).

The proposed third option would continue to be located at § 17.101(a)(8)(iii). It concerns prosthetic devices and durable equipment. Under the current regulations for this option, VA's charges for prosthetic devices and durable equipment reflect the actual cost to VA. We propose to change this

option to provide that the charge would be 1 and ½ times VA's actual cost. As noted above, the regulations were intended to contain methodologies to establish VA charges that replicate, insofar as possible, the 80th percentile of community charges. However, billing charges under the current third option fall short of this mark. Based on our expertise and experience with charging trend analyses, we have concluded that these proposed changes would provide interim billing charges that would be as close as possible to what the new billing charges will be when the charges for the new identifiers are established in accordance with the regulations.

Under the current regulations involving the fourth option, VA's charges for care or services consist of the Medicare participating provider allowed charge amount (if one could be determined), geographically adjusted using the applicable geographic area adjustment factors that are described in the regulations. We propose to change this option to consist of four different parts, two for new identifier DRG codes and two for new identifier CPT/HCPCS codes, as stated in the text portion of this document at § 17.101(a)(8)(iv) through (vii). Based on our expertise and experience with charging trend analyses, we have concluded that these proposed changes would provide interim billing charges that would be as close as possible to what the new billing charges will be when the charges for the new identifiers are established in accordance with the regulations.

Discounts

The current regulations at § 17.101(e)(5), (f)(4), (f)(5)(ii), and (g) include provisions to discount billing and thereby reflect industry standards. As explained below, we are proposing to change the regulations to discontinue applying discounts for billed charges by removing all of the provisions in the regulations that provide for such discounts.

The current regulations at § 17.101(e)(5) provide discounts when multiple surgical procedures were performed during the same outpatient encounter by a provider or provider team as indicated by multiple surgical CPT/HCPCS procedure codes. Under these provisions, the surgical procedure with the highest facility charge under the CPT/HCPCS procedure code is billed at 100 percent of the charges established under the regulations, the second highest at 25 percent, the third highest at 15 percent, and the rest at no charge.

The current regulations at § 17.101(f)(4) set forth a mechanism to establish discount factors for specified charge-significant CPT/HCPCS code modifiers. Under this authority, discounts are based on multipliers as follows:

51—Multiplier procedures 0.94,
52—Reduced services 0.70,
53—Discontinued procedure 0.97,
62—Two surgeons 0.92, and
80—Assistant surgeon 0.31.

The current regulations at § 17.101(f)(5)(ii) set forth discounts for charges for the professional services of certain providers. In this regard, the regulations provide that the charges for care would be the indicated percentages of the amount that would be charged if the care had been provided by a physician:

- Nurse practitioner: 85 percent.
- Clinical nurse specialist: 85 percent.
- Physician Assistant: 85 percent.
- Clinical psychologist: 80 percent.
- Clinical social worker: 75 percent.
- Dietitian: 75 percent.
- Clinical pharmacist: 80 percent.

The current regulations at § 17.101(g) provide for a 50 percent discount of the charges for professional anesthesia services provided by medically directed certified registered nurse anesthetists.

All of the discounts explained above, which are the same discounts that apply to billing under the Medicare program, reflect industry practices for billing. This is the same rationale described in the **Federal Register** for establishing paragraphs (f)(4), and (f)(5)(ii) (see 63 FR 54758). However, after the discounts are applied to the billed charges, virtually all third party payers apply the same discounts a second time (discounts are included in industry software), thereby reducing the billed charges below what was intended by the regulations. We believe that the duplicate discounting would cause unintended underpayments to the government of approximately $24 million annually. Accordingly, to eliminate duplicate discounting and to help ensure that the regulations work as intended, we propose to remove all of the provisions in the regulations that provide for such discounts. These amendments would not affect discounts applied by third party payers under industry billing practices.

Comment Period

We are providing a 30-day comment period instead of a 60-day comment period. We wish to consider any relevant comments prior to taking any regulatory action. However, subject to consideration of comments, it appears that it is necessary to take expeditious action on the proposed rule. As noted above, the regulations were promulgated to contain methodologies to establish VA charges that replicate, insofar as possible, the 80th percentile of community charges. The proposed changes regarding interim charges based on new DRG code or CPT/HCPCS code identifiers are intended to make the interim charges as close as possible to what the new billing charges will be when the charges for the new identifiers are established in accordance with the regulations, and, consequently, to make the interim charges as close as possible to the 80th percentile of community charges. With respect to the proposed changes regarding discounts, it is necessary to take expeditious action to prevent unintended underpayments to the government. Under the current regulations discounts are applied by VA to the billed charges. However, inconsistent with the intent of the regulations, virtually all third party payers apply the same discounts a second time (discounts are included in industry software), thereby reducing the billed charges below what was intended by the regulations.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This document contains no collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million or more, creating a serious inconsistency or interfering with an

action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. VA has examined the economic, legal, and policy implications of this proposed rule and has concluded that it is a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would affect mainly large insurance companies. The proposed rule might have an insignificant impact on a few small entities that do an inconsequential amount of their business with VA. Accordingly, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care.

List of Subjects in 38 CFR Part 17

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

Approved: November 3, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

Editorial Note: This document was received at the Office of the Federal Register on February 7, 2007.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 17 as set forth below:

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. Section 17.101, paragraph (g) introductory text is amended by removing ''50 percent'' and adding in its place ''100 percent''; and by revising paragraphs (a)(8), (e)(5), (f)(4), and (f)(5)(ii) to read as follows:

§ 17.101 Collection or recovery by VA for medical care or services provided or furnished to a veteran for a nonservice-connected disability.

(a)* * *

(8) *Charges when a new DRG or CPT/HCPCS code identifier does not have an established charge.* When VA does not have an established charge for a new DRG or CPT/HCPCS code to be used in determining a billing charge under the applicable methodology in this section, then VA will establish an interim billing charge or establish an interim charge to be used for determining a billing charge under the applicable methodology in paragraphs (a)(8)(i) through (a)(8)(viii) of this section.

(i) If a new DRG or CPT/HCPCS code identifier replaces a DRG or CPT/HCPCS code identifier, the most recently established charge for the identifier being replaced will continue to be used for determining a billable charge under paragraphs (b), (e), (f), (g), (h), (i), (k), or (l) of this section until such time as VA establishes a charge for the new identifier.

(ii) If medical care or service is provided or furnished at VA expense by a non-VA provider and a charge cannot be established under paragraph (a)(8)(i) of this section, then VA's billing charge for such care or service will be the amount VA paid to the non-VA provider without additional calculations under this section.

(iii) If a new CPT/HCPCS code has been established for a prosthetic device or durable medical equipment subject to paragraph (l) of this section and a charge cannot be established under paragraphs (a)(8)(i) or (ii) of this section, VA's charge for such prosthetic device or durable medical equipment will be 1 and ½ times VA's average actual cost without additional calculations under this section.

(iv) If a new medical identifier DRG code has been assigned to a particular type of medical care or service and a charge cannot be established under paragraphs (a)(8)(i) through (iii) of this section, then until such time as VA establishes a charge for the new medical identifier DRG code, the interim charge for use in paragraph (b) of this section will be the average charge of all medical DRG codes that are within plus or minus 10 of the numerical relative weight assigned to the new medical identifier DRG code.

(v) If a new surgical identifier DRG code has been assigned to a particular type of medical care or service and a charge cannot be established under paragraphs (a)(8)(i) through (iv) of this section, then until such time as VA establishes a charge for the new surgical identifier DRG code, the interim charge for use in paragraph (b) of this section will be the average charge of all surgical DRG codes that are within plus or minus 10 of the numerical relative weight assigned to the new surgical identifier DRG code.

(vi) If a new identifier CPT/HCPCS code is assigned to a particular type or item of medical care or service and a charge cannot be established under paragraphs (a)(8)(i) through (v) of this section, then until such time as VA establishes a charge for the new identifier for use in paragraphs (e), (f), (g), (h), (i), (k), or (l) of this section, VA's billing charge will be the Medicare allowable charge multiplied by 1 and ½, without additional calculations under this section.

(vii) If a new identifier CPT/HCPCS code is assigned to a particular type or item of medical care or service and a charge cannot be established under paragraphs (a)(8)(i) through (vi) of this section, then until such time as VA establishes a charge for the new identifier, VA's interim charge for use in paragraphs (e), (f), (g), (h), (i), (k), or (l) of this section, will be the charge for the CPT/HCPCS code that is closest in characteristics to the new CPT/HCPCS code.

(viii) If a charge cannot be established under paragraphs (a)(8)(i) through (a)(8)(vii) of this section, then VA will not charge for the care or service.

* * * * *

(e) * * *

(5) Multiple surgical procedures. When multiple surgical procedures are performed during the same outpatient encounter by a provider or provider team as indicated by multiple surgical

CPT/HCPCS procedure codes, then each CPT/HCPCS procedure code will be billed at 100 percent of the charges established under this section.

(f) * * *

(4) *Charge adjustment factors for specified CPT/HCPCS code modifiers.* Surcharges are calculated in the following manner: From the Part B component of the Medicare Standard Analytical File 5 percent Sample, the ratio of weighted average billed charges for CPT/HCPCS codes with the specified modifier to the weighted average billed charge for CPT/HCPCS codes with no charge modifier is calculated, using the frequency of procedure codes with the modifier as weights in both weighted average calculations. The resulting ratios constitute the surcharge factors for specified charge-significant CPT/HCPCS code modifiers.

(5) * * *

(ii) *Charges for professional services.* Charges for the professional services of the following providers will be 100 percent of the amount that would be charged if the care had been provided by a physician:

(A) Nurse practitioner.
(B) Clinical nurse specialist.
(C) Physician Assistant.
(D) Clinical psychologist.
(E) Clinical social worker.
(F) Dietitian.
(G) Clinical pharmacist.

* * * * *

[FR Doc. E7–2391 Filed 2–12–07; 8:45 am]

BILLING CODE 8320–01–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 Jollyville Plateau Salamander as 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 Jollyville Plateau salamander (*Eurycea tonkawae*) as endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing the Jollyville Plateau salamander may be warranted. Therefore, with the publication of this notice, we are initiating a status review to determine if listing the species is warranted. To ensure that the status review of the Jollyville Plateau salamander is comprehensive, we are soliciting information and data regarding this species.

DATES: The finding announced in this document was made on February 13, 2007. To be considered in the 12-month finding for this petition, comments and information should be submitted to us by April 16, 2007.

ADDRESSES: The complete supporting file for this finding is available for public inspection, by appointment, during normal business hours at the Austin Ecological Services Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758 or via electronic mail at *http://www.fws.gov/southwest/es/Library/*. The petition is available at *http://www.fws.gov/southwest/es/Library/*. Submit new information, materials, comments, or questions concerning this petition and our finding to the above address.

FOR FURTHER INFORMATION CONTACT: Robert Pine, Field Supervisor, Austin Ecological Services Field Office (see **ADDRESSES** section) (telephone 512/490–0057; facsimile 512/490–0974). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

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. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the Jollyville Plateau salamander. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning the status of the Jollyville Plateau salamander. We are seeking information regarding the species' historical and current status and distribution, its biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat.

We will base our 12-month finding on a review of the best scientific and commercial information available, including all information received during the public comment period. If you wish to comment or provide information, you may submit your comments and materials concerning this finding to the Field Supervisor, Austin Ecological Services Field Office (see **ADDRESSES** section). Please note that comments merely stating support or opposition to the actions under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made ''solely on the basis of the best scientific and commercial data available.'' At the conclusion of the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

Our practice is to make comments, including names and home addresses of respondents, available for public review during normal business hours. Individual respondents may request that we withhold their names and home addresses, etc., but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we make this finding within 90 days of receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

In making this finding, we relied on information provided by the petitioner that we determined reliable after reviewing sources referenced in the petition and information otherwise available in our files at the time of petition review. We evaluated that information in accordance with 50 CFR 424.14(b). Our process in making this 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold.

Petition

On June 13, 2005, we received a formal petition, dated June 10, 2005, from Save Our Springs Alliance (SOSA) requesting that the Jollyville Plateau salamander (*Eurycea tonkawae*) be listed as an endangered species in accordance with section 4 of the Act.

Action on this petition was precluded by court orders and settlement agreements for other listing actions that required all of our listing funds for fiscal year 2005 and a substantial portion of our listing funds for fiscal year 2006. On September 29, 2005, we received a 60-day notice of intent to sue from SOSA for failing to make a timely 90-day finding. On December 1, 2005, we sent a letter to SOSA informing them that we would not likely make a petition finding during the fiscal year of 2006 due to funding limitations. Subsequently, funding became available to act on the petition. On August 10, 2006, SOSA filed a complaint against the Service for failure to issue a 90-day petition finding under section 4 of the Act for the finding on the Jollyville Plateau salamander. In our December 11, 2006, motion for summary judgment, we informed the court that based on current funding and workload projections, we believed that we could complete a 90-day finding by February 6, 2007, and if we determined that the petition provided substantial scientific and commercial data, we could make a 12-month warranted or not warranted finding by February 6, 2008. This notice constitutes our 90-day finding for the petition to list the Jollyville Plateau salamander.

Species Information

The petitioners presented sufficient, reliable information related to the taxonomic status of the Jollyville Plateau salamander. This species was first described as *Eurycea tonkawae* in the scientific journal *Herpetological Monographs* by Chippendale et al. (2000, pp. 1–48) based on morphological characteristics and genetic analysis. We found no information in our files to refute the taxonomic status of the Jollyville Plateau salamander as a species or a listable entity under the Act. The Jollyville Plateau salamander is a neotenic member of the family Plethodontidae. Neotenic salamanders do not metamorphose into a terrestrial form. They retain external gills and are aquatic throughout their lives (City of Austin 2001, p. 3). Jollyville Plateau salamanders are approximately 1.5 to 2 inches (38 to 51 millimeters) at maturity (City of Austin 2001, p. 5).

Jollyville Plateau salamanders are distributed within springs, spring-runs, and water-bearing karst formations in the Jollyville Plateau area of the Edwards Aquifer in Travis and Williamson counties, Texas (City of Austin 2001, p. 3). Karst is defined as ''a type of terrain that is formed by the slow dissolution of calcium carbonate from limestone bedrock by mildly acidic groundwater. This process creates numerous cave openings, cracks, fissures, fractures, and sinkholes, and the bedrock resembles a honeycomb'' (Veni and Associates 2002, p. 70). The salamander's surface habitat is characterized by a typical depth of less than one foot (0.31 meters) of cool, well oxygenated water containing clean, loose substrates of boulder, cobble, and gravel (City of Austin 2001, p. 128). *Eurycea* species in Texas have been found to eat a variety of benthic macroinvertebrates (insects in their larval stage that are found at the bottom of a body of water), such as amphipods and chironomid larvae (midges) (City of Austin 2001, pp. 5–6).

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 Wildlife and Plants. 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) 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. The Act identifies the five factors to be considered, either singly or in combination, to determine whether a species may be threatened or endangered. In making this finding, we evaluated whether threats to the Jollyville Plateau salamander presented in the petition and other information available in our files at the time of the petition review may pose a concern with respect to its survival. The following evaluation of these threats was based on information provided or cited in the petition and found to be reliable. Unless otherwise indicated in this threats analysis section, the references cited were cited in the petition. The petition cited the draft Barton Springs Salamander Recovery Plan that was not finalized at the time we received the petition. However, we verified the information using the finalized, signed version (Service 2005), and we reference the page numbers from the finalized version in this finding. The petition also cites the Service's draft 2002 Candidate Listing and Priority Assessment Form for the Jollyville Plateau Salamander, which was never finalized, and our 1997 Final Rule to list the Barton Springs salamander (62 FR 23377) as endangered.

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

The petition states that Jollyville Plateau salamanders are found only within the rapidly developing counties of Travis and Williamson, Texas, where they are dependent upon a constant supply of clean water from the northern segment of the Edwards Aquifer (City of Austin 2001, p. 3). Flows may also originate from the Trinity Aquifer during droughts (Cole 1995, pp. 23–33). As of 2006, City of Austin data reflect that central Texas watersheds occupied by Jollyville Plateau salamanders include Brushy Creek, Bull Creek, Buttercup Creek, Lake Creek, Lake Travis, Shoal Creek, South Brushy Creek, Walnut Creek, and West Bull Creek. The petitioner notes that the Edwards and Trinity aquifers are localized, small, and highly susceptible to pollution, drying, or draining (Chippendale et al. 2000, p. 36).

Information, including a map, provided with the petition depict that the majority of Jollyville Plateau salamander habitat is found in

urbanized areas or areas scheduled for development (City of Austin 2005a, map; O'Donnell 2005, slide 12; Cole 1995, p. 28). The petition states that once natural vegetation in a watershed is replaced with impervious cover, rainfall is converted to surface runoff instead of filtering through the ground (Schueler 1991, p. 114). Impervious cover is any surface material, such as roads, rooftops, sidewalks, patios, paved surfaces, or compacted soil, that prevents water from filtering into the soil (Arnold and Gibbons 1996, p. 244). The petition cites an assessment by The Center for Watershed Protection that impervious cover exceeding 10 percent causes a loss of sensitive aquatic organisms, reduction in stream biodiversity, water quality degradation, stream warming, and channel instability within a watershed (Schueler 1994, pp. 100–106).

The City of Austin 2001 report (pp. 16–39), which was cited in the petition, indicates that six of the nine tributaries included in a Jollyville Plateau salamander monitoring study conducted by the City of Austin from 1996 to the present have impervious cover estimates greater than 15 percent. The petition states that more than half of the salamander's known localities are located within the Bull Creek watershed. The Bull Creek watershed contains varying degrees of urban development (City of Austin 2001, pp. 21–33): As a whole, it is more than 50 percent developed and has an average impervious cover estimate of 21–24 percent (City of Austin 1999, p. ii). However, where the main stem of Bull Creek flows through the Balcones Canyonland Preserve (BCP), some of the best quality habitat remaining for the Jollyville Plateau salamander exists (O'Donnell 2005, slide 4; O'Donnell 2006).

The petition states that developed tributaries occupied by the Jollyville Plateau salamander had higher levels of chloride, nitrate-nitrogen, specific conductance, magnesium, potassium, sodium, sulfate, and fecal coliform compared to undeveloped tributaries ($p < 0.05$) over the course of the City of Austin's monitoring study (City of Austin 2001, p. 59). Developed tributaries also experienced lower mean adult and juvenile Jollyville Plateau salamander abundances per square meter of wetted surface over the course of the study when compared to undeveloped tributaries ($p < 0.05$) (City of Austin 2001, p. 99). Information provided by the petitioner citing lower salamander abundances and decreased water quality in developed tributaries is corroborated by information in our files.

The petition presents information about the negative effects of sedimentation on urban stream ecosystems and aquatic organisms. Sediments are mixtures of silt, sand, clay, and organic debris that are washed into tributaries during storm events (White and White 1968, p. 116; Ford and Williams 1989, p. 537; Mahler and Lynch 1999, p. 13). Due to high organic carbon content, sediments can act as a sink and/or transport mechanism for contaminants. Contaminant compounds such as polycyclic aromatic hydrocarbons (PAHs), petroleum hydrocarbons, and pesticides can be absorbed into sediment particles in concentrations that are orders of magnitude greater than found in the water column (Mahler and Lynch 1999, p. 12). The petition adds that PAH exposure can cause impaired reproduction, reduced growth and development, and tumors or cancer in species of amphibians and reptiles. PAH exposure can also cause reduced survival, altered physiological function, and changes in species populations and community composition of freshwater invertebrates (Albers 2003, p. 352). The petition does not present evidence that these contaminant compounds are affecting the Jollyville Plateau salamanders specifically. However, information on the effects of sedimentation and contaminant compounds on amphibians, reptiles, and other aquatic organisms provided by the petitioner is corroborated by information in our files. Contamination from sedimentation has been documented to negatively affect reproduction, growth, and development in amphibians and reptiles, and has been shown to reduce survival for aquatic invertebrates, the salamander's food source.

The petition also states that sediments suspended in water can clog gill structures of aquatic organisms and impair their ability to avoid predators or locate food sources and potential mates (Garton 1977, p. 443; Schueler 1987, p. 1.5). Excessive deposition of sediment can physically reduce the amount of available habitat and protective cover for aquatic organisms by clogging spaces under or between the pebbles and rocks that are used for protective cover (Welsh and Ollivier 1998, p. 1128). Sedimentation from construction events that began in 2000 has affected one of the two City of Austin reference sites used in the aforementioned salamander monitoring study. The site, used as a control for the study due to its undeveloped status at the beginning of the study in 1996, can no longer be used as an undeveloped control due to the impacts corresponding to an increase in active construction upstream, including loss of salamander, benthic macroinvertebrate, and aquatic plant habitat (O'Donnell 2005, slide 14). We verified the petitioner's claim with information in our files indicating that, following construction, the City observed a decline in Jollyville Plateau salamander sightings in this tributary from more than 70 individuals per survey before the construction to rarely more than 1 after the construction began (O'Donnell 2006). The City of Austin monitoring study provides evidence that, as sediment deposition increases, salamander abundances significantly decrease ($p < 0.01$) (City of Austin 2001, pp. 101, 126). In addition, the petition cites observations by City of Austin biologists involved in the study that indicated that once a sediment layer is established, Jollyville Plateau salamander habitat is lost (O'Donnell 2005, slide 23). Information provided by the petitioner on the effects of sedimentation is corroborated by information in our files.

The petition suggests that frequent human visitation and gas line or sewage spills associated with developed tributaries may negatively affect Jollyville Plateau salamanders and their habitat. The petition cites documentation from the City of Austin of disturbed vegetation, vandalism, and the destruction of travertine deposits by foot traffic at one of their salamander monitoring sites in the Bull Creek watershed. The drainage area was also impacted by a construction sediment spill in 1994 (City of Austin 2001, p. 21). Several sewage spills occurred in another drainage area within the Bull Creek watershed during the mid-1990s, and the area still contains a subsurface sanitary sewer line that, if a leak occurs, could affect the salamanders living downstream (City of Austin 2001, pp. 21, 74). The petition also provides information regarding several spills affecting a tributary supporting Jollyville Plateau salamanders located in the Shoal Creek watershed, including a 50-gallon gas spill that occurred in 1987, a several gallon hydraulic fluid spill in 1995, followed by a 50-gallon diesel spill in 1996. There is at least one leaking underground storage tank located in this tributary (City of Austin 2001, p. 16). Information provided by the petitioner regarding gas, sediment, and sewage spills in the range of the Jollyville Plateau salamander is corroborated by information in our files.

The petition states that Jollyville Plateau salamander deformities, mainly in the form of curvature of the spine,

have been found at two of the City's Bull Creek watershed monitoring sites (City of Austin 2001, p. 120). The petition states that the City of Austin documented elevated levels of nutrients, particularly nitrates, at these sites and suggested that this was the cause of the deformities (O'Donnell et al. 2005, p. 11). The petition discusses these deformities as part of listing factor C, ''Disease or Predation.'' But, because the petition suggests that elevated nitrates are the likely cause of the spinal curvatures, we are including this information under Factor A, as a form of habitat modification. Information in our files states that possible sources of spinal curvature in amphibians include pathogens, inadequate nutrition, and contamination. After several labs conducted necropsies on some of the affected Jollyville Plateau salamanders, no obvious pathogens emerged as the cause (O'Donnell et al. 2005, p. 11). Information in the City's report indicates that nitrate levels at both of these sites have averaged six times greater than undeveloped Edwards Aquifer springs (City of Austin 2001, p. 120; O'Donnell et al. 2005, p. 11). Other studies cited in the City's report include documentation of salamander larvae and tadpoles developing bent tails, body swelling, and other deformities when continuously exposed to similar nitrate levels for more than five days (City of Austin 2001, p. 123; O'Donnell et al. 2005, pp. 11–12). Thus, environmental toxins are suspected by City biologists as a leading cause of the spinal curvature (O'Donnell et al., 2005, p. 11). Information in our files demonstrates that deformities continue to be observed, include missing eyes, limbs, and digits (O'Donnell et al. 2005, pp. 11–12). Information provided by the petitioner regarding the documented elevated nitrates and Jollyville Plateau salamander deformities is corroborated by information in our files.

The petition states that the City of Austin has plans to build a Water Treatment Plant in the Balcones Canyonland Preserve (BCP) above the main stem of Bull Creek, which is considered one of the best undeveloped habitats remaining for the Jollyville Plateau salamander (O'Donnell 2005, slide 4, slide 12; O'Donnell 2006). Although most of the creek's watershed is developed or slated for development, the main stem of the creek runs through the BCP, which has been providing water quality protection for the salamander by preventing development along that part of the creek (O'Donnell 2005, slide 4; O'Donnell 2006). The petition states the new plant will likely degrade the water quality of the creek as well as increase sediment loads within the salamander's habitat (O'Donnell 2006). Information provided by the petitioner on a new water treatment plant slated for development above the main stem of Bull Creek is corroborated by information in our files. We consider the petition to present substantial information that the Jollyville Plateau salamander may be threatened by habitat-based threats such as water quality degradation.

The petition also reports that increasing demand on the northern segment of the Edwards Aquifer for local human water consumption and diversion of surface runoff that would otherwise recharge the aquifer could result in lower spring surface discharge. Hundreds of springs have dried up in Texas due to human impacts on the aquifers, such as over-pumping, increases in impervious cover, and surface run-off diversion (Schram 1995, p. 90). To exacerbate this issue, the portion of the Edwards Aquifer underlying the Jollyville Plateau is relatively shallow, with a high elevation, thus being likely to dry out at the surface during periods of drought (Cole 1995, pp. 26–27). Information provided by the petitioner regarding increasing demand for water from the segment of the aquifer containing the Jollyville Plateau salamander, the susceptibility of that portion of the aquifer to dry out at the surface, and the documented effects of human impacts and over-pumping on aquifer systems in Texas is corroborated by information in our files. Previous Service documents have discussed reduced spring flow as a potential threat to similar *Eurycea* salamanders occurring in the Edwards Aquifer (Service 2005, pp. 1.6–22, 1.6–23). We are not making a finding on whether the petitioners have presented substantial information that the Jollyville Plateau salamander may be threatened by habitat-based threats associated with aquifer depletion. We will consider information related to this issue during the status review.

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

According to the petition, overutilization is not considered a threat to the Jollyville Plateau salamander at this time.

C. Disease or Predation

The petition contends that City of Austin biologists found Jollyville Plateau salamander abundances were negatively correlated with the abundance of predatory centrarchid fish (carnivorous freshwater fish belonging to the sunfish family), such as black bass (*Micropterus spp.*) or sunfish (*Lepomis spp.*) (City of Austin 2001, p. 102). Information provided by the petitioner on the negative correlation documented between salamander abundances and the abundance of predatory fish is corroborated by information in our files. There have been no direct observations of negative interactions between Jollyville Plateau salamanders and centrachid fish. Predation could have an additive effect to other threats occurring and may be significant in combination with those threats.

D. Inadequacy of Existing Regulatory Mechanisms

The petitioner states that there is currently no protection for the Jollyville Plateau salamander provided by Texas State Law. The species is not listed on the Texas State List of Threatened or Endangered Species. There were no sources cited in the petition regarding this statement, but this was verified by reviewing the State's list of threatened and endangered species (TPWD 2006, pp. 2–3).

The Balcones Canyonland Preserve (BCP) offers some water quality benefits to portions of the Bull Creek, West Bull Creek, Buttercup Creek, and Lake Travis watersheds through preservation of open space over their recharge zones (Service 1996a, pp. 2–28–2–29). However, some of the sites known to be occupied by the Jollyville Plateau salamander within the BCP can be affected by changes in land use and subsequent water quality degradation occurring in portions of contributing watersheds outside of the preserved tracts. Specifically, the preserved tracts within the BCP do not appear to be effective at reducing nutrient levels at some salamander sites (City of Austin 1999, p. 6–11). In addition, Jollyville Plateau salamanders are not a covered species under the section 10(a)(1)(B) permit under which the preserves were established (Service 1996b, pp. 1–10).

The petition states that the City of Austin's water quality ordinances provide some water quality regulatory protection to the salamander's habitat, but do not appear to be effective at reducing nutrient levels. The petition also notes that less than 20 percent of all development in the Bull Creek watershed is subject to the most stringent regulations, while the other 80 percent was developed prior to the passage of these regulations in 1993 (City of Austin 1999, p. 6–11). Additionally, regulations aimed at limiting impervious cover over the

Edwards Aquifer have been exempted by numerous grandfathering laws (Chapter 245 of the Texas Local Government Code as discussed in Service 2005, p. 1.6–17).

There are several State regulations, such as the Texas Commission on Environmental Quality's (TCEQ) Edwards Rules, along with some municipal ordinances, that are designed to minimize water quality degradation from new development. The Edwards Rules regulate activities that may pollute the Edwards Aquifer. The Edwards Rules do not address land use, impervious cover limitations, nonpoint source pollution, or application of fertilizers and pesticides over the recharge zone (The Edwards Aquifer Rules as discussed in 62 FR 23389; The Edwards Aquifer Rules as discussed in Service 2005, p. 1.6–16). Based on trend data that shows degradation of water quality at Barton Springs over the years, existing regulations for maintaining water quality in the Edwards Aquifer may not adequately protect the salamander (City of Austin 2005b, p. 20 as cited in Service 2005, p. 1.6–16). Information provided by the petitioner on the inadequacies of existing regulatory mechanisms is corroborated by information in our files. Data indicate that water quality degradation in streams occupied by the Jollyville Plateau salamander and other areas in the Edwards Aquifer such as Barton Springs continue to occur despite the existence of current regulatory mechanisms. Therefore, we consider the petition to present substantial information that inadequacy of existing regulatory mechanisms poses a substantial threat to the Jollyville Plateau salamander.

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

The petition states that natural factors negatively affecting the Jollyville Plateau salamander include its limited distribution and amphibians' sensitivity to water quality degradation. Amphibians, especially their eggs and larvae, are sensitive to many pollutants including heavy metals, insecticides, nitrates, salts, and petroleum hydrocarbons (Harfenist et al. 1989, pp. 4–57). In addition, crustaceans on which the Jollyville Plateau salamander feeds are especially sensitive to water pollution (Phipps et al. 1995, p. 282). Information provided by the petitioner on the Jollyville Plateau salamander's limited distribution and amphibian sensitivity to pollutants is corroborated by information in our files. As discussed under Factor A, the present or threatened destruction, modification, or curtailment of the species' habitat or range, Jollyville Plateau salamanders exhibit potential sensitivities to certain aspects of water quality degradation such as increased sedimentation from construction events (O'Donnell 2006) and/or abnormal development in areas with high nitrate levels (O'Donnell et al. 2005, pp. 11–12). Thus, we find that the petition presents substantial information that natural factors may increase susceptibility to other threats.

Finding

We have reviewed the petition and literature cited in the petition, and evaluated that information we deemed reliable to make this finding. We used other reliable information that was readily available in our files or readily available to us at the time of the petition review to evaluate the reliability of information in the petition. The petition presents evidence of water quality degradation resulting in lower salamander abundances, a loss in salamander habitat, and possible salamander deformities within urbanized areas of their habitat. The petition also presents evidence of expanding urbanization throughout their range, including areas that are currently considered protected. The information in our files supports the petition's statements regarding these threats to the salamander. Thus, we believe that the petition presents substantial information indicating water quality degradation combined with the species' limited distribution may increase extinction risk. In addition, existing available regulatory mechanisms appear potentially insufficient to control water quality levels in salamander habitat and prevent the progressive decline of the habitat upon which the Jollyville Plateau salamander depends. On the basis of this review and evaluation, we find that the petition presents substantial information indicating that listing the Jollyville Plateau salamander may be warranted. As such, we are initiating a further status review of the Jollyville Plateau salamander to determine whether listing the species under the Act is warranted.

We have also reviewed the available information to determine if the existing and foreseeable threats pose an emergency to this species. The immediacy of the threats described in the petition do not appear to be so great to a significant portion of the total population that the routine listing process would not be sufficient to prevent large losses that could otherwise result in extinction. Furthermore, we do not believe that expected losses of the salamander during the normal listing process would risk the continued existence of the entire listed species. For these reasons, we have determined that an emergency listing is not warranted at this time. However, if at any time we determine that emergency listing of the Jollyville Plateau salamander is warranted, we will seek to initiate an emergency listing process.

References Cited

A complete list of all references cited herein is available, upon request, from the Austin Ecological Services Field Office (see **ADDRESSES** section).

Author

The primary author of this notice is the Austin Ecological Services Field Office (see **ADDRESSES** section).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 6, 2007.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E7–2289 Filed 2–12–07; 8:45 am]

BILLING CODE 4310–55–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 San Felipe Gambusia as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the San Felipe gambusia (*Gambusia clarkhubbsi*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial information indicating that listing the San Felipe gambusia may be warranted. Therefore, we will not initiate a further status review in response to this petition. We ask the public to submit to us any new information that becomes available

concerning the status of the San Felipe gambusia or threats to it or its habitat at any time. This information will help us monitor and encourage the conservation of this species.

DATES: The finding announced in this document was made on February 13, 2007. You may submit new information concerning this species for our consideration at any time.

ADDRESSES: The complete supporting file for this finding is available for public inspection, by appointment, during normal business hours at the Austin Ecological Services Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758. Submit new information, materials, comments, or questions concerning this subspecies to us at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Pine, Field Supervisor, Austin Ecological Services Field Office (see **ADDRESSES**) (telephone 512/490–0057; facsimile 512/490–0974). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We base this finding on information submitted with the petition, referenced in the petition, and determined to be reliable after review, as well as information available in our files or otherwise available to us at the time of the petition review. To the maximum extent practicable, we make this finding within 90 days of receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

We base this finding on information provided by the petitioner that we determined to be reliable after reviewing sources referenced in the petition and information available in our files at the time of the petition review. We evaluated that information in accordance with 50 CFR 424.14(b). Our process for making this 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold. The substantiality test is applied only to the reliable information supporting the petition.

On June 13, 2005, we received a formal petition, dated June 10, 2005, from Save Our Springs Alliance (SOSA) requesting that the San Felipe gambusia (*Gambusia clarkhubbsi*) be listed as an endangered species in accordance with section 4 of the Act. The West Texas Springs Alliance was also listed as a petitioner, but did not provide a representative's signature. The petition is available at *http://www.fws.gov/southwest/es/Library/*.

Action on this petition was precluded by court orders and settlement agreements for other listing actions that required all of our listing funds for fiscal year 2005 and a substantial portion of our listing funds for fiscal year 2006. On September 29, 2005, we received a 60-day notice of intent to sue from SOSA for failing to make a timely 90-day finding. On December 1, 2005, we sent a letter to SOSA informing them that we would likely not make a petition finding during the fiscal year 2006 due to funding limitations. Subsequently, funding became available to act on the petition. On August 10, 2006, SOSA filed a complaint against the Service for failure to issue a 90-day petition finding on the San Felipe gambusia under section 4 of the Act. In our December 18, 2006, motion for summary judgment, we informed the court that, based on current funding and workload projections, we believed that we could complete a 90-day finding by February 6, 2007, and if we determined in the 90-day finding that the petition provided substantial scientific and commercial information, we could make a 12-month finding by February 6, 2008. This notice constitutes our 90-day finding for the petition to list the San Felipe gambusia.

Species Information

The San Felipe gambusia is a fish that was first discovered in 1997. It was described as *Gambusia clarkhubbsi* by Gary Garrett and Robert Edwards (2003, pp. 783–788) based on morphology. Genetic information has not been published on the San Felipe gambusia.

The San Felipe gambusia is a member of the subgenus *Gambusia* and a member of the *nobilis* species group (Garrett and Edwards 2003, p. 784). At maturity, the San Felipe gambusia's standard length averages 1.07 inches (in) (27.18 millimeters (mm)) for males and 1.39 in (35.22 mm) for females (Garrett and Edwards 2003, p. 786).

The San Felipe gambusia is most similar morphologically to the spotfin gambusia (*Gambusia krumholzi*) from northern Mexico, but differs in a number of morphological characteristics. The San Felipe gambusia's ground color is light overall with tan overtones, whereas the spotfin gambusia is silvery or yellow white with blue overtones (Garrett and Edwards 2003, p. 784). The San Felipe gambusia has a broader lateral stripe with more prominent spotting along its sides. It also has a broader streak in front of its vertebral column on its back. In addition, it has no streak behind its anus. The spotfin gambusia has, in contrast, a distinct, thin streak behind the anus. The back and tail fins are dusky to colorless in the San Felipe gambusia, whereas these fins are blackened near the margins on spotfin gambusia. The anal fin, also dusky to colorless on the San Felipe gambusia, is darkened on female spotfin gambusia (Garrett and Edwards 2003, p. 785).

The San Felipe gambusia is known only from San Felipe Creek, Val Verde County, Texas (Garrett and Edwards 2003, p. 783). San Felipe Creek emanates from the San Felipe Springs segment of the Edwards-Trinity (Plateau) Aquifer. The creek is a Rio Grande tributary, which flows through the City of Del Rio (Garrett and Edwards 2003, p. 785). Preliminary observations indicate that the San Felipe gambusia's habitat is characterized by edge or quiet water in close association with significant spring flows found in the upper portions of the creek. Garrett and Edwards (2003, p. 787) suggest that low numbers of San Felipe gambusia were long present in San Felipe Creek where they are dependent upon rare, specific portions of spring-associated habitat. The Tex-Mex gambusia (*Gambusia speciosa*) is the only other *Gambusia* occurring in San Felipe Creek. Since its discovery, San Felipe gambusia ''often have comprised 50 percent of the *Gambusia* in collections of 30 to several hundred individuals'' (Garrett and Edwards 2003, p. 787).

Threats Analysis

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4 of the Act, we may list a species, subspecies, or

distinct population segment of vertebrate taxa on the basis of any 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. In making this finding, we evaluated whether the threats to the San Felipe gambusia presented in the petition may pose a concern with respect to its survival. The Act identifies the five factors to be considered, either singly or in combination, to determine whether a species may be threatened or endangered. In making this finding, we evaluated whether threats to the San Felipe gambusia presented in the petition and other information available in our files at the time of the petition review may pose a concern with respect to the San Felipe gambusia's persistence in the wild. Our evaluation of these threats is presented below. In the discussion below, we have placed the threats listed in the petition under the most appropriate listing factor.

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

The petition claims that semi-arid climatic conditions combined with a local and regional desire for pumping aquifer water are probably the most important threats related to the destruction, modification, or curtailment of San Felipe gambusia's habitat. The San Felipe portion of the Edwards-Trinity (Plateau) Aquifer is the sole source of water for the City of Del Rio and Laughlin Airforce Base. The petitioner did not provide a citation to verify this information. Additionally, according to the petitioner, area ranchers and farmers use diverted water from San Felipe Creek, as well as water pumped from the aquifer, to irrigate their crops, although the petitioner presented no references for this statement.

In addition to potential problems presented by a strong local reliance on aquifer water, rapidly growing cities elsewhere in Texas are in the market to transport water from Cal Verde County to sustain their water demands. This practice is often referred to as ''water ranching'' or ''water mining'' (Texas Center for Policy Studies 2001, p. 1). The petition states that Val Verde County's proximity to San Antonio and San Angelo make it ideal for the profit-generating business of water ranching. Both San Antonio and San Angelo have established plans to transport water from certain rural areas located over the Edwards-Trinity (Plateau) Aquifer. Readily available information in our files indicates that several private water development projects have been evaluated to mine water into San Antonio from Val Verde, Kinney, and Edwards counties (HDR 2001, p. 1–1).

Sustaining spring flows in San Felipe Creek is highly dependent upon maintaining groundwater levels above a certain elevation within the San Felipe portion of the Edwards-Trinity (Plateau) Aquifer. Information from the Texas Center for Policy Studies (2001, p. 2), which was cited by the petitioner, indicates that if several large-scale water ranchers withdraw water from this portion of the aquifer simultaneously, the area could experience aquifer depletion. The petition states that because the San Felipe gambusia occupies rare portions of spring outlets with significant spring flow, reduced spring flow could potentially eliminate much of its habitat (Edwards *et al.* 2004, p. 254). Information provided by the petitioner regarding the semi-arid climatic conditions of the region, the local and regional desire to pump groundwater, and the San Felipe gambusia's dependence upon significant spring flows is supported by information in our files. However, the petitioner did not provide information to show that the flow levels at San Felipe Creek in particular have been or are likely to be reduced by groundwater pumping to an extent that may threaten the species. Thus, the petition does not provide scientific or commercial information that aquifer depletion and subsequent springflow depletion is threatening the San Felipe gambusia at this time.

The majority of San Felipe Springs, which feeds San Felipe Creek, emanates within a golf course inside the City of Del Rio. The creek has been modified over the years to accommodate urban expansion, including activities such as the building of roads and bridges, public access, irrigation diversion, and bank stabilization (Garrett and Edwards 2003, pp. 785–786). The petition reports that the creek has been repeatedly exposed to pollution. A source cited in the petition (Garrett and Edwards 2003, p. 786) states that prior to 1994, the Texas Commission on Environmental Quality (TCEQ) documented elevated levels of nitrates, phosphates, and orthophosphates in San Felipe Creek. It is hypothesized that land use practices in the watershed, such as runoff from the municipal golf course, may have contributed to the elevated levels of pollutants (Garrett and Edwards 2003, p. 786). The petition also states that current creek management strategies employed by the San Felipe Country Club and the City of Del Rio have improved creek habitat, resulting in positive effects for the San Felipe gambusia. Information provided by the petitioner regarding urban expansion, subsequent water quality degradation, and recently implemented, creek-friendly management practices is supported by information in our files. Because the petitioner does not provide information that urban expansion and water quality degradation have been or are likely to affect the San Felipe gambusia, and provides information that current creek management practices are having a positive impact on the fish, we have determined that the petition does not present scientific or commercial information that urbanization is threatening the San Felipe gambusia.

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

The petition did not contain information suggesting that overutilization for commercial, recreational, scientific, or educational purposes is a threat to the San Felipe gambusia.

C. Disease or Predation

According to the petition, neither disease nor predation is a threat to the San Felipe gambusia.

D. Inadequacy of Existing Regulatory Mechanisms

The petition states that Texas laws regarding groundwater ownership and private pumping are inadequate for preventing aquifer depletion. The petition includes this information under listing Factor A, the present or threatened destruction, modification, or curtailment of its habitat or range, but we find that it falls under listing Factor D, the inadequacy of existing regulatory mechanisms. The petition states that, in the absence of a groundwater conservation district, the Texas ''rule of capture,'' established in 1904, gives landowners the right to withdraw unlimited amounts of water from their property for sale or personal use. Groundwater conservation districts (*e.g.*, the Kinney County Groundwater Conservation District) provide for regulation of the spacing and production of water wells (Texas Center for Policy Studies 2001, p. 1). Information in our files supports this claim and indicates groundwater conservation districts have a narrow ability to restrict the transport of groundwater outside the boundaries of

the conservation district (House Research Organization 2006, p. 4). Additionally, there is no groundwater conservation district in Val Verde County (Marbury and Kelly 2005, p. 8). This information was provided by the petitioner, but the petitioner did not supply a reference to support the claim.

Information provided by the petitioner regarding the inadequacy of existing regulatory mechanisms to protect aquifer levels is supported by information in our files. However, we believe that the petition does not present scientific or commercial information indicating that inadequate regulatory mechanisms to protect aquifer levels are a threat to the San Felipe gambusia. As stated earlier, the petition does not present information demonstrating that aquifer and springflow depletion is a threat to the species.

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

According to the petition, there are three natural factors that render the San Felipe gambusia vulnerable to extinction. The first factor is the species' extremely limited distribution. The San Felipe gambusia is found only in San Felipe Creek (Garrett and Edwards 2003, p. 785). Thus, the petitioner suggests that localized disruptions affecting the San Felipe gambusia or its habitat could increase the species' vulnerability to extinction.

Secondly, the petition suggests that not only is the San Felipe gambusia limited to San Felipe Creek, but is probably even more restricted to rare, specific portions of the creek and associated spring outlets (Garrett and Edwards 2003, p. 787). The petitioner contends that if this is true, the creek could appear healthy at the same time this specific habitat is lost. Information provided by the petitioner regarding the San Felipe gambusia's limited distribution and rare habitat requirements is supported by information in our files. However, the petitioner did not provide information to show that the limited distribution and rare habitat requirements of the San Felipe gambusia have been or are likely to threaten the species in terms of aquifer depletion and subsequent springflow depletion, as discussed in factor A above.

Lastly, the petition states that because the San Felipe gambusia evolved sympatrically with the Tex-Mex gambusia, negative impacts to the San Felipe gambusia's habitat or niche could put this species at a competitive disadvantage. The petitioner also suggest's that either the introduction of nonnative *Gambusia* or an overlap in habitat between the two native, sympatrically occurring *Gambusia,* species could lead to hybridization. Sources cited in the petition document incidents of hybridization among co-occurring *Gambusia* species (Edwards *et al.* 2004, p. 258). We suspect that the new species has long been present is San Felipe Creek but in low numbers and perhaps associated with an as yet unidentified, specific, rare habitat. Information provided by the petitioner regarding the occurrence of co-existing *Gambusia* and the history of co-existing *Gambusia* to compete and hybridize when forced into the same habitat, is supported by information in our files. However, the petitioner does not provide information that co-existing *Gambusia* species are threatening the San Felipe gambusia at this time because there is no information indicating that aquifer depletion and subsequent springflow depletion will cause these species to utilize the same habitat, and the petitioner did not provide information about nonnative *Gambusia* occurring in the same habitats as San Felipe gambusia despite the fact that it has likely been long present in the creek.

The petition also reports that an exotic species, Armadillo Del Rio (*Hypostomus sp.*) or ''armored catfish,'' has recently become established in San Felipe Creek and has expanded rapidly. The petition did not present references for this statement, although information in our files supports this claim. Readily available information in our files indicates that the armored catfish is a popular aquarium fish that feeds on algae and is known for having a dramatic impact on stream ecosystems. They remove algal cover, destroy aquatic plants, and alter bank topography. The petition stated, but did not provide a reference, that armored catfish are also known to directly compete with native fishes as well as prey upon them by accidental ingestion of their eggs. The petition suggests that the endangered Devils River minnow has become extirpated within San Felipe Creek due to the introduction of this catfish. Information in our files indicates that this information is unreliable and that the Devils River minnow is still found in San Felipe Creek (Lopez-Fernandez and Winemiller 2005, p. 250). We recognize that the armored catfish may modify the ecosystem of San Felipe Creek, although the petitioner does not provide information on the negative impacts caused by the armored catfish within the San Felipe Creek ecosystem, nor does the petitioner describe how such impacts could threaten the survival of the San Felipe gambusia despite the fact that the armored catfish is present and known to be abundant in the creek. The petitioner therefore does not provide scientific or commercial information that the exotic armored catfish is a threat to the San Felipe gambusia at this time.

Finding

We evaluated each of the five listing factors individually. The petition focuses primarily on three listing factors: The present or threatened destruction, modification, or curtailment of the species' habitat or range; the inadequacy of existing regulatory mechanisms; and other natural or manmade factors affecting the continued existence of the species. The petition and information in our files suggest that the combination of the species' extremely limited distribution, reliance on springflows within semi-arid climatic conditions, and unregulated plans to pump water from the Edwards-Trinity (Plateau) Aquifer may be a concern for the San Felipe gambusia. Because the petition does not provide scientific or commercial information to show that the flow levels at San Felipe Creek in particular have been or are likely to be reduced by groundwater pumping, we find that the information presented in the petition regarding the threat of springflow depletion was not substantial. The petition also presents information about water quality degradation due to land uses associated with urbanization. Because the petition does not provide evidence that land use practices have been or are likely to degrade water quality in San Felipe Creek, we do not believe that the petition presents substantial information that water quality degradation is a threat. In addition, the petition suggests that an introduced armored catfish could have a dramatic impact on the ecosystem of San Felipe Creek based on the effects documented on other aquatic systems. However, the petition does not provide scientific or commercial information that indicates the armored catfish is negatively impacting San Felipe Creek or the San Felipe gambusia. Thus, we believe that the petition does not present scientific or commercial information that the armored catfish is a threat to the species. The petition presents information about possible competition with other native or nonnative *Gambusia.* The petition, however, does not provide scientific or commercial information that

competition with other *Gambusia* species is occurring or likely to occur.

The petition suggests that the San Felipe gambusia's naturally limited distribution and habitat specificity are a threat. We find, however, that the petition does present substantial scientific or commercial information indicating that the species' limited range and habitat specificity are natural factors that make the species vulnerable, but we do not believe that this information alone indicates that the petitioned action may be warranted. It appears that the San Felipe gambusia has always been a localized species with small population numbers.

We have reviewed and evaluated the petition and assessed the reliability of the information presented by reviewing literature cited in the petition and information in our files or otherwise readily available at the time of the petition review. On the basis of this review and evaluation, we find that the petition does not present substantial scientific or commercial information to indicate that listing the San Felipe gambusia may be warranted. Although we will not commence a status review in response to this petition, we will continue to monitor the San Felipe gambusia's population status and trends, potential threats, and ongoing management actions that might be important with regard to the conservation of the San Felipe gambusia across its range. We encourage interested parties to continue to gather data that will assist with the conservation of the species. If you wish to provide information regarding the San Felipe gambusia, you may submit your information or materials to the Field Supervisor, Austin Ecological Services Field Office (see **ADDRESSES**).

References Cited

A complete list of all references cited herein is available, upon request, from the Austin Ecological Services Field Office (see **ADDRESSES**).

Author

The primary author of this notice is the Austin Ecological Services Field Office (see **ADDRESSES**).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 6, 2007.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E7–2292 Filed 2–12–07; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 72, No. 29

Tuesday, February 13, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 7, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: On-line Registration for FSA-sponsored Events and Conferences.

OMB Control Number: 0560–0226.

Summary of Collection: The collect of information is necessary for respondents to register on-line to make payment and reservation to attend Farm Service Agency (FSA) sponsored events and conferences. The respondents will need to submit the information on-line to pay and to make reservation prior to attending any conferences and events. Respondents that do not have access to the Internet can register by mail or fax.

Need and use of the Information: FSA will collect the name, organization, organizations address, country, phone number, State, payment options and special accommodations from respondents. FSA will use the information to get payment, confirm and make hotel and other necessary arrangement for the respondents.

Description of Respondents: Individuals or households; Farms: Business or other for-profit; Federal government, Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 900.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 225.

Farm Service Agency

Title: Minority Farm Register.

OMB Control Number: 0560–0231.

Summary of Collection: This information collection is necessary to create a client list for the Farm Service Agency (FSA) and the Department of Agriculture (USDA) program outreach. The collected information is a tool to promote equal access to USDA Farm programs and services for minority farmers and ranchers with agricultural interests. The Register will provide a name and address file of those interested in outreach efforts. The authority for the collection of this information can be found at 7 U.S.C. 2279.

Need and use of the Information: FSA will collect the name, address, phone number, farm location, race, ethnicity and gender from the Minority Farm Register permission form, AD–2035. FSA manage the register and the Office of Outreach releases names, addresses and phone numbers of individuals to approved outreach organizations requesting lists of individuals with particular racial and ethnic characteristics with their authorizations.

Description of Respondents: Individuals or households.

Number of Respondents: 5,000.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 4,667.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–2393 Filed 2–12–07; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2007–0004]

Codex Alimentarius Commission: Meeting of the Codex Committee on General Principles

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), is sponsoring a public meeting on March 7, 2007. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the Twenty-fourth Session of the Codex Committee on General Principles (CCGP) of the Codex Alimentarius Commission (Codex), which will be held in Paris, France, April 2–6, 2007. The Under Secretary for Food Safety recognizes the importance of providing interested parties the opportunity to obtain background information on the 24th Session of CCGP and to address items on the agenda.

DATES: The public meeting is scheduled for Wednesday, March 7, 2007, 1–4 p.m.

ADDRESSES: The public meeting will be held in Room 107–A, Jamie L. Whitten Building, USDA, 1400 Independence Avenue, SW., Washington, DC 20250. Documents related to the 24th Session of CCGP will be accessible via the World Wide Web at the following address: *http://*

www.codexalimentarius.net/current.asp.

The U.S. Delegate to the 24th Session of CCGP, F. Edward Scarbrough, Ph.D., U.S. Codex Office, Food Safety and Inspection Service, USDA, invites U.S. interested parties to submit their comments electronically to the following e-mail address *uscodex@fsis.usda.gov*.

FOR FURTHER INFORMATION ABOUT THE 24TH SESSION OF THE CCGP CONTACT: F. Edward Scarbrough, Ph.D., U.S. Manager for Codex, Tel: (202) 720–2057, Fax: (202) 720–3157; E-mail: *ed.scarbrough@fsis.usda.gov*.

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Jasmine Matthews, Program Analyst, U.S. Codex Office, Tel: (202) 205–7760, Fax: (202) 720–3157, E-mail: *jasmine.matthews@fsis.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The Codex Committee on General Principles (CCGP) deals with rules and procedures referred to it by the Codex Alimentarius Commission including the establishment of principles which define the purpose and scope of the Codex Alimentarius and the nature of Codex standards. The development of mechanisms to address any economic impact statements is also the responsibility of the CCGP. The Committee is hosted by the Government of France.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 24th Session of the CCGP will be discussed during the public meeting:

- Proposed Draft Working Principles for Risk Analysis for Food Safety.
- Proposed Draft Revised Code of Ethics for International Trade in Foods.
- Respective roles of the Regional Coordinators and the Members of the Executive Committee elected on a geographic basis.
  - Designation of the Chairperson of the Coordinating Committee by the Regional Coordinator.
  - Respective roles of the Coordinator and the Member elected on a geographical basis in the Executive Committee.
- Review of the Procedures for the Elaboration of Codex Standards and Related Texts.
  - Proposed amendments to the Procedures.
  - Guide to the Procedure for the Revision and Amendment of Codex Standards; and Arrangements for the Amendment of Codex Standards Elaborated by Codex Committees which have adjourned *sine die.*
- Review of the General Principles of the Codex Alimentarius.
- Proposed new definitions of risk analysis terms related to food safety.
- Consideration of the Structure and Presentation of the Procedural Manual.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the Meeting. Members of the public may access or request copies of these documents (see **FOR FURTHER INFORMATION ABOUT THE 24TH SESSION OF THE CCGP CONTACT**).

Public Meeting

At the March 7, 2007 public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 24th Session of the CCGP, F. Edward Scarbrough (see **ADDRESSES**). Written comments should state that they relate to activities of the 24th Session of the CCGP.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2007_Notices_Index/*. FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC, on February 8, 2007.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. E7–2436 Filed 2–12–07; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2007–0005]

Codex Alimentarius Commission: Meeting of the Codex Committee on Methods of Analysis and Sampling

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA) and the Food and Drug Administration (FDA) are sponsoring a public meeting on February 22, 2007. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the Twenty-Eighth Session of the Codex Committee on Methods of Analysis and Sampling (CCMAS) of the Codex Alimentarius Commission (Codex), which will be held in Budapest, Hungary March 5–9, 2007. The Under Secretary for Food Safety and The Food and Drug Administration recognize the importance of providing interested parties the opportunity to obtain background information on the 28th Session of CCMAS and to address items on the agenda.

DATES: The public meeting is scheduled for Thursday, February 22, 2007 from 10:30 a.m. to 12 noon.

ADDRESSES: The public meeting will be held in Room 1A002, Harvey Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740. Documents related to the 28th Session of CCMAS will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

The U.S. Delegate to the 28th Session of CCMAS, Dr. Gregory Diachenko of FDA invites U.S. interested parties to submit their comments electronically to the following e-mail address *Gregory.Diachenko@fda.hhs.gov.*

FOR FURTHER INFORMATION ABOUT THE 28TH SESSION OF THE CCMAS CONTACT: Dr. Gregory Diachenko, Room HFS–245, Harvey Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–1898, Fax: (301) 436–2364, e-mail: *Gregory.Diachenko@fda.hhs.gov.*

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Mr. Syed Ali, International Issues Analyst, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157 *syed.ali@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The Codex Committee on Methods of Analysis and Sampling was established to elaborate codes, standards and related texts to define the criteria appropriate to Codex Methods of Analysis and Sampling. The Committee is hosted by Hungary.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 28th Session of CCMAS will be discussed during the public meeting:

- Matters Referred to the Committee by the Codex Alimentarius Commission and other Codex Committees.
- Draft Guidelines for Evaluating Acceptable Methods of Analysis.
- Draft Guidelines for Settling Disputes over Analytical (Test) Results.
- Proposed Draft Guidelines on Analytical Terminology for Codex Use.
- Endorsement of Methods of Analysis Provisions in Codex Standards.
- Conversion of Methods for Trace Elements into Criteria.
- Criteria for the Methods for the Detection and Identification of Foods Derived from Biotechnology.
- Revision of the Principles for the Establishment of Codex Sampling Procedures.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access or request copies of these documents (see **FOR FURTHER INFORMATION ABOUT THE 28TH SESSION OF THE CCMAS CONTACT**).

Public Meeting

At the February 22, 2007 public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 28th Session of CCMAS, Dr. Gregory Diachenko (see **ADDRESSES**). Written comments should state that they relate to activities of the 28th Session of CCMAS.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2007_Notices_Index/.* FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC on February 8, 2007.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. E7–2437 Filed 2–12–07; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2007–0002]

Codex Alimentarius Commission: Meeting of the Codex Committee on Contaminants in Foods

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services, are sponsoring a public meeting on March 8, 2007. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the First Session of the Codex Committee on Contaminants in Foods (CCCF) of the Codex Alimentarius Commission (Codex), which will be held in Beijing, China, on April 16–20, 2007. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 1st Session of CCCF and to address items on the agenda.

DATES: The public meeting is scheduled for Thursday, March 8, 2007 from 1 p.m. to 3 p.m.

ADDRESSES: The public meeting will be held in the auditorium (Room 1A003), Harvey W. Wiley Federal Building, FDA, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Highway, College Park MD 20740. Documents related to the 1st Session of CCCF will be accessible via the World Wide Web at the following address:

http://www.codexalimentarius.net/current.asp.

The U.S. Delegate to the CCCF, Dr. Nega Beru, invites U.S. interested parties to submit their comments electronically to the following e-mail address: *nega.beru@fda.hhs.gov.*

Registration: You may also register electronically to the same e-mail address above. Early registration is encouraged because it will expedite entry into the building and its parking area. If you require parking, please include the vehicle make and tag number, if known, when you register. Because the meeting will be held in a Federal building, you should also bring a photo identification (ID) and plan for adequate time to pass through security screening systems.

FOR FURTHER INFORMATION ABOUT THE 1ST SESSION OF THE CCCF CONTACT: Nega Beru, Center for Food Safety and Applied Nutrition, FDA, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1731, e-mail: *nega.beru@fda.hhs.gov.*

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Ellen Matten, International Issues Analyst, U.S. Codex Office, Food Safety and Inspection Service , Room 4861, South building, 1400 Independence Ave SW., Washington, DC 20250. Phone (202) 205–7760, Fax: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The Codex Committee on Contaminants in Foods was established by the Codex Alimentarius Commission in 2006 when the Codex Committee on Food Additives and Contaminants was split. It was established to set or endorse permitted maximum levels or guideline levels for contaminants and naturally occurring toxicants in food and feed; to prepare priority lists of contaminants and naturally occurring toxicants for risk assessment by the Joint FAO/WHO Expert Committee on Food Additives; to consider methods of analysis and sampling for the determination of contaminants and naturally occurring toxicants in food and feed; to consider and elaborate standards or codes of practice for related subjects; and to consider other matters assigned to it by the Commission in relation to contaminants and naturally occurring toxicants in food and feed. The Committee is hosted by the Netherlands.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 1st Session of the CCCF will be discussed during the public meeting:

- Matters Referred to the Committee from other Codex bodies.
- Matters of Interest arising from FAO/WHO.
- Endorsement/Revision of Maximum Levels for Contaminants in Codex Standards.
- Consideration of the Codex General Standard for Contaminants and Toxins in Foods.
- Proposed Draft Levels for Total Aflatoxins in Almonds, Hazelnuts and Pistachios ''for further processing'' and ''ready-to-eat''.
- Proposed draft Sampling Plan for Aflatoxin contamination in Almonds, Brazil nuts, Hazelnuts and Pistachios.
- Discussion paper on Maximum Levels in ''ready-to-eat'' almonds, hazelnuts and pistachios.
- Discussion paper on Aflatoxin contamination in Brazil nuts.
- Discussion paper on Deoxynivalenol (DON).
- Proposed Draft Code of Practice for the Prevention and Control of Ochratoxin A Contamination in Wine.
- Discussion paper on Ochratoxin A in Coffee.
- Discussion paper on Ochratoxin A in Cocoa.
- Discussion paper on Aflatoxins in dried figs.
- Proposed draft Maximum Levels for Tin in Canned Foods (other than beverages) and in Canned Beverages.
- Proposed draft Maximum Level for 3–MCPD in Liquid Condiments containing acid-HVP (excluding naturally fermented soya sauce).
- Proposed draft Code of Practice for the Reduction of Chloropropanols during the Production of acid-Hydrolysed Vegetable Proteins (HVPs) and Products that contain acid-HVPs.
- Proposed Draft Code of Practice for the Reduction of Acrylamide in Food.
- Proposed Draft Code of Practice for the Reduction of Contamination of foods with PAH from Smoking and Direct Drying.
- Priority List of Contaminants and Naturally Occurring Toxicants Proposed for Evaluation by JECFA.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the Meeting. Members of the public may access or request copies of these documents (see **FOR FURTHER INFORMATION ABOUT THE 1ST SESSION OF THE CCCF CONTACT**).

Public Meeting

At the March 8, 2007 public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for CCCF, Dr. Nega Beru (see **ADDRESSES**). Written comments should state that they relate to activities of the 1st Session of CCCF.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2007_Notices_Index/*. FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC, on February 8, 2007.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. E7–2438 Filed 2–12–07; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revision of Land Management Plan for the Uwharrie National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of commencement of the 90-day comment period for the Uwharrie National Forest proposed Land Management Plan.

SUMMARY: The Forest Service is proposing a revision to the Land Management Plan (hereafter referred to as the Proposed Plan) for the Uwharrie National Forest (UNF). This notice provides:

1. Information on how to view and/or obtain copies of the Proposed Plan and the Comprehensive Evaluation Report.
2. Information on how the public can comment on the Proposed Plan, when those comments are due and, how comments can be submitted;
3. Who to contact for more information.

DATES: Commencement of the 90-day comment period on the Proposed Plan formally begins on February 15, 2007.

ADDRESSES: Submit written comments to: Uwharrie Plan Revision, National Forests in North Carolina, 160–A Zillicoa Street, Asheville, NC 28801. Electronic mail should include ''Uwharrie Proposed Plan'' in the subject line and be sent to: *comments-southern-north-carolina@fs.fed.us.* More information on the UNF and Proposed Plan revision process is available at: *http://www.cs.unca.edu/nfsnc/uwharrie_plan/.*

FOR FURTHER INFORMATION CONTACT: Ruth Berner, National Forests in North Carolina, Planning Team Leader, (828) 257–4862.

SUPPLEMENTARY INFORMATION: The Uwharrie National Forest is managed as part of the National Forests in North Carolina. The original Land Management Plan (LMP) for the UNF was completed in 1986. A Notice of Initiation to revise the UNF's LMP was published in the **Federal Register** on November 18, 2005. Numerous public meetings and collaborative efforts have occurred to develop a Proposed Plan for the UNF. The results of these efforts will now be available for a formal 90-day public comment period.

Documents Available for Review

The following documents are available for review. They are available either online at: ''*http://www.cs.unca.edu/nfsnc/uwharrie_plan/,*'' or hardcopies are available by sending a request to ''*comments-southern-north-carolina@fs.fed.us*'' or by contacting the address shown above.

1. Uwharrie National Forest Proposed Land Management Plan.
2. Comprehensive Evaluation Report, which includes the following separate documents:
   - Terrestrial Ecosystem Sustainability,
   - Aquatic Ecosystem Sustainability,
   - Social Economic Sustainability and Social/Economic Overview.
3. Timber Resource Analysis.

Comment Requested

The Forest Service is seeking comments from individuals, organizations, and Federal, State, and local governments and agencies on the Uwharrie National Forest Proposed Land Management Plan. Comments on the Proposed Plan should be submitted within 90-days beginning February 15, 2007.

Responsible Official

The Forest Supervisor, National Forests in North Carolina, is the Responsible Official (36 CFR 219.2(b)(1)).

(Authority: 36 CFR 219.9(b)(2)(i), 70 FR 1023, January 5, 2005)

Marisue Hillard,

Forest Supervisor, National Forests in North Carolina.

[FR Doc. 07–618 Filed 2–12–07; 8:45 am]

BILLING CODE 3410–ES–M

DEPARTMENT OF AGRICULTURE

Notice of Availability of Final Soil Scientist Specialist Report and Determination

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Final Soil Scientist Specialist Report for the Basin Creek Hazardous Fuels Reduction Project Soil Productivity Best Management Practices Monitoring Compliance with Regional Soil Quality Standards and Determination that a modified record of decision is not needed, are available for public review. This final report supplements the soils effects section of the 2004 Basin Creek Hazardous Fuels Reduction Final Environmental Impact Statement.

ADDRESSES: The Final Soil Scientist Report and Determination are available at:

(1) *http://www.fs.fed.us/r1/b-d/projects/*

(2) Beaverhead-Deerlodge National Forest, Supervisors Office, 420 Barrett Street, Dillon, MT 59725.

FOR FURTHER INFORMATION CONTACT: Cindy Tencick, 406–683–3930 or e-mail: *ctencick@fs.fed.us.*

Dated: February 5, 2007.

Peri R. Suenram,

Planning, Budget, Systems Staff Officer.

[FR Doc. E7–2376 Filed 2–12–07; 8:45 am]

BILLING CODE 3410–83–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Petrom GmbH International Trade and Majid Rahmanifar; Order Making Order Denying Export Privileges of Petrom GmbH International Trade Applicable to Related Person Majid Rahmanifar.

In the Matter of: Petrom GmbH International Trade, Maria-Theresia Strasse 26, Munich 81675, Germany, Respondent, and Majid Rahmanifar, Moehlstrasse 31, Munich 81675, Germany, Related Person.

Pursuant to section 766.23 of the Export Administration Regulations (''EAR''), the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I make the Denial Order that was imposed against Petrom GmbH International Trade (''Petrom GmbH'') on June 6, 2005 (70 FR 32743) applicable to the following individual (hereinafter, the ''Related Person''), as a person related to Petrom GmbH: Majid Rahmanifar, Moehlstrasse 31, Munich 81675, German.

Section 766.23 of the Export Administration Regulations (the ''Regulations'') provide that ''[i]n order to prevent evasion, certain types of orders under this part may be made applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. Orders that may be made applicable to related persons include those that deny or affect export privilages * * *'' 15 CFR 766.23(a).

On June 6, 2005, an Order pursuant to Part 766 of the Regulation imposing a twenty-year denial of export privileges against Petrom GmbH was published in

the **Federal Register** to conclude administrative charges pending against Petrom GmbH. *See* 70 FR 32473 (June 6, 2005). Petrom GmbH was found to have conspired and acted in concert with others, known and unknown, to bring about acts that constitute violations of the Regulations by arranging the export from the United States to Iran via Germany of items subject to the Regulations and the Iranian Transactions Regulations without the required U.S. government authorizations and to have solicited on six separate occasions violations of the Regulations by ordering the shipment of the items at issue from the United States to Iran via Germany. Furthermore, in making each of these six unlawful solicitations, Petrom GmbH acted with knowledge that violations of the Regulations were intended to occur, as Iran was the intended ultimate destination of the items. All violations occurred from on or about March 1999 to on or about May 2000.

The Order against Petrom GmbH is an order that may be made applicable to related persons pursuant to section 766.23 of the Regulations upon evidence that indicates that the person is related to Petrom GmbH by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business, and that it is necessary to add this person to the Denial Order imposed against Petrom GmbH in order to avoid evasion of that Order. The determination was based on evidence establishing that Majid Rahmanifar is the sole owner of Petrom GmbH. As such, he overseas all activities of the company. Rahmanifar holds all nominal capital related to Petrom GmbH, which was formerly located at his home.

BIS notified the Related Person of its plans to take this action. In January 2006, BIS sent a letter to Related Person by registered mail notifying him of BIS's intent to add him as a related person to the May 26, 2005 Denial Order against Petrom GmbH. The Related Person signed for the letter, thereby indicating that he received it. No response, however, was ever returned to BIS by the Related Person.

Based upon the foregoing, it is my belief that Majid Rahmanifar is related to Petrom GmbH ''by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business'' and I find that it is necessary to make the Order imposed against Petrom GmbH applicable to the Related Person to prevent the evasion of that Order.

It is now therefore ordered, *First*, that having been provided notice and opportunity for comment as provided in section 766.23 of the Regulations, Majid Rahmanifar, Moehlstrasse 31, Munich 81675. Germany (''Related Person'') has been determined to be related to Petrom GmbH International Trade, Maria-Theresia Strasse 26, Munich 81675, Germany (a.k.a. Petrom GmbH) by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services, and it has been deemed necessary to make the Order denying the export privileges of Petrom GmbH applicable to this Related Person in order to prevent evasion of the Order.

Second, that the denial of export privileges described in the Order against Petrom GmbH, which was published in the **Federal Register** on June 6, 2005 at 70 FR 32,743, shall be made applicable to the Related Person until its expiration on June 6, 2025, as follows:

I. The Related Person and, when acting for or on behalf of the Related Person, its representatives, agents, assigns, or employees (collectively, ''Denied Person'') may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that in accordance with the provisions of section 766.23(c) of the Regulations, the Related Person may, at any time, make an appeal related to this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, this Order shall be published in the **Federal Register** and a copy provided to the Related Person.

This Order is effective upon publication in the **Federal Register**.

Entered this 5th day of February, 2007.

Darryl W. Jackson,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 07–620 Filed 2–12–07; 8:45am]

BILUNG CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Petrom GmbH International Trade and Koto Commercio Iberica, S.L.; Order Making Order Denying Export Privileges of Petrom GmbH International Trade Applicable to Related Person Koto Commercio Iberica, S.L.

In the Matter of: Petrom GmbH International Trade, Maria-Theresia Strasse 26, Munich 81675, Germany, Respondent, and Koto Commercio Iberica, S.L., c/ Valderrodrigo no. 55, Madrid, Spain, c/o Majid Rahmanifar, Moehlstrasse 31, Munich 81675, Germany, Related Person.

Pursuant to section 766.23 of the Export Administration Regulations (the ''Regulations''), the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I make the Denial Order that was imposed against Petrom GmbH International Trade (''Petrom GmbH'') on June 6, 2005 (70 FR 32743) applicable to the following entity (hereinafter, the ''Related Person''), as a person related to Petrom GmbH: Koto Commercio Iberica, S.L., c/ Valderrodrigo no. 55, Madrid, Spain, c/o Majid Rahmanifar, Moehlstrasse 31, Munich 81675, Germany.

Section 766.23 of the Regulations provides that ''[i]n order to prevent evasion, certain types of orders under this part may be applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. Orders that may be made applicable to related persons include those that deny or affect export privileges. * * *'' 15 CFR 766.23(a).

On June 6, 2005, an Order pursuant to Part 766 of the EAR imposing a twenty-year denial of export privileges against Petrom GmbH International Trade, Maria-Theresia Strasse 26, Munich 81675, Germany (a.k.a. Petrom GmbH) was published in the **Federal Register** to conclude administrative charges pending against Petrom GmbH. *See* 70 FR 32473 (June 6, 2005). Petrom GmbH was found to have conspired and acted in concert with others, known and unknown, to bring about acts that constitute violations of the Regulations by arranging the export from the United states to Iran via Germany of items subject to the Regulations and the Iranian Transactions Regulations without the required U.S. government authorizations and to have solicited on six separate occasions violations of the Regulations by ordering the shipment of the items at issue from the United States to Iran via Germany. Furthermore, in making each of these six unlawful solicitations, Petrom GmbH acted with knowledge that a violation of the Regulations was intended to occur, as Iran was the intended ultimate destination of the items. All violations occurred from on or about March 1999 to on or about May 2000.

This Order is an order that may be made applicable to related persons pursuant to section 766.23 upon evidence that indicates that the Related Person is related to Petrom GmbH by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business, and that it is necessary to add this entity to the Denial Order imposed against Petrom GmbH in order to avoid evasion of that Order. It is my belief that Koto is related to Petrom GmbH ''by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business.'' The determination is based on evidence establishing that Majid Rahmanifar is the sole owner of Petrom GmbH and Koto. As such, he oversees all activities of both companies. Rahmanifar holds all nominal capital related to Petrom GmbH, which was formerly located at his home.

BIS notified the Related Person of its plans to take this action on November 20, 2006 in accordance with sections 766.5(b) and 766.23 of the Regulations. Specifically, BIS provided notice to the last known address of the Related Party in Spain in January 2006, which was returned to BIS unopened. On November 20, 2006, BIS then provided notice to Majid Rahmanifar, an individual in Germany believed to be associated with the Related Person. The letter requested a response within 30 days. Rahmanifar signed for the letter, thereby indicating that he received it. No response, however, was ever returned to BIS by the Related Person or any individual associated with the Related Person.

It is my belief that Koto is related to Petrom GmbH ''by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business'' and that it is necessary to make the Order imposed against Petrom GmbH applicable to the Related Person to prevent the evasion of that Order.

It is now Therefore ordered,

First, that having been provided notice and opportunity for comment as provided in section 766.23 of the Regulations, Koto Commercio Iberica, S.L., c/Valderrodrigo no. 55, Madrid, Spain and c/o Moehlstrasse 31, Munich 81675, Germany (''Related Person'') has been determined to be related to Petrom GmbH International Trade, Maria-Theresia Strasse 26, Munich 81675, Germany (a.k.a. Petrom GmbH) by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services, and it has been deemed necessary to make the Order denying the export privileges of Petrom GmbH applicable to this Related Person in order to prevent evasion of the Order:

Second, that the denial of export privileges described in the Order against Petrom GmbH, which was published in the **Federal Register** on June 6, 2005 at 70 FR 32,743, shall be made applicable to the Related Person until its expiration on June 6, 2025, as follows:

I. The Related Person, its successors or assigns, and when acting for or on behalf of the Related Person, its officers, representatives, agents, or employees (collectively, ''Denied Person'') may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to 271 the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person

acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that in accordance with the provisions of Section 766.23(c) of the Regulations, the Related Person may, at any time, make an appeal related to this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be published in the **Federal Register** and a copy provided to the Related Person.

This Order is effective upon publication in the **Federal Register**.

Entered this 5th day of February, 2007.

Darryl W. Jackson,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 07–621 Filed 2–12–07; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Petrom GmbH International Trade and Petrom Internacional Trade, S.L., Order Making Order Denying Export Privileges of Petrom GmbH International Trade Applicable to Related Person Petrom Internacional Trade, S.L.

In the Matter of: Petrom GmbH International Trade, Maria-Theresia Strasse 26, Munich 81675, Germany, Respondent, and Petrom Internacional Trade, S.L., PL. De Verin 2, 28029 Madrid, Spain, c/o Majid Rahmanifar, Moehlstrasse 31, Munich 81675, Germany, Related Person.

Pursuant to section 766.23 of the Export Administration Regulations (''EAR''), the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I make the Denial Order that was imposed against Petrom GmbH International Trade (''Petrom GmbH'') on June 6, 2005 (70 FR 32743) applicable to the following entity (hereinafter, the ''Related Person''), as a person related to Petrom GmbH: Petrom Internacional Trade, S.L., PL. De Verin 2, 28029 Madrid, Spain, c/o Majid Rahmanifar, Moehlstrasse 31, Munich 81675, Germany.

Section 766.23 of the Regulations provides that ''[i]n order to prevent evasion, certain types of orders under this part may be made applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. Orders that may be made applicable to related persons include those that deny or affect export privileges * * *.'' 15 CFR 766.23(a).

On June 6, 2005, an Order pursuant to Part 766 of the Regulations imposing a twenty-year denial of export privileges against Petrom GmbH International Trade, Maria-Theresia Strasse 26, Munich 81675, Germany (a.k.a. Petrom GmbH) was published in the **Federal Register** to conclude administrative charges pending against Petrom GmbH *See* 70 FR 32473 (June 6, 2005). Petrom GmbH was found to have conspired and acted in concert with others known and unknown, to bring about acts that constitute violations of the Regulations by arranging export from the United States to Iran via Germany of items subject to the Regulations and the Iranian Transactions Regulations without the required U.S. government authorizations and to have solicited on six separate occasions violations of the Regulations by ordering the shipment of the items at issue from the United States to Iran via Germany. Furthermore, in making each of these six unlawful solicitations, Petrom GmbH acted with knowledge that a violation of the Regulations was intended to occur, as Iran was the intended ultimate destination of the items. All violations occurred from on or about March 1999 and May 2000.

This Order is an order that may be made applicable to related persons pursuant to section 766.23 upon evidence that indicates that the Related Person is related to Petrom GmbH by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business, and that it is necessary to add this entity to the Denial Order imposed against Petrom GmbH in order to avoid evasion of that Order. It is my belief that Petrom, S.L. is related to Petrom GmbH ''by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business.'' The determination is based on evidence establishing that Majid Rahmanifar is the sole owner of Petrom GmbH and Petrom, S.L. As such, he oversees all activities of both companies. Rahmanifar holds all nominal capital related to Petrom GmbH, which was formerly located at his home.

BIS notified the Related Person of its plans to take this action on November 20, 2006 in accordance with sections 766.5(b) and 766.23 of the Regulations. Specifically, BIS provided notice to the last known address of the Related Party in Spain in January 2006, which was returned to BIS unopened. On November 20, 2006, BIS then provided notice to Majid Rahmanifar, an individual in Germany believed to be associated with the Related Person. The letter requested a response within 30 days. Rahmanifar signed for the letter, thereby indicating that he received it. No response, however, was ever returned to BIS by the Related Person or any individual associated with the Related Person.

Based upon the foregoing, it is my belief that Petrom, S.L. is related to Petrom GmbH ''by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business'' and that it is necessary to make the Order imposed against Petrom GmbH applicable to the Related Person to prevent the evasion of that Order.

It is now therefore ordered,

First, that having been provided notice and opportunity for comment as provided in section 766.23 of the Export Administration Regulations (the ''Regulations''), Petrom Internacional Trade, S.L., PL. De Verin 2, 28029 Madrid, Spain and c/o Moehlstrasse 31, Munich 81675, Germany (''Related Person'') has been determined to be related to Petrom GmbH International Trade, Maria-Theresia Strasse 26, Munich 81675, Germany (a.k.a. Petrom GmbH) by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services, and it has been deemed necessary to make the Order denying the export privileges of Petrom GmbH applicable to this Related Person in order to prevent evasion of the Order.

Second, that the denial of export privileges described in the Order against Petrom GmbH, which was published in the **Federal Register** on June 6, 2005 at 70 FR 32,743, shall be made applicable to the Related Person until its expiration on June 6, 2025, as follows:

I. The Related Person, its successors or assigns, and when acting for or on behalf of the Related Person, its officers, representatives, agents, or employees (collectively, ''Denied Person'') may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing mans installation, maintenance, repair, modification or testing.

Third, that in accordance with the provisions section 766.23(c) of the Regulations, the Related Person may, at any time, make an appeal related to this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject 279 to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be published in the **Federal Register** and a copy provided to the related Person.

This Order is effective upon publication in the **Federal Register**.

Entered this 5th day of February, 2007.

Darryl W. Jackson,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 07–622 Filed 2–12–07: 8:45 am]

BILLING CODE 3510–PT–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology; Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology (VCAT), National Institute of Standards and Technology (NIST), will meet Tuesday, March 6, from 9 a.m. to 5 p.m. and Wednesday, March 7, from 9 a.m. to 11 a.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations.

The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST, an overview of NIST and its role in U.S. science & technology. Several laboratory tours also will be featured. The meeting will conclude with an extended discussion on NIST's overall role it plays in the nation's science and technology. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.htm.*

DATES: The meeting will convene on March 6 at 9 a.m. and will adjourn on March 7, 2007, at 11 a.m.

ADDRESSES: The meeting will be held in the Employees Lounge, Administration Building, at NIST, Gaithersburg, Maryland. All visitors to the NIST site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Denise Herbert no later than Thursday, March 1 and she will provide you with instructions for admittance. Ms. Herbert's e-mail address is *denise.herbert@nist.gov* and her phone number is (301) 975–2300.

FOR FURTHER INFORMATION CONTACT: Denise Herbert, Visiting Committee on Advanced Technology, National Institute of Standards and Technology,

Gaithersburg, MD 20899–1000, telephone number (301) 975–2300.

Dated: February 8, 2007.

James E. Hill,

Acting Deputy Director.

[FR Doc. E7–2453 Filed 2–12–07; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020807D]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Ad Hoc Sector Omnibus Committee (Committee) in February, 2007 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Thursday, February 22, 2007 at 9:30 a.m.

ADDRESSES: *Meeting address*: The meeting will be held at the Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500; fax: (978) 750–7991.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will review and address the terms of reference from the Council, set up a work schedule, including amendment development milestones, and identify analysis needs to support the Committee's work.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 8, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–2427 Filed 2–12–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020807E]

North Pacific Fishery Management Council; Notice of Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Charter Halibut Management Stakeholder Committee will meet in Anchorage Alaska.

DATES: The Charter Halibut Stakeholders Committee will convene on February 27–28, 2007, 8:30 a.m.–4:30 p.m. in Anchorage at the North Pacific Research Board.

ADDRESSES: North Pacific Research Board, 1007 W. 3rd Avenue, #100, Anchorage, Alaska, 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, NPFMC at 907–271–2809.

SUPPLEMENTARY INFORMATION: The committee agenda will include the following: (1) Review and provide recommendations on a limited entry (moratorium) program for the charter sector in Areas 2C and 3A; (2) a discussion paper on an allocation to the charter sector relative to the long term solution; (3) a State of Alaska proposal to manage the charter halibut fisheries under delegation of limited authority; (4) State of Alaska estimates of byctach mortality of sport-caught halibut; (5) permanent solution alternatives and options.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: February 8, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–2428 Filed 2–12–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0094]

Federal Acquisition Regulation; Information Collection; Debarment and Suspension

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 debarment and suspension. A request for public comments was published in the **Federal Register** at 71 FR 75236, on December 14, 2006. No comments were received. This OMB clearance expires on March 31, 2007.

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 March 15, 2007.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: William Clark, Contract Policy Division, GSA (202) 219–1813.

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR requires contracts to be awarded to only those contractors determined to be responsible. Instances where a firm or its principals have been indicted, convicted, suspended, proposed for debarment, debarred, or had a contract terminated for default are critical factors to be considered by the contracting officer in making a responsibility determination. This certification requires the disclosure of this information.

B. Annual Reporting Burden

Respondents: 89,995.
Responses per respondent: 12.223.
Total Responses: 1,100,000.
Hours Per Response: 0.0833 hrs.
Total Burden Hours: 91,667.
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. 9000–00394, Debarment and Suspension, in all correspondence.

Dated:February 7, 2007.

Ralph J. De Stefano

Director, Contract Policy Division.

[FR Doc. 07–634 Filed 2–12–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Closed Meeting.

SUMMARY: The CNO Executive Panel will report on the findings and recommendations of the Latin America Subcommittee and Missile Defense Subcommittee to the Chief of Naval Operations. The meeting will consist of discussions of current and future Navy strategy, plans, and policies in Latin America, as well as discussions of the U.S. Navy's emerging missions and capabilities for sea-based missile defense.

DATES: The meeting will be held on March 16, 2007, from 10:30 a.m. to 1 p.m.

ADDRESSES: The meeting will be held in the Boardroom in the CNA Corporation Building, 4825 Mark Center Drive, Alexandria, VA 22311.

FOR FURTHER INFORMATION CONTACT: LCDR Kelvin Upson, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, 703–681–4924.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: February 8, 2007.

M.A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7–2452 Filed 2–12–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The meeting will include discussions of personnel issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on Monday, March 5, 2007, from 8 a.m. to 10:30 a.m. The closed executive session will be held from 10:30 a.m. to 12:15 p.m., directly after the open session.

ADDRESSES: The meeting will be held at the United States Naval Academy, Alumni Hall, Building 675, Bo Cappedge Room #238, Annapolis, MD.

FOR FURTHER INFORMATION CONTACT: Major Craig C. Clemans, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000, telephone 410–293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of personnel issues at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the Navy has determined in writing that the meeting shall be partially closed to the public because it will be concerned with matters listed in section 552b(c)(2), (5), (6), (7), and (9) of title 5, United States Code.

Dated: February 8, 2007.

M.A. Harvison,

Lieutenant Commander, U.S. Navy, Office of the Judge Advocate General, Federal Register Liaison Officer.

[FR Doc. E7–2451 Filed 2–12–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 15, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725

17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, *e.g.*, ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 7, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title: OSFA Customer Satisfaction Survey Master Plan.

Frequency: Annually.

Affected Public:

Individuals or household; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 15,000.

Burden Hours: 7,500.

Abstract: The Higher Education Amendments of 1998 established the Office of Student Financial Assistance (SFA) as the Government's first Performance-Based Organization (PBO). That legislation specifies that one purpose of the PBO is to improve program services and processes for students and other participants in the student financial assistance programs. This requirement establishes an ongoing need for SFA to be engaged in an interactive process of collecting information and using it to improve the delivery of student financial assistance.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3241. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–2435 Filed 2–12–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–025]

Dauphin Island Gathering Partners; Notice of Negotiated Rates

February 6, 2007.

Take notice that on January 26, 2007, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Thirty-First Revised Tariff Sheet No. 9, to become effective February 26, 2007.

Dauphin Island states that this tariff sheet reflects changes to its statement of negotiated rates tariff sheets.

Any person desiring to intervene or to protest this filing 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). 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. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2386 Filed 2–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–71–000]

Dominion Transmission, Inc.; Notice of Application

February 6, 2007.

Take notice that on January 29, 2007, Dominion Transmission, Inc. (Dominion), 120 Tredegar Street, Richmond, VA, filed in Docket No. CP07–71–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA), to abandon wells CW–427 and CW–449 located in Dominion's Lost Creek Storage Reservoir located in Lewis County, West Virginia, all as more fully set forth in the application

which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or TTY, (202) 208–1659.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Any questions regarding this application should be directed to Matthew R. Bley, Manager, Gas Transmission Certificates, Dominion Transmission, Inc., 120 Tredegar Street, Richmond, VA 23219, at (804) 819–2877, or by facsimile at (804) 819–2064.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 27, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2390 Filed 2–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP93–618–017]

Gas Transmission Northwest Corporation; Notice of Annual Report

February 6, 2007.

Take notice that on January 31, 2007, Gas Transmission Northwest Corporation (GTN) tendered for filing its ''Annual Report on Deferred Revenue Recovery Mechanism and Revenue Reconciliation for the Year Ending October 31, 2006'' for its Medford, Oregon Lateral.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 23, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2382 Filed 2–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–78–000]

Georgia-Pacific LLD; Notice of Application

February 6, 2007.

Take notice that on January 29, 2007, Georgia-Pacific LLC (GP) filed with the Commission an Abbreviated Application to abandon Part 157 Certificate and Request to Obtain Part 284 Blanket Certificate.

Any person desiring to intervene or to protest this filing 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). 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. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time February 23, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2380 Filed 2–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–162–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Filing

February 6, 2007.

Take notice that on January 31, 2007, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing supporting calculations underlying Great Lakes' Transporter's Use percentages applicable during the six-month period from July 1, 2006 through December 31, 2006.

Any person desiring to intervene or to protest this filing 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). 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. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time February 14, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2388 Filed 2–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–80–000]

Gulf South Pipeline Company, L.P.; Notice of Application for Abandonment

February 6, 2007.

Take notice that on February 2, 2007, Gulf South Pipeline Company, LP (Gulf South), filed in the captioned docket pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and the Commission's Rules and Regulations, an abbreviated application for an order authorizing it to abandon by sale a 4.8 mile portion of the Latex-Ft. Worth line (designated as Index 1) in Gregg County, Texas, to Buffco Production, Inc., a producer.

Any person desiring to intervene or to protest this filing 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). 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. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time February 23, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2381 Filed 2–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–165–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

February 6, 2007.

Take notice that on February 2, 2007, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to be effective April 1, 2007:

Thirteenth Revised Sheet No. 20,
Fifth Revised Sheet No. 176A,
Eighth Revised Sheet No. 203A,
Second Revised Sheet No. 203C.

Any person desiring to intervene or to protest this filing 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). 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. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2389 Filed 2–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12596–001]

Ophir Valley Land Company, LLC; Notice of Surrender of Preliminary Permit

February 6, 2007.

Take notice that Ophir Valley Land Company, LLC, permittee for the proposed Carbonero Hydroelectric Project, has requested that its preliminary permit be terminated. The permit was issued on January 4, 2006, and would have expired on December 31, 2008.[1] The project would have been located on the Carbonero Mine Adit near Ophir, in San Miguel County, Colorado.

The permittee filed the request on January 30, 2007, and the preliminary permit for Project No. 12596 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, part-day holiday that affects the Commission, or legal holiday as described in section 18 CFR 385.2007, in which case the effective date is the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2384 Filed 2–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–040]

Questar Pipeline Company; Notice of Negotiated Rates

February 6, 2007.

Take notice that on February 1, 2007, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fortieth Revised Sheet No. 7 and Twelfth Revised Sheet No. 7A, to be effective February 1, 2007.

Questar states that a copy of this filing has been served upon all parties to this proceeding, Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to intervene or to protest this filing 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). 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. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a

[1] 114 FERC ¶ 62,005.

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.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2379 Filed 2–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status

February 6, 2007.

	Docket No.
Rathdrum Power, LLC	EG07–10–000
Loess Hills Wind Farm, LLC	EG07–11–000
Locust Ridge Wind Farm, LLC	EG07–12–000
Endeavor Power Partners, LLC	EG07–13–000
Brush Cogeneration Partners	EG07–14–000
Telecaset Wind Power Partners, LLC	EG07–16–000
MMC Mid-Sun, LLC	EG07–17–000
NE Hydro Generating Company	EG07–18–000
InterGen (International) B.V	FC07–4–000
Energia Azteca VIII, S. de R.L. de C.V.	
Servicios Azteca VIII, S. de R.L. de C.V.	
Operaciones Azteca VIII, S. de. R.L. de C.V.	
El Paso Corporation	FC07–5–000
El Paso Amazonas Energia, Ltda.	
El Paso Rio Negro Energia Ltda.	
Termo Norte Energia Ltda.	
The Nejapa Power Company, Ltd.	
Tipitapa Power Company, Ltd.	
Khulna Power Company, Ltd.	
Saba Power Company (Private) Ltd.	
Hablbullah Costal Power (Private) Co.	

Take notice that during the month of January 2007, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Magalie R. Salas,

Secretary.

[FR Doc. E7–2383 Filed 2–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–605–002]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

February 6, 2007.

Take notice that on February 2, 2007, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Tenth Revised Sheet No. 357, to be effective January 19, 2007.

Tennessee states that the filing is being made in compliance with the Commission's January 19, 2007 order in Docket No. RP03–605.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2387 Filed 2–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

February 6, 2007.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file

associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Exempt:

Docket number	Date received	Presenter or requester
1. CP00–6–014	1–30–07	Ji-Sun Yi.
2. CP06–12–000	1–30–07	Miles M. Croom.
3. CP06–54–000	1–31–07	Hon. David Denenberg.
4. CP06–365–000, *et al.*	1–11–07	Paul Friedman.[1]
5. Project No. 1971–079	2–5–07	William F. Bacon.
6. Project No. 11858–000	1–30–07	Dave Adams.

[1] Memo regarding 12/14/06 interagency meeting and summary.

Magalie R. Salas,

Secretary.

[FR Doc. E7–2385 Filed 2–12–07; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 06–126]

Notice of Debarment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (Bureau) debars NextiraOne, LLC (NextiraOne) from all activities associated with the schools and libraries universal service support mechanism, also known as the E-Rate program. NextiraOne pled guilty to and was convicted of a wire fraud felony against the E-Rate program. We find NextiraOne's conduct merits a debarment of at least three years, as contemplated by our debarment rule, but in light of several important factors, we will impose a debarment period of one year from the effective date of this Order.

DATES: Debarment commences on the effective date of this Order, August 24, 2006, for a period of one year.

FOR FURTHER INFORMATION CONTACT: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–A265, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at 202–418–1420 or e-mail at *diana.lee@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Debarment, released January 22, 2007. As an additional precaution to protect the E-Rate program, we put in place two monitoring measures to ensure NextiraOne's compliance upon its re-entry into the E-Rate program, in the event that NextiraOne re-enter the E-Rate program within five years after executing the plea agreement. First, we order USAC to review with heightened scrutiny NextiraOne's applications submitted during the first two funding years after re-entry.[1] Second, we order the Administrator to conduct automatic annual audits regarding NextiraOne's compliance with the Act and the Commission's rules governing the E-Rate program, for each of the first two funding periods upon NextiraOne's re-entry. We find these additional precautionary measures are necessary to ensure that E-Rate funds are used only for their intended purpose and that the program is not subject to additional waste, fraud, or abuse. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A–257, 445 12th Street, SW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCP), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The complete item is also available on the Commission's Web site at *http://www.fcc.gov/eb*.

[1] See Fifth Report and Order, 19 FCC Rcd at 15822–23, para. 44. We note that the Commission currently is considering what particular requirements, if any, that it should apply in conducting heightened review of E-Rate program participants. See Universal Service Fund Oversight NPRM, 20 FCC Rcd at 11345, para. 91.

Federal Communications Commission.

Hillary S. DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

[FR Doc. E7–2423 Filed 2–12–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Thursday, February 15, 2007, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b (c)(2), (c)(4), (c)(6), (c)(8), (9)(A)(ii), and (9)(B), Title 5, United States code, to consider matters relating to the corporation's surpervisory and corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7122.

Dated: February 8, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 07–675 Filed 2–9–07; 12:30 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b) , notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Thursday, February 15, 2007, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum re: Recommendation that the Board Approve Notice of New and Altered Privacy Act Systems of Records.

Memorandum re: Studies and Reports to Congress Required by the Federal Deposit Insurance Reform Conforming Amendments Act of 2005.

Discussion Agenda:

Memorandum re: Assessment Rate Adjustment Guidelines for Large Institutions and Insured Foreign Branches in Risk Category I.

Memorandum re: Proposed Basel II Capital Framework: Supervisory Guidance on Internal Ratings-Based Systems, Advanced Measurement Approaches, and Pillar 2/Internal Capital Adequacy Assessment Process.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7122.

Dated: February 8, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 07–676 Filed 2–9–07; 12:30 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011515–011.

Title: Steamship Line Cooperative Chassis Pool.

Parties: Atlantic Container Line AB; China Shipping Container Lines Co., Ltd.; COSCO Container Lines Company, Ltd.; CMA CGM, S.A.; Compania Sud Americana de Vapores, S.A.; Evergreen Marine Corp. (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mediterranean Shipping Company, S.A.; Safmarine Container Lines, NV; Yangming Marine Transport Corporation; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW; Suite 900; Washington, DC 20036.

Synopsis: The amendment substitutes COSCO Container Lines (Hong Kong) Co., Ltd. for COSCO Container Lines Company, Ltd. and reflects a change in the Evergreen entity that will be a party to the agreement effective May 1, 2007.

Agreement No.: 011689–010.

Title: Zim/CSCL Space Charter Agreement.

Parties: Zim Integrated Shipping Services, Ltd.; China Shipping Container Line Co., Ltd.; and China Shipping Container Lines (Hong Kong) Co., Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW; Suite 900; Washington, DC 20036.

Synopsis: The amendment revises the Agreement to delete the March 19, 2007 expiration date and provide the agreement with an indefinite duration.

Agreement No.: 011794–006.

Title: COSCON/KL/YMUK/Hanjin/Senator Worldwide Slot Allocation & Sailing Agreement.

Parties: COSCO Container Lines Company, Limited; Kawasaki Kisen Kaisha, Ltd.; Yangming (UK) Ltd.; Hanjin Shipping Co., Ltd.; and Senator Lines GmbH.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 555 West 5th Street, 46th Floor; Los Angeles, CA 90013.

Synopsis: The amendment adds COSCO Container Lines (Hong Kong) Co., Limited and removes COSCO Container Lines Co., Limited effective March 1, 2007.

Agreement No.: 011882–002.

Title: Zim/COSCON Slot Charter Agreement.

Parties: COSCO Container Lines Co. Ltd. and Zim Integrated Shipping Services, Ltd.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 555 West 5th Street, 46th Floor; Los Angeles, CA 90013.

Synopsis: The amendment adds COSCO Container Lines (Hong Kong) Co., Limited and removes COSCO Container Lines Co., Limited effective March 1, 2007.

Agreement No.: 011937–001.

Title: MSC/CKY Space Charter Agreement.

Parties: COSCO Container Lines Company, Limited; Kawasaki Kisen Kaisha, Ltd.; Mediterranean Shipping Co. S.A.; and YangMing (UK) Ltd.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 555 West 5th Street, 46th Floor; Los Angeles, CA 90013.

Synopsis: The amendment adds COSCO Container Lines (Hong Kong) Co., Limited, and removes COSCO Container Lines Co., Limited effective March 1, 2007.

Agreement No.: 011961–001.

Title: The Maritime Credit Agreement.

Parties: Alianca Navegacao e Logistica Ltda. & Cia; A.P. Moller-Maersk A/S; Atlantic Container Line AB; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; Companhia Libra de Navegacao; Compania Sudamericana de Vapores, S.A.; COSCO Container Lines Company Limited; Crowley Liner Services, Inc.; Dole Ocean Cargo Express; Hamburg-Süd; Hapag-Lloyd Container Linie GmbH; Hoegh Autoliners A/S; Independent Container Line Ltd.; Montemar Maritima S.A.; Norasia Container Lines Limited; Safmarine Container Lines N.V.; Tropical Shipping & Construction Co., Ltd.; United Arab Shipping Company (S.A.G.); Wallenius Wilhelmsen Logistics AS; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW; Suite 900; Washington, DC 20036.

Synopsis: The amendment substitutes COSCO Container Lines (Hong Kong) Co., Ltd. for COSCO Container Lines Company Limited as a party to the Agreement and revises the address of that entity. It also changes the names of Hapag-Lloyd and Montemar Maritima, and corrects the address of Hamburg Sd.

Agreement No.: 201147–001.

Title: Broward/Chiquita Lease and Operating Agreement.

Parties: Broward County (Florida) and Chiquita Fresh North America LLC.

Filing Party: Ms. Candace J. McCann; Office of the County Attorney, Broward County; 1850 Eller Drive, Suite 502; Fort Lauderdale, FL 33316.

Synopsis: The amendment adds additional office space to the leased premises under the basic arrangement.

By order of the Federal Maritime Commission.

Dated: February 8, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–2459 Filed 2–12–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 28, 2007.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. David and Joyce Sullivan, Elgin, Nebraska, individually; and by Billy and Karen Novak, Alan and Kim Grossnicklaus, Elgin, Nebraska; Terry and Rhonda Novak, Randy Novak, Neligh, Nebraska; and Richard and Sandy Seckman, Schuyler, Nebraska; as a group acting in concert to acquire voting shares of Antelope Bancshares, Inc., and thereby indirectly acquire voting shares of Bank of Elgin, both in Elgin, Nebraska.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Clarence E. Leatherwood, III, Dublin, Texas; to acquire voting shares of Dublin Bancshares, Inc., Dublin Texas, and there indirectly acquire voting shares of First National Bank of Dublin, Dublin, Texas.

C. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. R. Scott Priest, Layton, Utah; to retain voting shares of Centennial Bankshares, Inc., and thereby indirectly retain voting shares of Centennial Bank, both of Ogden, Utah.

Board of Governors of the Federal Reserve System, February 8, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–2441 Filed 2–12–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 9, 2007.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Atlantic Capital Bancshares, Inc., Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Atlantic Capital Bank, Atlanta, Georgia (in organization).

2. BankCap Partners Fund I, L.P., BCP Fund I Southeast Holdings, LLC, BankCap Equity Fund, LLC, and BankCap Partners GP, L.P., all of Dallas, Texas; to become bank holding companies by acquiring 49.9 percent of the voting shares of Atlantic Capital Bancshares, Inc., and thereby indirectly acquire voting shares of Atlantic Capital Bank (in organization), both of Atlanta, Georgia.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Orchid Financial Bancorp, Inc., South Elgin, Illinois; to acquire 55 percent of the voting shares of Ashland Financial Bancorp, Inc., Chicago, Illinois, and thereby indirectly acquire voting shares of American Eagle Bank of Chicago (in organization), Chicago, Illinois.

In connection with this application, Ashland Financial Bancorp, Inc., Chicago, Illinois, has applied to become a bank holding company by acquiring 100 percent of the voting shares of American Eagle Bank of Chicago (in organization), Chicago, Illinois.

C. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. OMEGA Capital Corp., Centennial, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Front Range Bancshares, Inc., and thereby indirectly acquire voting shares of Front Range Bank, both in Lakewood, Colorado.

Board of Governors of the Federal Reserve System, February 8, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–2442 Filed 2–12–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 28, 2007.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Appalachian Bancshares, Inc., Ellijay, Georgia; to acquire Appalachian Community Bank, F.S.B., McCaysville, Georgia, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received by March 9, 2007.

2. Coastal Community Investments, Inc., Panama City Beach, Florida; to acquire 100 percent of the voting shares of Bayside Financial Corporation, and thereby indirectly acquire Bayside Savings Bank, both of Port St. Joe, Florida, and engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received by March 9, 2007.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. State Bankshares Inc., Fargo, North Dakota; to acquire 100 percent of the voting shares of Passport Benefit Solutions, L.L.C., Minnetonka, Minnesota, and thereby engage in employee benefits consulting services and related data processing, pursuant to sections 225.28(b)(9)(ii) and 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, February 8, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–2444 Filed 2–12–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 3:00 p.m., Tuesday, February 20, 2007.

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 Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 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, February 9, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 07–689 Filed 2–9–07; 3:15 pm]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9 a.m. (EST). February 20, 2007.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the January 16, 2007 Board member meeting
2. Thrift Savings Plan activity report by the Executive Director
3. Dept. of Labor Reports
   a. Clintwood Call Center
   b. Pittsburgh Backup/Recovery Site
4. Dept. of Labor/KPMG Annual Audit Report
5. Annual Participant Statements
6. Communications and Operations Report

Parts Closed to the Public

7. Personnel

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: February 9, 2007.

Thomas K. Emswiler,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 07–671 Filed 2–9–07; 11:26 am]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7 A(b)(2) of the Act permits the agencies, in individual cases, to terminate this

waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans. No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—01/23/2007			
20070377	Northrop Grumman Corporation	Essex Corporation	Essex Corporation.
20070522	Wintergames Holdings SARL	Oak Hill Capital Partners, L.P	Steamboat Ski & Resort Corporation.
20070574	On Assignment, Inc	Oxford Global Resources, Inc	Oxford Global Resources, Inc.
20070594	QBE Insurance Group Limited	HDI Haftpflichtverband der Deutschen Industrie VaG.	Praetorian Financial Group, Inc.
20070600	Cisco Systems, Inc	IronPort Systems, Inc	ironPort Systems, Inc.
20070602	American Securities Partners IV, L.P	NEP, Inc	NEP, Inc.
20070604	Elder Health, Inc	Health Partners of Philadelphia, Inc	Health Partners of Philadelphia, Inc.
20070616	Ripplewood Partners II, L.P	Ripplewood Partners, L.P	WRC Media, Inc.
20070620	D.E. Shaw Composite International Fund.	Foamex International, Inc	Foamex International, Inc.
20070621	The Goldman Sachs Group, Inc	Foamex International, Inc	Foamex International, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—01/24/2007			
20070539	American Capital Strategies, Ltd	Explorer Pipeline Company, Inc	CITGO Pipeline Holding I, LLC.
20070561	Seminole Hard Rock Entertainment, Inc	The Rank Group Plc	Rank America, Inc. Rank Group Holdings Limited. Rank Holding Espana SA. Rank Holdings (France) SA. Rank Holdings (Germany) GmbH. Rank Holdings (Netherlands) BV. Rank Leisure Holdings Limited. Rank Overseas Holdings Limited. Rank (UK) Holdings Limited.
20070571	KAR Holdings II, LLC	ADESA, Inc	ADESA, Inc.
20070591	Macquarie Infrastructure Company Trust	David G. Price	Aviation Contract Services, Inc. Superman of Stewart, LLC. Supermarine Aviation, Limited. Supermarine Investors, Inc. Supermarine of Santa Monica, a California Limited Partnership. Supermarine of Stewart, LLC.
2070592	Macquarie Infrastructure Company Trust	Dallas Price-Van Breda	Aviation Contract Services, Inc. Supermarine Aviation, Limited. Supermarine Investors, Inc. Supermarine of Santa Monica, a California Ltd. Partnership. Supermarine of Stewart, LLC.
20070603	BG Group plc	Lake Road Holding Company, LLC	Lake Road Generating Company, LP.
20080605	Arlington Capital Partners II, L.P	Michael W. Major	Cambridge Major Laboratories, Inc.
20070613	Airline Partners Australia Fund	Qantas Airways Limited	Qantas Airways Limited.
TRANSACTIONS GRANTED EARLY TERMINATION—01/25/2007			
20070390	Knight Holdco LLC	Kinder Morgan, Inc	Kinder Morgan, Inc.
20070578	KGen Power Corporation	MatlinPatterson Global Opportunities Partners II, L.P.	KGen Partners LLC.
20070584	Mittal Steel Company N.V	Julio Cesar Villarreal Guajardo	BSRM Holdings, Inc. Servicios Operativos del Centro, S.A. de C.V. Siderurgica Lazaro Cardenas las Truchas, S.A. de C.V. V.I. Holding, Inc.
20070589	MPBP Holdings Inc.	Three Cities Offshore II, C.V	Cohr Holdings, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—01/26/2007			
20070555	Kennametal Inc	Federal Signal Corporation	Clapp Dico Corporation. Manchester Tool Company. On Time Machining Company.
20070562	Schering-Plough Corporation	ALK-Abello A/S	ALK-Abello A/S.
20070565	Bridgestone Corporation	Bandag, Incorporated	Bandag, Incorporated.
20070590	Jolly Roger Offshore Fund, LTD	Hilton Hotels Corporation	Hilton Hotels Corporation.

Trans. No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—01/30/2007			
20070587	Berkshire Hathaway, Inc	Paul E. Andrews, Jr.	CJE, Inc. Mouser Electronics, Inc. TTI, Inc.
20070628	Stifel Financial Corp	BFC Financial Corporation	Ryan Beck Holdings, Inc.
20070629	BFC Financial Corporation	Stifel Financial Corp	Stifel Financial Corp.
20070633	Oak Hill Capital Partners II, L.P	The New York Times Company	KAUT–TV, LLC. New York Times Management Services. NYT Broadcast Holdings, LLC. NYT Holdings, Inc.
20070644	Quadrangle Capital Partners LP	Integrated Alarm Services Group, Inc	Integrated Alarm Services Group, Inc.
20070646	Bucyrus International, Inc	RAG Akiengesellschaft	DBT GmbH.
20070647	Gryphon Partners III, L.P	Norm Daniels	G.I. Joe's, Inc.
20070648	Welsh, Carson, Anderson & Stowe X, L.P.	United Surgical Partners International, Inc.	United Surgical Partners International, Inc.
20070649	Brockway Moran & Partners Fund II, L.P	Odyssey Investment Partners Fund, L.P	TSEI Holdings, Inc.
20070652	Basic Energy Services, Inc	JetStar Consolidated Holdings, Inc	JetStar Consolidated Holdings, Inc.
20070656	EXCO Resources, Inc	Anadarko Petroleum Corporation	Anadarko Gathering Company.
TRANSACTIONS GRANTED EARLY TERMINATION—01/31/2007			
20070607	The Goldman Sachs Group, Inc	He Xiangjian	GuangDong Midea Electric Appliances Co., Ltd. Guangdong Province, People's Republic of China. Media Industrial City, Shunde, Foshan.
20070609	FR XI Offshore AIV., L.P	Brand Holdings, LLC	Brand Energy & Infrastructure Services, Inc.
20070625	Nucor Corporation	Harris Steel Group, Inc	Harris Steel Group, Inc.
20070626	WLR Recovery Fund II, L.P	WLR Recovery Fund III, L.P	BST US Holdings, Inc.
20070640	Financiere Daunou 12	Lafarge, S.A.	Clay Tiles Holdings Inc. Lafarge Roofing Holdings Inc. MonierLifetile LLC. Tile Service Company LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—02/02/2007			
20070381	Jefferson Health Systems, Inc	Riddle Health System	Riddle Healthcare Associates. Riddle Health Care Services. Riddle Memorial Hospital. Riddle System Services. RMH Physician Services.
20070569	Harsco Corpration	William Blair Mezzanine Capital Fund III, L.P.	Excell Materials, Inc.
20070608	Welsh, Carson, Anderson & Stowe X, L.P.	Spectrum Equity Investors IV, L.P	CBD Investor, Inc. CBD Media, LLC. c/o CBD Investor, Inc.
20070653	Advent OXO (Cayman) Limited	Celanese Corporation	Celanese Chemicals Europe GmbH. Celanese Ltd. European Oxo Chemicals GmbH. Infraserv GmbH & Co. Ticona Polymers, Inc.
20070658	Warburg Pincus Equity IX, L.P	Dominion Resources, Inc	Armstrong Energy Limited Partnership, LLP. Dominion Armstrong Services Company, Inc. Dominion Pleasants Services Company, Inc. Dominion Troy Services Company, Inc. Pleasants Energy, LLC. Troy Energy, LLC.
20070659	Time Warner, Inc	Sci Entertainment Group Plc	Sci Entertainment Group Plc.
20070661	B.S.A	Mozzarella Fresca, Incorporated	Mozzarella Fresca, Incorporated.
20070663	Knology, Inc	PrairieWave Holdings, Inc	PrairieWave Holdings, Inc.
20070667	Macquarie Bank Limited	American Consolidated Media, L.P	American Consolidated Media, Inc. Valley Newspaper Holdings, L.P.
20070668	Tinicum Capital Partners II, L.P	Enesco Group, Inc	Enesco Group, Inc.
20070670	Cenveo, Inc	The Huron Fund LP	PC Ink Corp.
20070672	Leucadia National Corporation	Samer Tawfik	Dialaround Enterprises, Inc. Phonecard Enterprises, Inc. STi Mobile, Inc. STi PCS, LLC.

Trans. No.	Acquiring	Acquired	Entities
20070674	GS Capital Partners VI, L.P	USI Holdings Corporation	STi Phonecard, Inc. Telco Group, Inc. VOIP Enterprises Inc. USI Holdings Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—02/05/2007			
20070516	GlaxoSmithKline plc	Genmab A/S	Genmab A/S.
20070580	Cenveo, Inc	Cadmus Communications Corporation	Cadmus Communications Corporation.
20070611	Welsh, Carson, Anderson & Stowe VIII, L.P.	Windstream Corporation	Windstream Regatta Holdings.
20070612	Welsh, Carson, Anderson & Stowe IX, L.P.	Windstream Corporation	Windstream Regatta Holdings.
20070654	Roche Holding Ltd	Seattle Genetics, Inc	Seattle Genetics, Inc.
20070677	Citigroup, Inc	ABN AMRO Holding N.V	AAMBG Reinsurance, Inc. ABN AMRO Mortgage Corporation. ABN AMRO Mortgage Group, Inc. Mortgage Group Reinsurance, Ltd.
20070686	4363205 Canada, Inc	BCE, Inc	Telesat Canada.
TRANSACTIONS GRANTED EARLY TERMINATION—02/06/2007			
20070639	Intuit, Inc	Electronic Clearing House, Inc	Electronic Clearing House, Inc.
20070689	B&G Foods, Inc	Altria Group, Inc	COWC Acquisition Corp. Kraft Foods Global, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—02/07/2007			
20070615	eBay, Inc	StubHub, Inc	StubHub, Inc.
20070682	Redpoint Ventures I, L.P	BigBand Networks, Inc	BigBand Networks, Inc.
20070685	FIF III Liberty Holdings LLC	SureWest Communications	SureWest Directories.

For Further Information Contact: Sandra M. Peay, Contact Representative or Renee Hallman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 07–633 Filed 2–12–07; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality Agency Information Collection Activities

Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: ''Pilot Study of Proposed Nursing Home Survey on Resident Safety.'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on December 12th, 2006 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by March 15, 2007.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room #5036, Rockville, MD 20850, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Pilot Study of Proposed Nursing Home Survey on Resident Safety''

The activity is an expansion and refinement of AHRQ's Hospital Survey on Patient Safety Culture (HSOPSC) which was developed and released to the public for use in November 2004. This proposed new tool is based on the HSOPSC but also contains new and revised items as well as dimensions that more accurately apply to the nursing home setting. The instrument will be pilot tested with staff in 40 nursing homes. The data collected will be analyzed to determine the psychometric properties of the survey's items and dimensions and provide information for the revision and shortening of the final survey based on an assessment of its reliability and construct validity. The final survey will be made publicly available to enable nursing homes to assess their resident safety culture.

Methods of Collection

A purposive sample of 40 nursing homes will be recruited and selected. These nursing homes will represent a distribution of bed size, nature of ownership (non-profit/for-profit), urbanicity (urban/rural), and geographic region of the United States. Recruited nursing homes will be allocated to each category in numbers roughly

proportionate to the national distribution of homes in each category.

All employees, contractors and agency staff in all job classes in nursing homes with up to 200 employees will be asked to respond to the survey. In nursing homes with more than 200 employees, a random sample of 200 employees will be selected. Since not all nursing home staff have access to or are familiar with e-mail or the internet, paper surveys will be administered. Standard non-response follow-up techniques such as reminder postcards and distribution of a second survey will be used. Individuals and organizations contacted will be assured of the confidentiality of their replies under Section 924(c) of the Healthcare Research and Quality Act of 1999.

Estimated Annual Respondent Burden

The survey will be distributed to approximately 5,500 nursing home employees, with a target response rate of 70%, or 3,850 returned surveys. Respondents should take approximately 15 minutes to complete the survey. Therefore, we estimate that the respondent burden for completing the survey will be 963 hours (3,850 completes multiplied by 0.25 hours per completed survey).

Type of respondent	Number of respondents	Number of responses per respondent	Estimated time per respondent (hours)	Estimated total respondent burden hours
Nursing home staff member	3,850	1	0.25	963

Estimated Annual Costs to the Federal Government

The total cost to the Government for developing this survey is approximately $319,000, and is being funded solely by AHRQ. This estimate includes the costs of a background literature review, survey development, cognitive testing, pilot data collection, data analysis, and preparation of final deliverables and reports.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of infomation is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public period.

Dated: January 23, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–573 Filed 2–12–07; 8:45am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: ''Development of an Electronic System for Reporting Medication Errors and Adverse Drug Events in Primary Care Practice (MEADERS).'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C., 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on December 12th, 2006 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by March 15, 2007.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room #5036, Rockville, MD 20850, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477

SUPPLEMENTARY INFORMATION:

Proposed Project

''Development of an Electronic System for Reporting Medication Errors and Adverse Drug Events in Primary Care Practice (MEADERS)''

The project is being conducted in response to an AHRQ RFP entitled ''Resource Center for Primary Care Practice-Based Research Networks (PBRNs)'' (issued under Contract 290–88–0008).

In response to a proposed modification to AHRQ contract no. 290.02.0008, the PBRN Resource Center is proposing to assist AHRQ in its continued commitment to assessing the status and capabilities of its funded PBRNs and making available to them the tools and resources necessary to improve the quality of care they provide. Through the modification of this contract, the PBRN Resource Center will develop and make available an electronic system for reporting medication errors and adverse drug events that occur in outpatient physician practices of selected PBRNs to their own practices for quality improvement purposes and to the Food and Drug Administration (FDA).

The landmark Harvard Medical Practice Study was published in 1991 and stated that 98,000 Americans die each year from medical errors.[1] Although the exact figure has been disputed, no one disputes the fact that too many Americans are injured unnecessarily by medical mistakes that could be avoided.[2–3] Another study performed by the Department of Veterans Affairs suggests that in one out of every 10,000 hospitalizations, a patient dies due directly to a medical error.[4]

In response to the growing concern over medical errors, the Agency for Healthcare Research and Quality (AHRQ) has published three important monographs outlining the problems of errors,[5] their effects on the quality of care,[6] and offering suggestions on improving patient safety.[7] The first recommendation of this third monograph was ''*capture information on patient safety—including both adverse events and near misses—as a byproduct of care, and use this information to design even safer care delivery systems.*'' One central theme to each of these monographs is that there simply is too much chaotic information flowing in the medical environment for a single provider to handle effectively. Therefore, solutions to the problem of medical errors should include some combination of health information technology and redesign of health care systems to enhance the prevalence of appropriate decisions (i.e., avoiding errors of omission) and reduce the occurrence of avoidable mistakes (i.e., avoiding errors of commission).

A recent conference sponsored by AHRQ highlighted interventions to improve medical decision-making and reduce medical errors.[8] Most of the interventions presented were based in hospitals, where the most intensive and immediately life-threatening events occur. Yet the majority of medical decisions are made in outpatient practices and offices where there has been little error-reduction research performed. Further, most outpatient studies have been performed in academic medical centers which have capabilities, providers, and patients that may not typify the average U.S. medical practice.[9]

With the recent passing of the Patient Safety and Quality Improvement Act of 2005, 42 USC 299b–21–b–26, now is an opportune time to evaluate a primary care error reporting system and PBRNs are an ideally suited place to study interventions aimed at reporting and reducing medical errors. In most primary care practices there is no mechanism in place to report medical errors as they occur. We propose to develop, implement, and study an outpatient error reporting system to better understand the ability of physicians to identify their own errors and their willingness to report them to their own practices and the FDA and AHRQ. We will focus on the most common invasive intervention invoked in outpatient practice—drug treatment of acute and chronic conditions—and will create and test a paper- and computer-based system for both capturing medication errors and reporting adverse drug events, which are also under-reported.[10]

The fundamental objective is to utilize the Resource Center's expertise in health information technology and its working relationships with PBRNs to support AHRQ's objectives in developing and evaluating systems for reporting medication errors and adverse drug events in primary care. We will accomplish this objective through (1) developing and implementing an electronic and paper-based outpatient medication error and adverse event reporting system, (2) evaluating the usefulness, ease of use, and actual use of the system in everyday clinical practices, and (3) identifying patient, provider, and practice characteristics that predict uptake and use of this system in participating primary care practices.

Methods of Collection

The value of MEADERS to practicing primary care clinicians will be illustrated by performing demonstration implementations in two PBRNs. A PBRN is a group of clinicians working together, either locally or nationally, to conduct research and implement research findings into practice settings. A total of 45 physicians and their practice staff will participate in the field test in addition to completing baseline surveys of their practice.

A request for proposals will be sent to all PBRNs that have registered with the PBRN Resource Center. A review committee consisting of a selection of four expert panel members, one or two PBRN representatives, and some members of the PBRN Resource Center will evaluate the applications. The AHRQ Project Officer will chair the review committee and, together with PBRN Resource Center staff, develop a set of review criteria. The review committee will make recommendations to the PBRN Resource Center who will make the final determination of participating PBRNs. Once the PBRNs are selected, each PBRN will chose up to three of its affiliated practices to participate in this trial. Although initial participation by a practice is voluntary, once selected the practice must provide assurances that at lease three to five clinicians will agree to use the system and that the practice will support the project.

The PBRN Resource Center will develop a series of surveys to capture data describing the practice and the patients it serves, the extent of the error reporting system's use, and an assessment of the users' overall satisfaction with the system. Practice and provider information will be collected at baseline along with characteristics that could be facilitators (such as an electronic medical record system) or barriers (such as lack of time and resources needed to report information) to implementation of the MEADER system. Data collected on the system's use will include the number of clinicians who have used MEADERS at least once, the number of times used overall, the time it takes to enter data into the electronic MEADERS, and the types of medication errors and adverse drug events that are being reported. Both the paper and electronic versions of the system will be assessed at the conclusion of the evaluation period. The follow-up assessment will include clinicians' and managers' satisfaction with the system (e.g., ease of use, usefulness of the generated reports and individual feedback) and whether they intend to continue its use after the initial study period has concluded. Finally, semi-structured interviews and conference call discussions will be used to collect additional comments and suggestions for future implementation of MEADERS.

Although any clinician in the practice will be able to use the system, physicians are likely to be the primary users of the system. The Resource Center is estimating that physicians will account for about 80% of MEADERS use and Nurse Practitioners, Physician Assistants and Medical Assistants will make up the remainder (See Exhibit 1). The time for entering an event into the system is estimated to require no more than 8 minutes of a clinician's time.

Wherever possible, existing validated measures will be used. Where validated measures do not exist, new measures will be developed and assessed. The final instruments will be field tested within selected practices in the PBRNs chosen to participate in the implementation study.

Estimated Annual Respondent Burden

EXHIBIT 1.—ESTIMATE OF COST BURDEN TO RESPONDENTS

Date collection effort	Number of responses*	Estimated time per respondent in hours	Estimated total burden hours	Average hourly wage rate** ($)	Estimated annual cost burden to respondents ($)
Office Manager baseline survey	45	0.25	11.25	$34.67	$390.04
Physician baseline survey	45	0.25	11.25	57.90	651.38
Physician opinion survey of system	45	0.25	11.25	57.90	651.38
Physician entry of medication error	216	0.134	28.94	57.90	1675.63
Nurse opinion survey of system	45	0.25	11.25	27.35	307.69
Nurse entry of medication error	18	0.134	2.4	27.35	65.64
PA/NP opinion survey of system	45	0.25	11.25	34.17	384.41
PA/NP entry of medication error	18	0.134	2.4	34.17	82.00
Medical assistant survey of system	45	0.25	11.25	12.58	141.53
Medical assistant entry of medication error	18	0.134	2.4	12.58	30.19
Office Manager opinion-survey of system	45	0.25	11.25	34.67	390.04
Total	585		114.89		4769.93

*Based on a six month trial period of MEADER reporting.
**Based upon the mean of the average wages, National Compensation Survey: Occupational wages in the United States 2004, ''U.S. Department of Labor, Bureau of Labor Statistics.''

This information collection will not impose a cost burden on the respondent beyond that associated with their time to provide the required data. There will be no additional costs for capital equipment, software, computer services, etc.

Estimated Costs to the Federal Government

The total cost to the government for this activity is estimated to be $1,000,000.00.

Request for Comments

In accordance with the above-cited legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of health care research and information dissemination functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

References

[1] Brennan TA, Leape LL, Laird NM, et al. Incidence of adverse events and negligence in hospitalized patients: Results of the Harvard Medical Practice Study. N Engl J Med 1991; 324:370–376.

[2] McDonald CJ, Weiner M, Hui SL. Deaths due to medical errors are exaggerated in the Institute of Medicine Report. JAMA 2000; 284:93–95.

[3] Leape LL. Institute of Medicine medical error figures are not exaggerated. JAMA. 2000; 28:95–97.

[4] Hayward RA, Hofer TP. Estimating hospital deaths due to medical errors: preventability is in the eye of the reviewer. JAMA. 2001; 286:415–420

[5] Institute of Medicine. To Err is Human: Building a Safer Health System. Washington, DC: National Academy Press, 2000.

[6] Institute of Medicine. Crossing the Quality Chasm: a New System for the 21st Century. Washington, DC: National Academy Press, 2001.

[7] Institute of Medicine. Patient Safety: Achieving a New Standard for Care. Washington, DC: National Academy Press 2004.

[8] *http://www.blsmeetings.net/PatientSafetyandHIT/* (accessed August 11, 2005).

[9] Green LA, Fryer GE, Yawn BP, Lanier D, Dovey SM: The ecology of medical care revisited. N Engl J Med 2001; 344:2021–2025.

[10] Uribe CL, Schweikhart SB, Pathak DS, Dow M, Marsh GP. Perceived barriers to medical-error reporting: an exploratory investigation. J Healthcare Management. 2002; 47(4):263–79.

Dated: January 30, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–574 Filed 2–12–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–07–05CJ]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 371–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Colorectal Cancer Screening Demonstration Program—New—National Center for Chronic Disease Prevention and Health Promotion (NCDDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) is seeking a 3-year Office of Management and Budget (OMB) approval to collect individual patient-level screening, diagnostic, and treatment data in association with a new colorectal cancer screening demonstration program. CDC funded 5 cooperative agreements in fiscal year

(FY) 2005 to implement these new colorectal cancer (CRC) demonstration programs. These 3-year demonstration programs are designed to increase population-based CRC screening among persons 50 years and older in a geographically defined area, focusing screening efforts on persons age 50 years and older with low incomes and inadequate or no health insurance coverage for CRC screening (priority population).

Colorectal Cancer (CRC) is the second leading cause of cancer-related deaths in the United States, following lung cancer. Based on scientific evidence which indicates that regular screening is effective in reducing CRC incidence and mortality, regular CRC screening is now recommended for average-risk persons with one or a combination of the following tests: fecal occult blood testing (FOBT), flexible sigmoidoscopy, colonoscopy, and/or double-contrast barium enema (DCBE). Fecal immunochemical testing (FIT) is considered an acceptable alternative to FOBT. In the absence of evidence indicating a single most effective test, selected programs chose the screening test(s) they will use from the above list of recommended tests.

All funded programs are required to submit patient-level data to capture demographic information, CRC screening and diagnostic services provided through this program, and clinical results, and submit these data to Information Management Services (IMS) on a quarterly basis, so that CDC and the programs can evaluate immediate and long term (3 year) program effectiveness and assess the quality and appropriateness of the services delivered, including medical complications. While CDC funds will not be used for treatment, programs will need to monitor treatment and document that patients are receiving appropriate treatment services. Submitted data must contain no patient identifiers. CDC, the funded programs, and IMS worked together to define the key, standardized clinical data elements which are included in a codebook to be used by the programs and CDC known as the Colorectal Cancer Clinical Data Elements (CCDE). Data collection forms have been developed by staff at the programs to collect the standardized individual patient-level data. IMS will assist CDC by receiving the data from the programs, cleaning the data and producing standardized data reports.

All programs will additionally submit annual cost data to CDC to monitor cost and cost-effectiveness over the 3-year program period.

In developing the definition variable and data definitions to be reported in the CCDEs, CDC has consulted with representatives of the American Cancer Society, The National Cancer Institute, The Agency for Health Care Research and Quality, the Centers for Medicare and Medicaid Services, representatives from professional medical societies involved in colorectal cancer screening, representatives from managed care organizations, representatives from state health departments, and a variety of individuals with expertise and interest in this field.

There are no costs to the respondents other than their time. The total estimated annualized burden hours are 1270.

Estimated Annualized Burden Hours:

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Colorectal Cancer Demonstration Program Sites.	Colorectal Cancer Data Elements for Colonoscopy Programs.	2	240	1
	Colorectal Cancer Data Elements for Fecal Occult Blood Test Programs.	3	1000	15/60
	Medical Complications Form	5	6	1
	Annual Aggregate Data on Medically Ineligible Clients.	5	1	1
	Reimbursement Data Reporting Form	5	1	1

*Respondents include cooperative agreement recipients.

Dated: February 6, 2007.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–2429 Filed 2–12–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Ethics Subcommittee, Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC); Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention announces the aforementioned Subcommittee meeting.

Times and Dates: 1 p.m.–5 p.m., February 27, 2007. 8:30 a.m.–12 p.m., February 28, 2007.

Place: Centers for Disease Control and Prevention, 1825 Century Center, Conference Room 1 A/B, Atlanta, GA 30345.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The Ethics Subcommittee will provide counsel to the ACD, CDC, regarding a broad range of public health ethics questions and issues arising from programs, scientists and practitioners.

Matters To Be Discussed: Agenda items will include public health ethics of genomics; public health ethics of emergency preparedness and response; ethical considerations in pandemic influenza preparedness; ethical considerations for non-research data collections; demonstration of CDC's public health ethics intranet site; and procedural issues relating to the Ethics Subcommittee. Agenda items are subject to change as priorities dictate.

Due to programmatic matters, this **Federal Register** Notice is being published on less than 15 calendar days notice to the public (41 CFR 102–3.150(b)).

For Further Information Contact: Please contact Drue Barrett, Ph.D., Designated Federal Official, Ethics Subcommittee, CDC, 1600 Clifton Road, NE., M/S D–50, Atlanta, Georgia 30333, telephone 404/639–4690. E-mail: *dbarrett@cdc.gov*. The deadline for notification of attendance is February 20, 2007. 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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–2464 Filed 2–12–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control Initial Review Group (NCIPC/IRG)

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 aforementioned committee meeting:

Times and Dates:

4 p.m.–7 p.m., March 5, 2007.
9 a.m.–5 p.m., March 6, 2007.
4 p.m.–7 p.m., March 7, 2007.
9 a.m.–5 p.m., March 8, 2007.
9 a.m.–5 p.m., March 9, 2007.

Place: Sheraton Midtown Atlanta Hotel Colony Square Atlanta, GA 30361.

Status:

Open: 4 p.m.–5 p.m., March 5, 2007.
Closed: 5 p.m.–7 p.m., March 5, 2007.
Closed: 9 a.m.–5 p.m., March 6, 2007.
Open: 4 p.m.–5 p.m., March 7, 2007.
Closed: 5 p.m.–7 p.m., March 7, 2007.
Closed: 9 a.m.–5 p.m., March 8, 2007.
Closed: 9 a.m.–5 p.m., March 9, 2007.

Purpose: This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control.

Matters To Be Discussed: Agenda items include an overview of the injury program, discussion of the review process and panelists' responsibilities, and the review of and vote on applications. Beginning at 4 p.m., March 5, through 5 p.m., March 9, the Group will review individual research grant and cooperative agreement applications submitted in response to two Fiscal Year 2007 Requests for Applications related to the following individual research announcements: #07009, Dissertation Grant Awards for Doctoral Candidates for Violence-Related Injury Prevention Research in Minority Communities, and #07010, Research for Preventing Violence and Violence-Related Injury. This portion of 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 Section 10(d) of Public Law 92–463.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Gwendolyn H. Cattledge, Ph.D., M.S.E.H., Executive Secretary, NCIPC/IRG, CDC, 4770 Buford Highway, NE, M/S K02, Atlanta, Georgia 30341–3724, telephone 770/488–1240.

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.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–2430 Filed 2–12–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Center for Chronic Disease Prevention and Health Promotion

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention announces the following meeting.

Name: Interagency Committee on Smoking and Health: Meeting.

Time And Date: 9 a.m.–4:30 p.m., March 5, 2007.

Place: Ronald Reagan International Trade Center, Horizon Ballroom, 1300 Pennsylvania Avenue, NW., Washington, DC 20004, telephone (202) 312–1300.

Status: Open to the public, limited only by the space available. Those who wish to attend are encouraged to register with the contact person listed below. If you will require a sign language interpreter, or have other special needs, please notify the contact person by 4:30 p.m. Eastern Standard Time on February 26, 2007.

Purpose: The Interagency Committee on Smoking and Health advises the Secretary, Department of Health and Human Services, and the Assistant Secretary for Health in the (a) coordination of all research and education programs and other activities within the Department and with other Federal, State, local and private agencies and (b) establishment and maintenance of liaison with appropriate private entities, federal agencies, and state and local public health agencies with respect to smoking and health activities.

Matters To Be Discussed: The agenda will focus on ''Reducing the Exposure to Second Hand Smoke.''

Contact Person For More Infomation: Substantive program information as well as summaries of the meeting and roster of committee members may be obtained from the Internet at *http://www.cdc.gov/tobacco* in mid-April or from Ms. Monica L. Swann, Management and Program Analyst, Office on Smoking and Health, Centers for Disease Control and Prevention, 4770 Buford Highway, M/S K50, Atlanta, GA 30341, (770) 488–5278. Agenda items are subject to change as priorities dictate.

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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Acting Director, Management Analysis and Service Office, Centers for Disease Control and Prevention.

[FR Doc. E7–2422 Filed 2–12–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Income Withholding for Support (IWO) (Formerly: Order to Withhold Income for Child Support and Notice of an Order to Withhold Income for Child Support)

OMB No. 0970–0154

Description: Pub. L. 104–193, The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, Section 324, requires the Federal Office of Child Support Enforcement (OCSE) to develop a standardized form to collect child support payments from an obligor's employer. The form, which promotes standardization and is used for title IV–

D and non-IV–D cases that require income withholding, expires 5/31/2007, and the Administration for Children and Families is taking this opportunity to revise the form and its instructions.

Overall, the language and format of the form have been edited, modified, and made easier to read and comprehend. The two-page form provides a detailed legal description of the established order, support amounts, and remittance information an employer needs to withhold payments from an obligor who owes child support. One of the new fields on the form is for the attachment of lump sum payments by employers. This addition allows the issuing entity to instruct the employer with respect to the attachment and remittance of lump sum payments. Fields for child's name and date of birth have been moved to the front of the form, allowing the employer community to easily identify who the form is for and to avoid implementation of duplicate orders. Other changes that have enhanced the form include: A simplified title, clear identification of who is sending the form, and modifications to allow the employer to easily report employee terminations.

Respondents: States, Territories, and Tribes.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
IWO	54	222,222	.0017	20,400

Estimated Total Annual Burden Hours: 20,400.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. *E-mail address: infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 7, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07–631 Filed 2–12–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Identifying Promising Temporary Assistance for Needy Families (TANF) Diversion Practices.

OMB No.: New Collection.

Description: The Identifying Promising TANF Diversion Practices study is designed to understand States' and local offices' TANF diversion policies and practices. Since the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, a majority of States have implemented formal diversion programs that provide assistance to families and/or impose program requirements on them when they apply for TANF in order to reduce the number of families who enroll in the program. These programs can send a strong signal to applicants that TANF is a work-oriented program and/or prevent applicants' need to use time-limited welfare benefits. States have implemented three types of formal diversion programs: (1) Lump-sum payment programs targeted to work-ready applicants to help them through short-term crises; (2) ''up-front'' program requirements, such as mandatory participation in a program orientation or job search as a condition of eligibility; and (3) hybrid programs that provide short-term cash assistance and impose up-front requirements. The Administration for Children and Families has contracted with Mathematica Policy Research, Inc. to learn more about States' implementation of these programs and to identify best practices.

The study consists of a survey of States and in-depth visits to local sites. The survey of States will be administered in four stages: (1) A State survey to the TANF director in all 50 States and the District of Columbia to obtain a profile of States' diversion policies and practices; (2) a semi-structured, one-hour followup telephone interview with the State TANF director or designee in an estimated 35 States with current diversion programs to gather additional information about these programs; (3) a semi-structured, 20-minute telephone interview with the State TANF director or designee in other States without current diversion programs to learn about future plans for diversion programs; and (4) a semi-structured, one-hour telephone interview with local TANF administrators from 30 selected local offices in States that provide local flexibility in administering diversion policies to learn about their practices.

To further understand the local implementation of diversion policies and practices, the study includes site visits to two local offices in each of three States with promising diversion programs. In each office, interviews will be conducted with one TANF administrator, an average of two supervisors or mid-level management staff members, an average of three line staff members, and an average of two staff members from partner organizations. Site visitors also will observe selected activities, such as intake, orientation, and job search.

Respondents: State TANF directors and administrators and local TANF administrators and line staff.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Survey of States				
Stage 1: State Survey	51	1	0.333333	17.0
Stage 2: Interview State TANF Director with Diversion Program	35	1	1.0	35.0
Stage 3: Interview State TANF Director without Diversion Program	16	1	0.3	4.8
Stage 4: Interview Local TANF Administrator	30	1	1.0	30.0
Site Visit Protocols				
Administrator	6	1	1.5	9.0
Supervisor	12	1	1.0	12.0
Line Staff	18	1	1.0	18.0
Partner Organization	12	1	1.0	12.0
Observation	12	1		
Estimated Total Annual Burden Hours:				137.8

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. *E-mail address: infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–6974, *Attn:* Desk Officer for the Administration for Children and Families.

Dated: February 7, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07–632 Filed 2–12–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Heritable Disorders and Genetic Diseases in Newborns and Children

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of request for nominations.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill eight (8) vacancies on the Advisory Committee on Heritable Disorders and Genetic Diseases in Newborns and Children.

Authority: Section 1111 of the PHS Act, 42 U.S.C. 300b–10. The Committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. App. 2), and 41 CFR Part 102–3, which sets forth standards for the formation and use of advisory committees.

DATES: The agency must receive nominations on or before March 15, 2007.

ADDRESSES: All nominations are to be submitted to Michele A. Lloyd-Puryear, M.D., Ph.D., Designated Federal Official and Executive Secretary, Advisory Committee on Heritable Disorders and Genetic Diseases in Newborns and Children, and Chief, Genetic Services Branch, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Nominations will not be accepted by e-mail or facsimilie.

FOR FURTHER INFORMATION CONTACT: Ms. Jill F. Shuger, Genetic Services Branch, Maternal and Child Health Bureau, HRSA, at *jshuger@hrsa.gov* or (301) 443–1080. A copy of the Committee Charter and list of the current membership can be obtained by contacting Ms. Shuger or by accessing the Advisory Committee Web site at *http://mchb.hrsa.gov/programs/genetics/committee.*

SUPPLEMENTARY INFORMATION: Title XXVI of the Children's Health Act of 2000, ''Screening for Heritable Disorders,'' established a program to improve the ability of States to provide newborn and child screening for heritable disorders. Title XXVI enacts three sections of the Public Health Service (PHS) Act: Sections 1109, 1110, and 1111. The Secretary of Health and Human Services (HHS) is directed under section 1111 of the PHS Act to establish an Advisory Committee on Heritable Disorders in Newborns and Children (Committee). HHS has expanded the Committee to include genetic diseases and has renamed the Committee accordingly.

The Committee is established to advise and guide the Secretary regarding the most appropriate application of universal newborn screening tests, technologies, policies, guidelines and programs for effectively reducing morbidity and mortality in newborns and children having or at risk for heritable disorders. In addition, the Committee provides advice and recommendations to the Secretary concerning the grants and projects authorized under section 1109 and technical information to develop policies and priorities for this Program that will enhance the ability of the State and local health agencies to provide for newborn and child screening, counseling and health care services for newborns and children having or at risk for heritable disorders.

Specifically, HRSA is requesting nominations for eight voting members to serve on the Committee. Members shall be selected from medical, technical, public health or scientific professionals with special expertise in the field of heritable disorders or in providing screening, counseling, testing or specialty services for newborns and children at risk for heritable disorders and from members of the public having

special expertise about or concern with heritable disorders.

The individuals selected for appointment to the Committee can be invited to serve for overlapping terms of up to 4 years. However, any member appointed to fill a vacancy of an unexpired term shall be appointed for the remainder of such term. Members may serve after the expiration of their term until their successors have taken office. Terms of more than 2 years are contingent upon the renewal of the Committee by appropriate action prior to its expiration. Members who are not Federal employees will receive a stipend for each day they are engaged in the performance of their duties as members of the Committee. Members shall receive per diem and travel expenses as authorized by Section 5 U.S.C. 5703 for persons employed intermittently in Government service. Members who are officers or employees of the United States Government shall not receive compensation for service on the Committee. Nominees will be invited to serve beginning from September 30, 2007.

To allow the Secretary to choose from a highly qualified list of potential candidates, more than one nomination is requested per open position. Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude the Committee membership—potential candidates will be asked to provide detailed information concerning consultancies, research grants, or contracts to permit evaluation of possible sources of conflicts of interest; (2) the nominator's name, address, and daytime telephone number, and the home/or work address, telephone number, and e-mail address of the individual being nominated; and (3) a current copy of the nominee's curriculum vitae. Please submit nominations no later than March 15, 2007.

To the extent practicable, members of the Committee should have expertise in dealing with heritable disorders and genetic diseases that affect the racial and ethnic and geographical diversity of newborns served by the State newborn screening programs. The Department of Health and Human Services will ensure that the membership of the Committee reflects an equitable geographical and gender distribution, provided that the effectiveness of the Committee would not be impaired. Appointments shall be made without discrimination on the basis of age, ethnicity, gender, sexual orientation, and cultural, religious, or socioeconomic status.

Dated: February 6, 2007.

Elizabeth M. Duke,

Administrator.

[FR Doc. E7–2362 Filed 2–12–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Poison Control Centers Stabilization and Enhancement Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice; request for public comment.

SUMMARY: The Health Resources and Services Administration (HRSA) is seeking comments from the public on its plan to institute a permanent deviation from a policy in the Department of Health and Human Services (HHS), Grants Policy Directive (GPD) 3.01 governing indirect cost recovery for one of its grant programs. The GPD states ''HHS considers activities conducted by grantees that result in indirect charges a necessary and appropriate part of HHS grants, and HHS awarding offices must reimburse their share of these costs.'' Although HRSA typically reimburses grantees for their full share of administrative overhead represented in approved indirect cost rates (which can be up to 50 percent), the agency believes, in the case of its Poison Control Program, that full recovery of overhead expenditures would be detrimental to the poison control centers (PCCs) funded under the program because of the financial instability of PCCs. The purpose of the HRSA Poison Control Centers Stabilization and Enhancement Grant Program is to assist PCCs in achieving financial stability, preventing poisonings and providing treatment recommendations for poisonings. Limiting indirect costs is necessary because many PCCs are located within institutions such as universities and hospitals that have established indirect cost rates in the range of 30 to 50 percent. It is in the best interest of PCCs to limit the indirect cost recovery to 10 percent, leaving 90 percent of the grant funds to achieve the objectives of the grant program. This limitation would be applicable to all awardees of the Poison Control Center Stabilization and Enhancement Grant Programs.

DATES: If you wish to comment on any portion of this notice, HRSA must receive comments by March 15, 2007.

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

- *E-mail: lroche@hrsa.gov*. Include ''Poison Control Stabilization and Enhancement Program'' in the subject line of the message.
- *Mail:* Lori Roche, Division of Healthcare Preparedness, Healthcare Systems Bureau, Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Room 13–103, Rockville, MD 20857.
- *Hand Delivery/Courier:* Lori Roche, Division of Healthcare Preparedness, Healthcare Systems Bureau, Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Room 13–103, Rockville, MD 20857.

Docket: For access to the docket to read background documents or comments received, go to the Division of Healthcare Preparedness, Healthcare Systems Bureau, Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Room 13–103, Rockville, Maryland, 20857, weekdays between the hours of 8:30 a.m. and 5 p.m. To schedule an appointment to view public comments, phone (301) 443–0652.

FOR FURTHER INFORMATION CONTACT: Lori Roche, at the above address, telephone number 301–443–0652.

SUPPLEMENTARY INFORMATION: The Health Resources and Services Administration's (HRSA) Poison Control Program (PCP) was established in February 2000 under the Poison Center Enhancement and Awareness Act, Pub. L. 106–174. The program was reauthorized in 2003 under the Poison Control Center Enhancement and Awareness Act, Amendments of 2003, Pub. L. 108–194. This Act authorizes funding to maintain the national toll-free number; establish a nationwide media campaign to promote poison control center (PCC) utilization; maintain the PCC grant program; develop standardized poison prevention and poison control promotion programs; develop standard patient management guidelines for commonly encountered toxic exposures; improve and expand the poison control data collection activities; improve national toxic exposure surveillance by enhancing activities at the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease

Registry; expand the toxicologic expertise within PCCs; and improve the capacity of PCCs to answer high volumes of calls during times of national crisis.

The grant program that was established, in response to the legislation, provides funding for the financial stabilization, certification and incentive grants. Financial stabilization grants provide assistance to PCCs that are certified by the American Association of Poison Control Centers (AAPCC). The intent of the financial stabilization program is to assist PCCs in poison prevention and to help stabilize their funding structure. Certification grants have previously been awarded to poison centers that do not meet the AAPCC's certification standards and thereby do not qualify for assistance under the financial stabilization grant category. These grants were designed to assist uncertified centers in achieving certification by the AAPCC. The incentive grants have previously been awarded to PCCs that are working collaboratively and innovatively with one another and other public health agencies to improve, enhance and expand poison control systems and services. Assistance under the three grant categories is in the form of grant funds and technical assistance.

PCCs provide poison services and prevention education to combat deaths and injuries due to poisonings. PCCs also serve as part of the Nation's surveillance and first response system, providing a continuum of emergency services, which is needed to confront the threat of bioterrorism. While PCCs provide a benefit to the public health community, their funding structures are unstable and are derived from a variety of sources, including Federal, State, and local government, as well as corporate and foundation donations.

Since inception, the Federal Poison Control Program has helped PCCs meet the needs of the public and poison community. According to the Evaluation of the Effectiveness of the Poison Control Centers Grant Program, a study conducted by Battelle Centers for Public Health Research and Evaluation (a research service organization), the Federal program represents a lifeline for poison centers. During the first two grant years alone, PCCs made remarkable strides in accomplishing the objectives outlined in their grant proposals. The program finds this to still be true after four years of the grant program.

The PCC grant guidance has limited indirect costs to 10 percent of allowable total direct costs since 2001. However, for the 2005 grant funding opportunity guidance, a request to deviate from the Department of Health and Human Services (DHHS) Grants Policy Directive (GPD) 3.01, Indirect Costs and Other Cost Policies was required; it was submitted and approved by the DHHS, Office of Grants Management Policy, Assistant Secretary for Administration and Management on March 23, 2005. The grant program initiated this limitation on the recoverable indirect costs because many PCCs are located within universities and hospitals that have established indirect cost rate agreements in the range of 30 to 50 percent. In adhering to the existing GPD policy, as much as 50 percent of grants funds could be consumed for administrative purposes by the host institution, which significantly reduces the amount of funds available to carry out the objectives of the authorizing legislation and grant program.

Continuation of this indirect cost limitation will greatly enhance the awardees' ability to become financially stable, which is the intent of the grant program. However, reduced funding would reverse the success of the grant program to date in helping to stabilize PCCs funding structure and meet the objectives of the grant program. Historically, reduced and insufficient funding has forced many PCCs to decrease center operations and terminate critical staff that provides free poison prevention and expert poison treatment services to the public. Termination of critical operational staff can result in the loss of PCC certification status, which will disqualify centers from receiving Federal Poison Control Program funding. For many centers, this can lead to closure, which can also weaken our Nation's first response system to poisoning emergencies, biological, chemical and nuclear terrorism.

Public Comment

HRSA invites public comment on its plan to indefinitely limit indirect costs to 10 percent of the total allowable direct costs for awardees of the Poison Control Center Stabilization and Enhancement Grant Program.

Dated: February 6, 2007.

Elizabeth M. Duke,

Administrator.

[FR Doc. E7–2365 Filed 2–12–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Comparative Biology Review.

Date: March 15–16, 2007.

Time: 7 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Radisson Governor's Inn, I–40 at Davis Drive, Exit 280, Research Triangle Park, NC 27709.

Contact Person: Leroy Worth, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 919/541–0670, *worth@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Environmental Sensors for Personal Exposure Assessment.

Date: March 22–23, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Radisson Governor's Inn, I–40 at Davis Drive, Exit 280, Research Triangle Park, NC 27709.

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752, *mcgee1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower

Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 5, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–635 Filed 2–12–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Autism Review.

Date: March 5, 2007.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Christopher S. Sarampote, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892, 301–443–1969, *csarampo@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; U01 Panel B.

Date: March 6, 2007.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NIMH K99 Review.

Date: March 8, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Silvio O. Conte Centers for Neuroscience Research Review Meeting.

Date: March 8, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Bettina D. Osborn, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20892–9609, 301–443–1178, *acunab@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Silvio Conte Centers for Collaborative Neuroscience Research.

Date: March 9, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: A. Roger Little, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6157, MSC 9609, Rockville, MD 20852–9609, 301–402–5844, *alittle@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, R25 Review.

Date: March 12, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Mary C. Blehar, Scientific Review Administrator, Office of the Director, Neuroscience Center, 6001 Executive Blvd., Room 7216, MSC 9634, Bethesda, MD 20892–9634, 301–443–4491, *mblehar@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Transition to Adulthood RFA.

Date: March 20, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Washington, Pennsylvania Ave at 15th Street, NW., Washington, DC 20004.

Contact Person: Marina Broitman, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, NIMH R34/R21 AIDS Applications Review.

Date: March 23, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Henry J. Haigler, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/433–7126, *hhaigler@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS).

Dated: February 5, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–636 Filed 2–12–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY 050–07–1610–DO]

Notice of Intent To Prepare a Resource Management Plan Revision and Associated Environmental Impact Statement, for the Lander Field Office, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: The Bureau of Land Management (BLM) Lander Field Office, Wyoming intends to prepare a Resource Management Plan revision with an associated Environmental Impact Statement (RMP\EIS) for the Lander Field Office planning area and by this notice is announcing public scoping meetings. The RMP will replace the existing Lander RMP.

DATES: This notice initiates the public scoping process. Comments and

resource information should be submitted to the BLM within 60 days of publication of this notice in the **Federal Register**. The BLM will announce public scoping meetings to identify relevant issues through local news media, newsletters, and the BLM Web site (*http://www.wy.blm.gov/lfo/lfoplan.htm*) at least 15 days prior to the first meeting.

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

- *Web site: http://www.wy.blm.gov/lfo/lfoplan.htm.*
- *E-mail: lrmp_wymail@blm.gov.*
- *Fax:* 307–332–8444.
- *Mail:* Bureau of Land Management, Lander Field Office, P.O. Box 589, Lander, WY 82520.

Documents pertinent to this proposal may be examined at the Lander Field Office. Respondents' comments, including names and street addresses, will be available for public review at the Lander Field Office during regular business hours 7:45 a.m.–4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored 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: For further information and/or to have your name added to our mailing list, contact Carol-Anne Murray, Lander Field Office, at 307–332–8448 or by e-mail to *lrmp_wymail@blm.gov*.

SUPPLEMENTARY INFORMATION: The planning area is located in Fremont, Natrona, Sweetwater, Carbon, and Hot Springs Counties, Wyoming. This planning activity encompasses approximately 2.5 million surface acres of BLM-administered public lands and 2.7 million acres of subsurface mineral estate. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act, the Federal Land Policy and Management Act, and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis and EIS alternatives. These issues will also guide the planning process. You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed under **ADDRESSES** above.

To be most helpful, you should submit formal scoping comments within 30 days after the last public meeting.

Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. They represent the BLM's knowledge to date regarding the existing issues and concerns with current land management. The EIS will describe and analyze a range of alternatives, comprised of the No Action alternative (continued management) and a number of action alternatives, each of which will describe options for addressing the major issues. The major issue themes that will be addressed in the plan effort include:

- Energy and minerals management;
- Management of riparian areas and water quality concerns;
- Livestock grazing management;
- Recreation/visitor use and safety management;
- Travel management, including Off Highway Vehicles;
- Management of wildlife habitat including protection of sensitive species habitat;
- Land tenure adjustments, realty leases, and utility corridor right-of-ways;
- Management of areas with special values; and,
- Management and protection of public land resources while allowing for multiple uses.

At this time, there are no areas identified during preplanning for consideration as new Areas of Critical Environmental Concern.

After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of four categories:

1. Issues to be resolved in the plan;
2. Issues resolved through policy or administrative action;
3. Issues beyond the scope of this plan; or
4. Issues that have already been addressed but should be better communicated to the issue holder.

Rationale will be provided in the plan for each issue placed in category two, three, or four. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase. An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in rangeland management, minerals and geology, wildland fire and fuels management, outdoor recreation, archaeology, paleontology, wildlife, fisheries, lands and realty, soils, water and air, wild horses, environmental justice, and sociology and economics.

The following planning criteria have been proposed to guide development of the plan, avoid unnecessary data collection and analyses, and to ensure the plan is tailored to the issues. Other criteria may be identified during the public scoping process. After gathering comments on planning criteria, the BLM will finalize the criteria and provide feedback to the public on the criteria to be used throughout the planning process. Some of the planning criteria that are under consideration include:

- The plan will be completed in compliance with the Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*) and the National Environmental Policy Act;
- The plan will recognize valid existing rights;
- Public participation will be encouraged throughout the process by collaborating and building relationships with tribes, state and local governments, Federal agencies, local stakeholders, and others with interest in the plan. Collaborators are regularly informed and offered timely and meaningful opportunities to participate in the planning process.

Dated: December 8, 2006.

Robert A. Bennett,

State Director, Wyoming.

[FR Doc. E7–2421 Filed 2–12–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–07–1420–BJ]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially

filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico

The plat representing the dependent resurvey and survey and subdivision of sections in Township 31 North, Range 1 West, accepted December 18, 2006, for Group 1020 New Mexico.

The plat representing the dependent resurvey and subdivision of sections for Township 31 North, Range 1 East, accepted December 18, 2006 for Group 1020 New Mexico.

The plat representing the dependent resurvey for Township 17 South, Range 30 East, accepted August 23, 2006 for Group 1055 New Mexico.

The plat in four sheets representing the resurvey and subdivision of sections for Township 26 South, Range 28 East, accepted September 18, 2006 for Group 923 New Mexico.

The Supplement Plat, representing the subdivision of sections for Township 9 North, Range 4 West, accepted September 27, 2006 for New Mexico.

The plat representing the dependent resurvey for Township 16 North, Range 11 East, accepted September 29, 2006 for Group 908 New Mexico.

The plat in two sheets representing the dependent resurvey and survey for Township 15 North, Range 16 West, accepted November 28, 2006 for Group 1029 New Mexico.

Indian Meridian, Oklahoma

The plat representing the dependent resurvey for Township 24 North, Range 8 East, accepted September 11, 2006 for Group 130 Oklahoma.

The plat representing the dependent resurvey for Township 3 South, Range 2 East, accepted September 12, 2006 for Group 135 Oklahoma.

The plat representing the dependent resurvey for Township 8 South, Range 2 West, accepted September 18, 2006 for Group 133 Oklahoma.

The plat representing the dependent resurvey for Township 10 North, Range 7 East, accepted September 28, 2006 for Group 109 Oklahoma.

The plat representing the dependent resurvey for Township 3 North, Range 21 East, accepted September 28, 2006 for Group 124 Oklahoma.

The plat representing the dependent resurvey for Township 12 North, Range 18 West, accepted September 11, 2006 for Group 140 Oklahoma.

The plat representing the dependent resurvey for Township 8 North, Range 15 East, accepted September 29, 2006 for Group 117 Oklahoma.

The plat representing the dependent resurvey for Township 9 North, Range 15 East, accepted September 29, 2006 for Group 118 Oklahoma.

The plat representing the dependent resurvey for Township 4 North, Range 21 East, accepted September 26, 2006 for Group 123 Oklahoma.

The plats in three sheets, representing the dependent resurvey and survey for Township 8 North, Range 14 West, accepted September 28, 2006 for Group 79 Oklahoma.

The plat representing the dependent resurvey for Township 7 North, Range 14 West, accepted September 28, 2006 for Group 79 Oklahoma.

The plat representing the dependent resurvey for Township 19 North, Range 13 West, accepted December 13, 2006 for Group 138 Oklahoma.

The plat representing the dependent resurvey for Township 5 South, Range 3 West, accepted September 28, 2006 for Group 134 Oklahoma.

The plat representing the dependent resurvey for Township 21 North, Range 9 East, accepted September 28, 2006 for Group 129 Oklahoma.

The plat in two sheets, representing the dependent resurvey and survey for Township 21 North, Range 8 East, accepted September 28, 2006 for Group 129 Oklahoma.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed.

A person or party who wishes to protest against any of these surveys must file a written protest with the New Mexico State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, and P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: January 30, 2007.

Robert A. Casias,

Chief Cadastral Surveyor, New Mexico.

[FR Doc. 07–583 Filed 2–12–07; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before January 27, 2007. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by February 28, 2007.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

CONNECTICUT

Fairfield County

Glenville Historic Rd., Roughly along Glen Ridge Rd., Glenville Rd., Glenville St., Pemberwick Rd., Riversville Rd., and Weaver St., Greenwich, 07000107

Hartford County

Rocky Hill Center Historic District, Roughly bounded by Old Main, Pratt & Washington Sts., Glastonbury Ave., and Riverview Rd., Rocky Hill, 07000111

Litchfield County

Bridge #2305, Main St. over Burton Brook, Salisbury, 07000109

New Haven County

Depot Street Bridge, Depot St., Beacon Falls, 07000108

New London County

Park, William, House, 330 Main St., Sprague, 07000106

Rossie Velvet Mill Historic District, Roughly along Bruggerman Court, Bruggerman Place, Greenmanville Ave., Hinckly St., Pleasant St., Rossie St. Velvet St., Stonington, 07000110

FLORIDA

Hillsborough County

Jackson Rooming House, 851 Zack St., Tampa, 07000112

ILLINOIS

Cook County

Falconer Bungalow Historic District, (Chicago Bungalows MPS) Roughly bounded by W. Wellington Ave., N. Lamon

Ave., N. Laramie Ave., and the alley N of W. Diversey Ave., Chicago, 07000114

Edgar County

Shaw—Van Gilder House, 306 E. Crawford St., Paris, 07000116

Kankakee County

Kankakee County Courthouse, 450 E. Court St., Kankakee, 07000115

Livingston County

Illinois State Police Office, Pontiac, 15551 Old U.S. 66, Pontiac, 07000117

IOWA

Pottawattamie County

Chevra B'nai Yisroel Synagogue, 618 Mynster St., Council Bluffs, 07000113

MASSACHUSETTS

Plymouth County

Plympton Village Historic District, Main St., Elm St., Parsonage Rd., Mayflower Rd., Plympton, 07000120

MISSISSIPPI

Lowndes County

Owen—Richardson—Owen House, 1709 9th St. S, Columbus, 07000122

MISSOURI

Clark County

Shrine of St. Patrick Church, Erin Circle, St. Patrick, 07000121

N. MARIANA ISLANDS

Northern Islands Municipality

Brown Beach One Japanese Fortifications, Unai Loaloa Kattan, Unai Laolao Kattan, 07000123

RHODE ISLAND

Newport County

Friends Meeting House and Cemetery, 234 W. Main Rd., Little Compton, 07000124

Wilbor House, 548 W. Main Rd., Little Compton, 07000125

SOUTH CAROLINA

Anderson County

Denver Downs Farmstead, 4915 Clemson Blvd., Anderson, 07000118

Greenwood County

Kinard House, 227 W. Main St., Ninety Six, 07000119

Richland County

Wade Hampton State Office Building, (Segregation in Columbia, South Carolina MPS) 1015 Sumter St., Columbia, 07000126

TEXAS

Dallas County

Monroe Shops, 2111 S. Corinth St., Dallas, 07000130

Goliad County

Fair Oaks Ranch, 14509 U.S. 59 S, Berclair, 07000127

Smith County

Glass, D.R., Library at Texas College, 2404 N. Grand Ave., Tyler, 07000128

President's House at Texas College, (Tyler, Texas MPS) 2404 N. Grand Ave., Tyler, 07000131

Tyler City Hall, (Tyler, Texas MPS) 212 N. Bonner Ave., Tyler, 07000129

VIRGINIA

Albemarle County

Bel Aire, 4710 Dickerson Rd., Charlottesville, 07000132

Fredericksburg Independent City

Matthew Fontaine Maury School, 900 Barton School, Fredericksburg (Independent City), 07000133

WASHINGTON

King County

Saint Edward Seminary, 14445 Juanita Dr. NE, Kenmore, 07000137

San Juan County

San Juan Lime Company—Cowell's, 1567 West Side Rd. N, Friday Harbor, 07000136

Thurston County

General Administration Building, 210 11th Ave. SW, Olympia, 07000134

Georgia—Pacific Plywood Company Office, 600 Capitol Way N., Olympia, 07000135

[FR Doc. E7–2394 Filed 2–12–07; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–484]

Commercial Availability of Apparel Inputs (2007): Effect of Providing Preferential Treatment to Apparel From Sub-Saharan African, Caribbean Basin, and Andean Countries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

DATES: Effective Date: January 29, 2007.

SUMMARY: Following receipt of a request from the United States Trade Representative (USTR) dated January 22, 2007, the Commission instituted investigation No. 332–484, *Commercial Availability of Apparel Inputs (2007): Effect of Providing Preferential Treatment to Apparel from Sub-Saharan African, Caribbean Basin, and Andean Countries*, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide advice regarding the probable economic effect of granting preferential treatment to apparel made from fabrics or yarns that are the subject of petitions filed in 2007 with the Committee for the Implementation of Textile Agreements (CITA) under the ''commercial availability'' provisions of the African Growth and Opportunity Act (AGOA), the United States-Caribbean Basin Trade Partnership Act (CBTPA), and the Andean Trade Promotion and Drug Eradication Act (ATPDEA). This investigation is similar to investigations instituted in 2001–06 to provide advice with respect to petitions filed in those years.

DATES: Date of institution: January 29, 2007

ADDRESSES: All offices of the Commission are located at 500 E Street, SW., Washington, DC. All submissions in this investigation should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Project Leader: Jackie W. Jones (202–205–3466, *jackie.jones@usitc.gov*). Deputy Project Leader: Heidi Colby-Oizumi (202–205–3391, *heidi.colby@usitc.gov*).

Industry-specific information may be obtained from the above persons. For more information on legal aspects of the investigation, contact William Gearhart of the Commission's Office of the General Counsel at 202–205–3091 or *william.gearhart@usitc.gov*. The media should contact Margaret O'Laughlin, Office of External Relations at 202–205–1819 or *margaret.olaughlin@usitc.gov*. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the 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. The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ONLINE) at *http://www.usitc.gov//edis.htm*. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: The Commission will follow procedures similar to those followed in the commercial availability reviews in 2006 under investigation No. 332–473. Thus, in 2007, the Commission will provide advice for each commercial availability review under one investigation number. The Commission will post a notification letter announcing the initiation of each review on its Internet site (*http://www.usitc.gov*) and send the notification letter to a list of interested parties who wish to be automatically notified about any requests for which

the Commission initiates analysis. Interested parties may be added to this list by notifying Jackie W. Jones (202–205–3466, *jackie.jones@usitc.gov*) or Heidi Colby-Oizumi (202–205–3391, *heidi.colby@usitc.gov*). The notification letter will specify the article(s) under consideration, the deadline for submission of public comments on the proposed preferential treatment, and the name, telephone number, and Internet e-mail address of a staff contact for additional information. The Commission has a special area on its web site (*http://www.usitc.gov/ind_econ_ana/research_ana/pres_cong/332/short_supply/shortsupintro.htm*) to provide the public with information on the status of each request for which the Commission initiated analysis. CITA publishes a summary of each request from interested parties in the **Federal Register** and posts them on its Internet site (U.S. Department of Commerce, Office of Textiles and Apparel, at *http://otexa.ita.doc.gov/fr.htm*).

The Commission will submit its reviews to the USTR not later than the 42nd day after receiving a request for advice. The Commission will post a public version of each review on its website as soon as possible thereafter, with any confidential business information deleted.

Written submissions: Because of time constraints, the Commission will not hold public hearings in connection with the advice provided under this investigation number. However, interested persons are invited to submit written statements containing data and other information concerning the matters to be addressed by the Commission. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and should be received no later than the close of business (5:15 p.m. ET) on the date stated in the notification letter of each review of a petition. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8), except that submitters need file only a signed original (or a copy designated as an original) and three (3) copies of each document filed, and if confidential treatment of the document is requested, two (2) additional copies in which the confidential business information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission rules do not authorize filing submissions with the Secretary by facsimile or electronic means except to the extent permitted by section 201.8 of the Commission's rules (19 CFR 201.8) (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or edis@usitc.gov).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

Some or all of the confidential business information provided may be included in the reviews that the Commission sends to the USTR. The Commission plans to publish a public version of each review shortly after the review is sent to the USTR. However, in the public version the Commission will not publish confidential business information in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: February 6, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–2366 Filed 2–12–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–485]

Canned Peaches, Pears, and Fruit Mixtures: Conditions of Competition Between U.S. and Principal Foreign Supplier Industries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt of a request on December 12, 2006, from the House Committee on Ways and Means, the Commission instituted investigation No. 332–485, *Canned Peaches, Pears, and Fruit Mixtures: Conditions of Competition between U.S. and Principal Foreign Supplier Industries*, under section 332(g) of the Tariff Act of 1939 (19 U.S.C. 1332(g)).

DATES: February 6, 2007: Date of institution.

June 28, 2007: Deadline for filing requests to appear at the public hearing.

July 2, 2007: Deadline for filing pre-hearing briefs and statements.

July 12, 2007, 9:30 am: Public hearing.

July 26, 2007: Deadline for written statements, including any post-hearing briefs.

December 12, 2007: Transmittal of report to the Committee on Ways and Means.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. 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: Industry-specific information may be obtained from Douglas Newman, Co-Project Leader (202–205–3328; *douglas.newman@usitc.gov*), or Timothy McCarty, Co-Project Leader (202–205–3324; *timothy.mccarty@usitc.gov*), Office of Industries, United States International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of General Counsel (202–205–3091; *wgearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Public Affairs Office (202–205–1819; *margaret.olaughlin@usitc.gov*). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). 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.

SUPPLEMENTARY INFORMATION: As requested by the Committee, the Commission will conduct an investigation and provide a report on competitive conditions for certain canned fruit between U.S. and principal

foreign supplier industries during the period 2003–05. Data and analysis will be provided for (1) Canned peaches, (2) canned pears, and (3) canned fruit mixtures, with any overlap among the industries clearly identified. In its report, the Commission will provide, to the extent possible, the following:

- An overview of the canned peach, canned pear, and canned fruit mixtures industries in the United States and major supplier countries (such as China, Greece, Spain, and Thailand), including production of fresh peaches and pears for processing, planted acreage and new plantings, processing volumes, processing capacity, and consumption;
- Information on U.S. and foreign supplier imports and exports of canned peaches, canned pears, and canned fruit mixtures, as well as the market segments in which U.S. imports are being sold (e.g., retail, food service sector, or other);
- A description of principal trade practices and government programs and measures affecting production of the products (especially in China, Greece, and Spain); and,
- A comparison of the strengths and weaknesses of these foreign competitor canned fruit industries and the U.S. industries (including industry structure, input cost and availability, processing technology, product innovation, government programs, exchange rates, and pricing and marketing regimes), and steps the respective industries are taking to increase their competitiveness.

As requested, the Commission will transmit its report to the Committee by December 12, 2007.

Public Hearing: A public hearing in connection with the investigation is scheduled to be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC beginning at 9:30 a.m. on July 12, 2007. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., June 28, 2007. Any pre-hearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., July 2, 2007. The deadline for filing post-hearing briefs or statements is 5:15 p.m., July 26, 2007. In the event that, as of the close of business on June 28, 2007, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary (202–205–2000) after June 28, 2007, to determine whether the hearing will be held.

Written Statements: In lieu of or in addition to participating in the hearing, interested persons are invited to submit written statements concerning the investigation. All submissions should be addressed to Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and should be received no later than the close of business on July 26, 2007. All written submissions must conform with the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 of the rules require that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except as permitted by section 201.8 of the Commission's Rules (19 C.F.R. 201.8) (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*.

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Committee has asked that the report that the Commission transmits not contain any confidential business information. Any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: February 7, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–2363 Filed 2–12–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–402 and 731–TA–892 and 893 (Review)]

Honey From Argentina and China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of expedited five-year reviews concerning the countervailing duty order on honey from Argentina and the antidumping duty orders on honey from Argentina and China.

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 countervailing duty order on honey from Argentina and the antidumping duty orders on honey from Argentina and China 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: February 5, 2007.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 February 5, 2007, the Commission determined that the domestic interested party group

response to its notice of institution (71 FR 64292, November 1, 2006) of the subject five-year reviews was adequate and that the respondent interested party group responses were inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] 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 May 15, 2007, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in § 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,[2] 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 May 22, 2007, 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 May 22, 2007. 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 §§ 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 § 201.8 of the Commission's rules, as amended, 67 FR 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 FR 68168, 68173 (November 8, 2002).

In accordance with §§ 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 § 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 7, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–2455 Filed 2–12–07; 8:45 am]

BILLING CODE 7020–02–P

[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] The Commission has found the responses submitted by the American Honey Producers Association and the Sioux Honey Association to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–919 and 920 (Review)]

Welded Large Diameter Line Pipe From Japan And Mexico

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the antidumping duty orders on welded large diameter line pipe from Japan and Mexico.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on welded large diameter line pipe from Japan and Mexico would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. 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: February 5, 2007.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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: On February 5, 2007, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (71 FR 64294, November 1, 2006) were adequate. 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.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 7, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–2456 Filed 2–12–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Privacy Act of 1974; Systems of Records

AGENCY: Foreign Claims Settlement Commission, Justice.

ACTION: Revisions of Notice of Privacy Act Systems of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, notice is given that the Foreign Claims Settlement Commission (''Commission'') is modifying all of its

Privacy Act Systems of Records, which were identified in the revised Table of Contents published in the **Federal Register** on November 14, 2006, 71 FR 66,347 (November 14, 2006), and corrected on December 4, 2006. 71 FR 70,426 (December 4, 2006).

On November 14, 2006, the Commission published a proposal to modify all of its systems of records to include a new routine use that would allow disclosure to appropriate persons and entities for purposes of response and remedial efforts in the event that there had been a breach of the data contained in the systems. 71 FR 66,347 (November 14, 2006). In accordance with 5 U.S.C. 552a(e)(4) and (11), the public was given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, required a 40-day period in which to conclude its review of the systems.

As a result of comments received, the Commission is making a minor modification to the language of the routine use in order to provide greater clarity. A concern was raised that the condition set forth in clause (1) of the routine use (''when (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised'') does not clearly identify precisely who has to suspect or confirm the compromise. While it was the intent of the drafters that it be the Commission that must suspect or confirm the compromise, because that intent was expressed only implicitly in the routine use, the Commission is modifying the language of the first condition to provide additional clarity.

The text of the modification to the Commission's systems of records is set forth below. In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress. The new routine use will be effective February 13, 2007.

Accordingly, pursuant to the provisions of 5 U.S.C. 552a, the Foreign Claims Settlement Commission hereby publishes notice that it is supplementing the list of Routine Uses of the Records Maintained in each of its Privacy Act Systems of Records, including the Categories of Users and the Purposes of Such Uses, by including the following additional Routine Use: ''To appropriate agencies, entities, and persons when (1) The Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.''

Mauricio J. Tamargok,

Chairman.

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BILLING CODE 4410–BA–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Nos. D–11324, Deutsche Bank AG (DB); D–11383, L–11384 and D–11385]

Kern County Electrical Pension Trust (the Pension Plan), Kern County Electrical Joint Apprenticeship and Training Trust (the Apprenticeship Plan), Kern County Electrical Health and Welfare Plan (the Welfare Plan), The International Brotherhood of Electrical Workers Local Union 428 (the Local Union); L–11302 and L–11303, OPET Health Care and Life Insurance Plans RM3A and RM5A (Together the H&L Plans); and OPET Prescription Drug Plan RRx (Plan RRx; All Three Together, the Plans), et al.; Proposed Exemptions: Involving Deutsche Bank, Kern County and OPET Health Care

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____ , stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor.

Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Deutsche Bank AG (DB), Located in Germany, With Affiliates in New York, New York and Other Locations

[Application No. D–11324]

Proposed Exemption

Under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990), the Department of Labor (the Department) is considering granting an exemption to DB and its affiliates (the Applicants) which will supersede Prohibited Transaction Exemption 2003–24 (PTE 2003–24) (68 FR 48637, August 14, 2003, *as amended,* 68 FR 55993, September 29, 2003).[1]

Section I—Transactions

If the proposed exemption is granted, the restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply:

(a) To the purchase of certain securities (the Securities), as defined, below in section III(h), by an asset management affiliate of DB, as ''affiliate'' is defined, below, in section III(c), from any person other than such asset management affiliate of DB or any affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such Securities, where a broker-dealer affiliated with DB (the Affiliated Broker-Dealer), as defined, below, in section III(b), is a manager or member of such syndicate and the asset management affiliate of DB purchases such Securities, as a fiduciary:

(1) On behalf of an employee benefit plan or employee benefit plans (Client Plan(s)), as defined, below, in section III(e) and/or on behalf of a Master Trust or Master Trusts (Master Trust(s)), as defined, below, in section III(o); or

(2) On behalf of Client Plans, Master Trusts, and/or In-House Plans, as defined, below, in section III(q), which are invested in a pooled fund or in pooled funds (Pooled Fund(s)), as defined, below, in section III(f); or

(3) On behalf of Client Plans, Master Trusts, and/or In-House Plans which are invested in a fund or in funds (Advised Fund(s)), as defined, below, in section III(a); provided that the conditions as set forth, below, in section II, are satisfied. (An affiliated underwriter transaction (AUT)); and/or

(b) to the purchase of Securities by an asset management affiliate of DB from any person other than such asset management affiliate of DB or any affiliate thereof, where a trustee affiliated with DB (the Affiliated Trustee), as defined, below, in section III(l), serves as a trustee of a trust that issued the Securities (whether or not such Securities are debt securities) or serves as an indenture trustee of Securities that are debt securities and where the asset management affiliate of DB purchases such Securities:

(1) On behalf of a Client Plan or Client Plans and/or on behalf of a Master Trust or Master Trusts; or

(2) On behalf of Client Plans, Master Trusts, and/or In-House Plans which are invested in a Pooled Fund or in Pooled Funds; or

(3) On behalf of Client Plans, Master Trusts, and/or In-House Plans which are invested in an Advised Fund or in Advised Funds; provided that the conditions as set forth, below, in section II, are satisfied (an affiliated trustee transaction (ATT)).[2]

Section II—Conditions

The proposed exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following requirements:

(a)(1) The Securities to be purchased are either—

(i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a *et seq.*). If the Securities to be purchased are part of an issue that is exempt from such registration requirement, such Securities:

(A) Are issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States,

(B) Are issued by a bank,

(C) Are exempt from such registration requirement pursuant to a Federal statute other than the 1933 Act, or

(D) Are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such Securities and that has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding twelve (12) months; or

(ii) Part of an issue that is an Eligible Rule 144A Offering, as defined in SEC Rule 10f–3 (17 CFR 270.10f–3(a)(4)). Where the Eligible Rule 144A Offering of the Securities is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) The Securities to be purchased are purchased prior to the end of the first day on which any sales are made, pursuant to that offering, at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities, except that—

(i) If such Securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such Securities are debt securities, they may be purchased at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, pursuant to that offering, provided that the interest rates, as of the date of such purchase, on comparable debt securities offered to the public subsequent to the end of the first day on which any sales are made and prior to the purchase date are less than the interest rate of the debt Securities being purchased; and

(3) The Securities to be purchased are offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the Securities being offered, except if—

(i) Such Securities are purchased by others pursuant to a rights offering; or

(ii) Such Securities are offered pursuant to an over-allotment option.

[1] For a discussion of how this proposed exemption will affect other applicants that are entitled to relief under PTE 2003–24, see the discussion in paragraph number 4 in the Summary of Facts and Representations of this proposed exemption.

[2] For purposes of this proposed exemption, an In-House Plan may engage in AUT's and ATT's only through investment in a Pooled Fund or an Advised Fund.

(b) The issuer of the Securities to be purchased pursuant to this exemption must have been in continuous operation for not less than three years, including the operation of any predecessors, unless the Securities to be purchased—

(1) Are non-convertible debt securities rated in one of the four highest rating categories by Standard & Poor's Rating Services, Moody's Investors Service, Inc., FitchRatings, Inc., Dominion Bond Rating Service Limited, Dominion Bond Rating Service, Inc., or any successors thereto (collectively, the Rating Organizations); provided that none of the Rating Organizations rates such securities in a category lower than the fourth highest rating category; or

(2) Are debt securities issued or fully guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; or

(3) Are debt securities which are fully guaranteed by a person (the Guarantor) that has been in continuous operation for not less than three years, including the operation of any predecessors, provided that such Guarantor has issued other securities registered under the 1933 Act; or if such Guarantor has issued other securities which are exempt from such registration requirement, such Guarantor has been in continuous operation for not less than three years, including the operation of any predecessors, and such Guarantor:

(a) Is a bank; or

(b) Is an issuer of securities which are exempt from such registration requirement, pursuant to a Federal statute other than the 1933 Act; or

(c) Is an issuer of securities that are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such securities and that has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding twelve (12) months.

(c) The aggregate amount of Securities of an issue purchased, pursuant to this exemption, by the asset management affiliate of DB with: (i) The assets of all Client Plans and all Master Trusts; and (ii) the assets, calculated on a *pro-rata* basis, of all Client Plans, Master Trusts, and In-House Plans investing in Pooled Funds managed by the asset management affiliate of DB and investing in Advised Funds; and (iii) the assets of plans to which the asset management affiliate of DB renders investment advice within the meaning of 29 CFR 2510.3–21(c)) does not exceed:

(1) 10 percent (10%) of the total amount of such Securities being offered in an issue, if such Securities are equity securities;

(2) 35 percent (35%) of the total amount of such Securities being offered in an issue, if such Securities are debt securities rated in one of the four highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the fourth highest rating category; or

(3) 25 percent (25%) of the total amount of such Securities being offered in an issue, if such Securities are debt securities rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the sixth highest rating category; and

(4) The assets of any single Client Plan, any Master Trust (and the assets of any Client Plans, any Master Trusts and any In-House Plans investing in Pooled Funds and in Advised Funds) may not be used to purchase any Securities being offered, if such Securities are debt securities rated lower than the sixth highest rating category by any of the Rating Organizations;

(5) Notwithstanding the percentage of Securities of an issue permitted to be acquired, as set forth in Section II(c)(1), (2), and (3), above, of this exemption, the amount of Securities in any issue (whether equity or debt securities) purchased, pursuant to this exemption, by the asset management affiliate of DB on behalf of any single Client Plan or any Master Trust, either individually or through investment, calculated on a *pro-rata* basis, in a Pooled Fund or Advised Fund may not exceed three percent (3%) of the total amount of such Securities being offered in such issue, and;

(6) If purchased in an Eligible Rule 144A Offering, the total amount of the Securities being offered for purposes of determining the percentages, described, above, in Section II(c)(1)—(3) and (5), is the total of:

(i) The principal amount of the offering of such class of Securities sold by underwriters or members of the selling syndicate to ''qualified institutional buyers'' (QIBs), as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) The principal amount of the offering of such class of Securities in any concurrent public offering.

(d) The aggregate amount to be paid by any single Client Plan or Master Trust in purchasing any Securities which are the subject of this exemption, including any amounts paid by any Client Plan, Master Trust, or In-House Plan in purchasing such Securities through a Pooled Fund or an Advised Fund, calculated on a *pro-rata* basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan, Master Trust, or In-House Plan, as of the last day of the most recent fiscal quarter of such Client Plan, Master Trust, or In-House Plan prior to such transaction.

(e) The covered transactions are not part of an agreement, arrangement, or understanding designed to benefit the asset management affiliate of DB or an affiliate.

(f) If the transaction is an AUT, the Affiliated Broker-Dealer does not receive, either directly, indirectly, or through designation, any selling concession, or other compensation or consideration that is based upon the amount of Securities purchased by any single Client Plan or Master Trust or that is based on the amount of Securities purchased by Client Plans, Master Trusts, or In-House Plans through Pooled Funds or Advised Funds, pursuant to this exemption. In this regard, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation or consideration that is attributable to the fixed designations generated by purchases of the Securities by the asset management affiliate of DB on behalf of any single Client Plan or Master Trust or any Client Plan, Master Trust, or In-House Plan in Pooled Funds or Advised Funds.

(g) If the transaction is an AUT,

(1) The amount the Affiliated Broker-Dealer receives in management, underwriting, or other compensation or consideration is not increased through an agreement, arrangement, or understanding for the purpose of compensating the Affiliated Broker-Dealer for foregoing any selling concessions for those Securities sold pursuant to this exemption. Except as described above, nothing in this Section II(g)(1) shall be construed as precluding the Affiliated Broker-Dealer from receiving management fees for serving as manager of the underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other compensation

or consideration that is not based upon the amount of Securities purchased by the asset management affiliate of DB on behalf of any single Client Plan or Master Trust or on behalf of any Client Plan, Master Trust, or In-House Plan participating in Pooled Funds and in Advised Funds, pursuant to this exemption; and

(2) The Affiliated Broker-Dealer shall provide to the asset management affiliate of DB a written certification, signed by an officer of the Affiliated Broker-Dealer, stating the amount that the Affiliated Broker-Dealer received in compensation or consideration during the past quarter, in connection with any offerings covered by this exemption, was not adjusted in a manner inconsistent with Section II(e), (f), or (g) of this exemption.

(h) The covered transactions are performed under a written authorization executed in advance by an independent fiduciary of each single Client Plan (the Independent Fiduciary), as defined, below, in Section III(g), or by a master trustee (the Master Trustee), as defined, below, in Section III(n), of each Master Trust).

If an Independent Fiduciary acting on behalf of a single Client Plan (or if a Master Trustee acting on behalf of a Master Trust, as the case may be) executed a written authorization with respect of AUTs, as required under another prohibited transaction exemption covering the same asset management affiliate of DB, prior to publication of this exemption in the **Federal Register**, the written authorization requirement of this Section II(h) shall be deemed satisfied with respect to ATTs and AUTs, if such asset management affiliate of DB provides to the same Independent Fiduciary (or the same Master Trustee) the materials described, below in Section II(i), together with a termination form expressly providing an election for the Independent Fiduciary (or Master Trustee) to terminate the authorization with respect to AUTs or ATTs, or both, and a statement to the effect that the asset management affiliate of DB proposes to engage in ATTs on a specified date, unless the Independent Fiduciary (or Master Trustee) signs and returns the termination form to such asset management affiliate of DB prior to such specified date. Such specified date shall not be less than 45 days after the date the asset management affiliate of DB sent the notice of the intent to engage in ATTs to the Independent Fiduciary (or to the Master Trustee).

(i) Prior to the execution by an Independent Fiduciary of a single Client Plan (or by a Master Trustee of a Master Trust, as the case may be) of the written authorization described, above, in Section II(h), the following information and materials (which may be provided electronically) must be provided by the asset management affiliate of DB to such Independent Fiduciary (and to such Master Trustee):

(1) A copy of the Notice of Proposed Exemption (the Notice) and a copy of the final exemption as published in the **Federal Register**; and

(2) Any other reasonably available information regarding the covered transactions that such Independent Fiduciary (or such Master Trustee) requests the asset management affiliate of DB to provide.

(j) Subsequent to the initial authorization by an Independent Fiduciary of a single Client Plan (or by a Master Trustee of a Master Trust, as the case may be) permitting the asset management affiliate of DB to engage in the covered transactions on behalf of such single Client Plan (or on behalf of such Master Trust), the asset management affiliate of DB will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary (or the Master Trustee) requests the asset management affiliate of DB to provide.

(k)(1) In the case of an existing employee benefit plan investor (or existing Master Trust investor, or existing In-House Plan investor, as the case may be) in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this exemption, unless the asset management affiliate of DB provides the written information, as described, below, and within the time period described, below, in this Section II(k)(3), to the Independent Fiduciary of each such plan participating in such Pooled Fund (and to the Master Trustee of each such Master Trust and to the fiduciary of each such In-House Plan participating in such Pooled Fund).

(2) In the case of an existing employee benefit plan investor (or existing Master Trust investor or existing In-House Plan investor, as the case may be) in an Advised Fund, such Advised Fund may not engage in any covered transactions pursuant to this exemption, unless the asset management affiliate of DB provides the written information, as described, below, and within the time period described, below, in this Section II(k)(3), to the fiduciary who establishes and maintains the Advised Fund (the Appointing Fiduciary), as defined, below, in Section III(m); provided that: (i) Such Appointing Fiduciary is contractually obligated pursuant to a written agreement with the asset management affiliate of DB to distribute to the Independent Fiduciary of each such plan participating in such Advised Fund (and to the Master Trustee of each such Master Trust, and to the fiduciary of each such In-House Plan participating in such Advised Fund) the written information, described, below, in this Section II(k)(3); and (ii) after completing the distribution of such written information, such Appointing Fiduciary confirms in writing to the asset management affiliate of DB the date that the written information, described, below, in this Section II(k)(3), was sent to the Independent Fiduciary of each such plan participating in such Advised Fund (and to the Master Trustee of each such Master Trust and to the fiduciary of each such In-House Plan participating in such Advised Fund).

(3) The following information and materials (which may be provided electronically) shall be provided by the asset management affiliate of DB not less than 45 days prior to such asset management affiliate of DB engaging in the covered transactions on behalf of a Pooled Fund or on behalf of an Advised Fund, as the case may be, pursuant to this exemption:

(i) A notice of the intent of such Pooled Fund or such Advised Fund to purchase Securities pursuant to this exemption, a copy of this Notice, and a copy of the final exemption, as published in the **Federal Register**;

(ii) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary of a plan (or Master Trustee of a Master Trust or fiduciary of an In-House Plan) participating in a Pooled Fund requests the asset management affiliate of DB to provide or in the case of a plan (or Master Trust or In-House Plan) participating in an Advised Fund, any other reasonably available information that the Independent Fiduciary of such plan (or Master Trustee of such Master Trust or fiduciary of such In-House Plan) has requested the Appointing Fiduciary of such Advised Fund to provide; and

(iii) A termination form expressly providing an election for the Independent Fiduciary of a plan (or Master Trustee of a Master Trust or fiduciary of an In-House Plan) participating in a Pooled Fund or in an Advised Fund to terminate such plan's (or Master Trust's or In-House Plan's) investment in such Pooled Fund or in such Advised Fund without penalty to such plan (or to such Master Trust or to such In-House Plan). Such form shall

include instructions specifying how to use the form. Specifically, the instructions will explain that such plan (or such Master Trust or such In-House Plan) has an opportunity to withdraw its assets from a Pooled Fund or an Advised Fund for a period of no more than 30 days after such plan's (or such Master Trust's or such In-House Plan's) receipt of the initial notice of intent, described, above, in Section II(k)(3)(i), and that the failure of the Independent Fiduciary of such plan (or Master Trustee of such Master Trust or fiduciary of such In-House Plan) to return the termination form to the asset management affiliate of DB in the case of a plan (or Master Trust or In-House Plan) participating in a Pooled Fund or to return the termination form to the Appointing Fiduciary in the case of a plan (or Master Trust or In-House Plan) in an Advised Fund by the specified date shall be deemed to be an approval by such plan (or such Master Trust or such In-House Plan) of its participation in the covered transactions as an investor in such Pooled Fund or in such Advised Fund.

Further, the instructions will identify DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, and the Affiliated Trustee and will provide the address of the asset management affiliate of DB and the address of the Appointing Fiduciary, if applicable. The instructions will state that this exemption may be unavailable, unless the fiduciary of each plan (and the Master Trustee of each Master Trust) participating in the covered transactions as an investor in a Pooled Fund or as an investor in an Advised Fund is, in fact, independent of DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, and the Affiliated Trustee. The instructions will also state that the fiduciary of each such plan must advise the asset management affiliate of DB and the Appointing Fiduciary, if applicable, in writing, if it is not an ''Independent Fiduciary,'' as that term is defined, below, in Section III(g). The instructions will also state that each Master Trustee of a Master Trust must advise the asset management affiliate of DB and the Appointing Fiduciary, if applicable, in writing, if it is not ''independent,'' as the term, ''Master Trustee,'' is defined, below, in Section III(n).

For purposes of this Section II(k), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I of this exemption for each plan be independent of the asset management affiliate of DB shall not apply in the case of an In-House Plan.

(l)(1) In the case of each plan (and in the case of each Master Trust and each In-House Plan) whose assets are proposed to be invested in a Pooled Fund after such Pooled Fund has satisfied the conditions set forth in this exemption to engage in the covered transactions, the investment by such plan (or by such Master Trust or such In-House Plan) in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary representing such plan (or the prior written authorization by the Master Trustee of such Master Trust or by the fiduciary of such In-House Plan, as the case may be), following the receipt by such Independent Fiduciary of such plan (or by the Master Trustee of such Master Trust or the fiduciary of such In-House Plan, as the case may be) of the written information described, above, in Section II(k)(3)(i) and (ii).

(2) In the case of each plan (and in the case of each Master Trust and each In-House Plan) whose assets are proposed to be invested in an Advised Fund after such Advised Fund has satisfied the conditions set forth in this exemption to engage in the covered transactions:

(i) The investment by such plan (or Master Trust or In-House Plan) in such Advised Fund is subject to the prior written authorization of the Independent Fiduciary representing such plan (or the prior written authorization by the Master Trustee of such Master Trust or by the fiduciary of such In-House Plan, as the case may be), following the receipt by such Independent Fiduciary (or by such Master Trustee or by such fiduciary of such In-House Plan) of the written information described, above, in Section II(k)(3)(i) and (ii), which information the asset management affiliate of DB is required to provide, not less than 30 days prior to the investment of such plan (or such Master Trust or such In-House Plan) in such Advised Fund, to the Appointing Fiduciary of such Advised Fund; and

(ii) The investment by such plan (or Master Trust or In-House Plan) in such Advised Fund is subject further to the requirement that, pursuant to a written agreement with the asset management affiliate of DB, the Appointing Fiduciary is contractually obligated to distribute the written information described, above, in Section II(k)(3)(i) and (ii) to the Independent Fiduciary of each plan proposing to invest in such Advised Fund (or to the Master Trustee of each Master Trust or to the fiduciary of each In-House Plan proposing to invest in such Advised Fund, as the case may be) and is contractually obligated to confirm in writing to the asset management affiliate of DB the date that such information was sent to the Independent Fiduciary of each plan (or Master Trustee of each Master Trust or fiduciary of each In-House Plan, as the case may be) proposing to invest in such Advised Fund, and is contractually obligated to confirm in writing to the asset management affiliate of DB the date that the Appointing Fiduciary obtained the written authorization of the Independent Fiduciary of each plan (or the Master Trustee of each Master Trust or fiduciary of each In-House Plan, as the case may be); provided that such date is not less than 30 days prior to the date of the investment by such plan (or Master Trust or In-House Plan, as the case may be) in such Advised Fund.

(3) For purposes of this Section II(l), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I of this exemption for each plan proposing to invest a Pooled Fund or in an Advised Fund be independent of DB and its affiliates shall not apply in the case of an In-House Plan.

(m)(1) Subsequent to the initial authorization by an Independent Fiduciary of a plan (or by a Master Trustee of a Master Trust or fiduciary of an In-House Plan) to invest in a Pooled Fund that engages in the covered transactions, the asset management affiliate of DB will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary of such plan (or the Master Trustee of such Master Trust or the fiduciary of such In-House Plan, as the case may be) requests the asset management affiliate of DB to provide; and

(2) Subsequent to the initial authorization by an Independent Fiduciary of a plan (or by a Master Trustee of a Master Trust or fiduciary of an In-House Plan) to invest in an Advised Fund that engages in the covered transactions, the asset management affiliate of DB will continue to be subject to the requirement to provide within a reasonable period of time to the Appointing Fiduciary any reasonably available information regarding the covered transactions that the Independent Fiduciary of such Plan (or the Master Trustee of such Master Trust or the fiduciary of such In-House Plan, as the case may be) requests the Appointing Fiduciary to provide.

(n) At least once every three months, and not later than 45 days following the three (3) month period, the asset

management affiliate of DB shall furnish:

(1) In the case of each single Client Plan (and in the case of each Master Trust) that engages in the covered transactions, the information described, below, in this Section II(n)(4)–(8), to the Independent Fiduciary of each such single Client Plan (and to the Master Trustee of each such Master Trust, as the case may be).

(2) In the case of each Pooled Fund in which a Client Plan (or in which a Master Trust or in which an In-House Plan) invests, the information described, below, in this Section II(n)(4)–(7) and (9), to the Independent Fiduciary of each such Client Plan (and to the Master Trustee of each such Master Trust and to the fiduciary of each such In-House Plan) invested in such Pooled Fund.

(3) In the case of each Advised Fund in which a Client Plan (or in which a Master Trust or in which an In-House Plan) invests, the information described, below, in this Section II(n)(4)–(7) and (9), to the Appointing Fiduciary of such Advised Fund who is contractually obligated to distribute such information, not later than 30 days following receipt of such information, to the Independent Fiduciary of each such Client Plan (and to the Master Trustee of each such Master Trust and to the fiduciary of each such In-House Plan) invested in such Advised Fund, and is contractually obligated to confirm in writing to DB the date when such distribution was sent to the Independent Fiduciary of each such Client Plan (and to the Master Trustee of each such Master Trust and to the fiduciary of each such In-House Plan) invested in such Advised Fund).

(4) A quarterly report (a Quarterly Report) (which may be provided electronically) which discloses all the Securities purchased pursuant to the exemption during the period to which such report relates on behalf of the Client Plan, Master Trust, In-House Plan, Pooled Fund, or Advised Fund to which such report relates and which discloses the terms of each of the transactions described in such report, including:

(i) The type of Securities (including the rating of any Securities which are debt securities) involved in each transaction;

(ii) The price at which the Securities were purchased in each transaction;

(iii) The first day on which any sale was made during the offering of the Securities;

(iv) The size of the issue of the Securities involved in each transaction;

(v) The number of Securities purchased by the asset management affiliate of DB for the Client Plan, Master Trust, In-House Plan, Pooled Fund, or Advised Fund to which the transaction relates;

(vi) The identity of the underwriter from whom the Securities were purchased for each transaction;

(vii) In the case of an AUT, the underwriting spread in each transaction (*i.e.*, the difference, between the price at which the underwriter purchases the securities from the issuer and the price at which the securities are sold to the public);

(viii) In the case of an ATT, the basis upon which the Affiliated Trustee was compensated in each transaction;

(ix) The price at which any of the Securities purchased during the period to which such report relates were sold; and

(x) The market value at the end of the period to which such report relates of the Securities purchased during such period and not sold;

(5) The Quarterly Report contains: (i) In the case of AUTs, a representation that the asset management affiliate of DB has received a written certification signed by an officer of the Affiliated Broker-Dealer, as described, above, in Section II(g)(2), affirming that, as to each AUT covered by this exemption during the past quarter, the Affiliated Broker-Dealer acted in compliance with Section II(e), (f), and (g) of this exemption, and a representation that copies of such certifications will be provided upon request, and

(ii) In the case of ATTs, a representation of the asset management affiliate of DB, affirming that, as to each ATT, the transaction was not part of an agreement, arrangement, or understanding designed to benefit the Affiliated Trustee;

(6) A disclosure in the Quarterly Report that states that any other reasonably available information regarding a covered transaction that an Independent Fiduciary (or Master Trustee or fiduciary of an In-House Plan) requests will be provided, including, but not limited to:

(i) The date on which the Securities were purchased on behalf of the Client Plan (or Master Trust or In-House Plan) to which the disclosure relates (including Securities purchased by Pooled Funds or Advised Funds in which such Client Plan, (or such Master Trust or such In-House Plan) invests;

(ii) The percentage of the offering purchased on behalf of all Client Plans and Master Trusts (and the pro-rata percentage purchased on behalf of Client Plans, Master Trusts, and In-House Plans investing in Pooled Funds or Advised Funds); and

(iii) The identity of all members of the underwriting syndicate;

(7) The Quarterly Report discloses any instance during the past quarter where the asset management affiliate of DB was precluded for any period of time from selling Securities purchased under this exemption in that quarter because of its status as an affiliate of an Affiliated Broker-Dealer or of an Affiliated Trustee and the reason for this restriction;

(8) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each single Client Plan (and to the Master Trustee of each Master Trust) that engages in the covered transactions that the authorization to engage in such covered transactions may be terminated, without penalty to such single Client Plan (or such Master Trust), within five (5) days after the date that the Independent Fiduciary of such single Client Plan (or the Master Trustee of such Master Trust) informs the person identified in such notification that the authorization to engage in the covered transactions is terminated; and

(9) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each Client Plan (and to the Master Trustee of each Master Trust and to the fiduciary of each In-House Plan) that engages in the covered transactions through a Pooled Fund or an Advised Fund that the investment in such Pooled Fund or such Advised Fund may be terminated, without penalty to such Client Plan (or such Master Trust or such In-House Plan), within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans, after the date that that the Independent Fiduciary of such Client Plan (or the Master Trustee of such Master Trust or the fiduciary of such In-House Plan, as the case may be) informs the person identified in such notification that the investment in such Pooled Fund or such Advised Fund is terminated.

(o) For purposes of engaging in covered transactions, each Client Plan (and each Master Trust and each In-House Plan) shall have total net assets with a value of at least $50 million (the $50 Million Net Asset Requirement). For purposes of engaging in covered transactions involving an Eligible Rule 144A Offering,[3] each Client Plan (and

[3] SEC Rule 10f–3(a)(4), 17 CFR 270.10f–3(a)(4), states that the term ''Eligible Rule 144A Offering'' means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section

each Master Trust and each In-House Plan) shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (such Master Trust or such In-House Plan, as the case may be) (the $100 Million Net Asset Requirement).

For purposes of a Pooled Fund or an Advised Fund engaging in covered transactions, each Client Plan (and each Master Trust and each In-House Plan) in such Pooled Fund or Advised Fund shall have total net assets with a value of at least $50 million. Notwithstanding the foregoing, if each such Client Plan (and each such Master Trust and each such In-House Plan) in such Pooled Fund or Advised Fund does not have total net assets with a value of at least $50 million, the $50 Million Net Asset Requirement will be met, if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund or in such Advised Fund are held by Client Plans (or by Master Trusts, or by In-House Plans), each of which has total net assets with a value of at least $50 million. For purposes of a Pooled Fund or an Advised Fund engaging in covered transactions involving an Eligible Rule 144A Offering, each Client Plan (and each Master Trust and each In-House Plan) in such Pooled Fund or in such Advised Fund shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such Master Trust or such In-House Plan, as the case may be). Notwithstanding the foregoing, if each such Client Plan (and each such Master Trust and each such In-House Plan) in such Pooled Fund or in such Advised Fund does not have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (Master Trust or In-House Plan, as the case may be), the $100 Million Net Asset Requirement will be met if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund or in such Advised Fund are held by Client Plans (or by Master Trusts or by In-House Plans), each of which has total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such Master Trust or such In-House Plan, as the case may be), and the Pooled Fund or the Advised Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(F)).

Solely for purposes of applying this Section II(o) in calculating whether 50 percent (50%) or more of the units of beneficial interest in a Pooled Fund or in an Advised Fund is held by ''Client Plans'' each of which has total net asset with a value of at least $50 million (or in the case of an Eligible Rule 144A Offering, has total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (such Master Trust or such In-House Plan, as the case may be)), the word, ''Client Plans,'' includes governmental plans within the meaning of section 3(32) of the Act; provided that each such government plan has total net assets with a value of at least $50 million (or in the case of an Eligible Rule 144A Offering, has total net assets of at least $100 million in securities of issuers that are not affiliated with such government plan).

For purposes of the net asset requirements described, above, in this Section II(o), where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 Million Net Asset Requirement (or in the case of an Eligible Rule 144A Offering, the $100 Million Net Asset Requirement) may be met by aggregating the assets of such Client Plans, if the assets of such Client Plans are pooled for investment purposes under a Master Trustee, as defined, below, in Section III(n), in a single Master Trust, as defined, below, in Section III(o) of this exemption.

For purposes of complying with the net asset requirements, as set forth in this Section II(o), the Appointing Fiduciary with respect to an Advised Fund which engages in the transactions described, above, in Section I of this exemption, must enter into a contractual obligation, pursuant to a written agreement with the asset management affiliate of DB, to ensure that the $50 Million Net Asset Requirement and the $100 Million Net Asset Requirement, as set forth in this Section II(o), is satisfied; to maintain records with respect thereto; and to provide written confirmation of compliance with Section II(o) upon request from the asset management affiliate of DB.

(p) The asset management affiliate of DB qualifies as a ''qualified professional asset manager'' (QPAM), as that term is defined under Part V(a) of PTE 84–14. Notwithstanding the fact that the asset management affiliate of DB satisfies the requirements, as set forth in Part V(a) of PTE 84–14, such asset management affiliate of DB must also have total client assets under its management and control in excess of $5 billion, as of the last day of it most recent fiscal year and shareholders' or partners' equity in excess of $1 million. Furthermore, the requirement that the asset management affiliate of DB must have total client asset under its management and control in excess of $5 billion, as of the last day of it most recent fiscal year and shareholders' or partners' equity in excess of $1 million, as set forth in this Section II(p), applies whether such asset management affiliate of DB, qualifies as a QPAM, pursuant to Part V(a)(1), (a)(2), (a)(3) or (a)(4) of PTE 84–14.

(q) No more than 20 percent (20%) of the assets of a Pooled Fund or of an Advised Fund, at the time of a covered transaction, are comprised of assets of In-House Plans, for which DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, or an affiliate exercises investment discretion.

(r) The asset management affiliate of DB, and the Affiliated Broker-Dealer, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the persons, described, below, in Section II(s), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a plan which engages in the covered transactions, other than DB, the asset management affiliate of DB, and the Affiliated Broker-Dealer, or Affiliated Trustee, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by Section II(s); and

(2) A prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of the asset management affiliate of DB, the Affiliated Broker-Dealer, or Affiliated Trustee, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(s)(1) Except as provided, below, in Section II(s)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in Section II(r) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC; or

4(2) of the Securities Act of 1933 [15 U.S.C. 77d(d)], rule 144A thereunder [§ 230.144A of this chapter], or rules 501–508 thereunder [§§ 230.501–230–508 of this chapter];

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter; and

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to § 230.144A of this chapter.

(ii) Any fiduciary of any plan (and any Master Trustee of a Master Trust) that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary or Master Trustee; or

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a plan that engages in the covered transactions, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in Section II(s)(1)(ii)–(iv) shall be authorized to examine trade secrets of the asset management affiliate of DB, or the Affiliated Broker-Dealer, or the Affiliated Trustee, or commercial or financial information which is privileged or confidential; and

(3) Should the asset management affiliate of DB, or the Affiliated Broker-Dealer, or the Affiliated Trustee refuse to disclose information on the basis that such information is exempt from disclosure, pursuant to Section II(s)(2), above, the asset management affiliate of DB shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

(t) An indenture trustee whose affiliate has, within the prior 12 months, underwritten any Securities for an obligor of the indenture securities will resign as indenture trustee if a default occurs upon the indenture securities.

(u) The Appointing Fiduciary of an Advised Fund must enter into a written contractual obligation with the asset management affiliate of DB to distribute the written disclosures, as required by Section II(k), (l), (m), and the written reports, as required by Section II(n), to each investor participating in such Advised Fund which is an employee benefit plan subject to the fiduciary responsibility provisions of the Act or which is established pursuant to section 4975 of the Code or which is a Master Trust, as defined in Section III(o).

Section III—Definitions

(a) The term, ''Advised Fund(s),'' means a common or collective trust fund(s) or pooled investment fund(s), in which employee benefit plan(s) subject to the Act and/or Code invest, which is established and maintained by an Appointing Fiduciary, as defined, below, in Section III(m), and such Appointing Fiduciary (and not an affiliate thereof) is directly responsible for the selection of an asset management affiliate of DB to exercise discretionary authority or discretionary control over the management or disposition of some or all of the assets in such fund; or to render investment advice, as described in section 3(21)(A)(ii) of the Act, with respect to some or all of the assets in such fund. The term, ''Advised Fund(s),'' does not include any common or collective trust fund(s) or pooled investment fund(s) in which employee benefit plan(s) subject to the Act and/or Code invest, which is established and maintained by an Appointing Fiduciary but for which an entity, other than such Appointing Fiduciary, has selected an asset management affiliate of DB to exercise discretionary authority or discretionary control over the management or disposition of some or all of the assets of such plan(s) or to render investment advice, as defined in section 3(21)(A)(ii) of the Act, with respect to some or all of the assets invested in such fund, and for which such entity serves as a fiduciary, as defined in section 3(21) of the Act.

In addition to the foregoing, the proposed exemption does not apply to any AUT and ATT transactions involving plan assets which are invested in certain multi-tiered pooled arrangements. In this regard, if a common or collective trust fund or other pooled investment fund (except for a Master Trust, as defined, below, in Section III(o)) containing the assets of employee benefit plans(s) subject to the Act and/or the Code, invests, directly or indirectly, some or all such plan assets in a Pooled Fund, as defined, below, in Section III(f), or in an Advised Fund, as defined, in this Section III(a), then the exemption does not apply to any AUT or ATT transactions engaged in by such Pooled Fund or such Advised Fund.

(b) The term, ''Affiliated Broker-Dealer,'' means any broker-dealer affiliate, as ''affiliate'' is defined, below, in Section III(c), of the Applicants, as ''Applicants'' are defined, below, in Section III(p), that meets the requirements of this exemption. Such Affiliated Broker-Dealer may participate in an underwriting or selling syndicate as a manager or member. The term, ''manager,'' means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the Securities, as defined, below, in Section III(h), being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(c) The term ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee, or relative, as defined in section 3(15) of the Act, of such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(d) The term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term, ''Client Plan(s),'' means an employee benefit plan(s) that is subject to the Act and/or the Code, and for which plan(s) an asset management affiliate of DB exercises discretionary authority or discretionary control respecting management or disposition of some or all of the assets of such plan(s), but excludes In-House Plans, as defined, below, in Section III(q) and Master Trusts, as defined below, in Section III(o).

(f) The term, ''Pooled Fund(s),'' means a common or collective trust fund(s) or a pooled investment fund(s): (i) In which employee benefit plan(s) subject to the Act and/or Code invest, (ii) which is maintained by an asset management affiliate of DB, (as the term, ''affiliate'' is defined, above, in Section III(c)), and (iii) for which such asset management affiliate of DB exercises discretionary authority or discretionary control respecting the management or disposition of the assets of such fund(s).

(g)(1) The term, ''Independent Fiduciary,'' means a fiduciary of a plan who is unrelated to, and independent of DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, and the Affiliated Trustee. For purposes of this exemption, a fiduciary of a plan will be deemed to be unrelated to, and independent of DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, and the Affiliated Trustee, if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for the transactions described, above, in Section I of this exemption, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, or the Affiliated Trustee, and represents that such fiduciary shall

advise the asset management affiliate of DB, and if applicable, the Appointing Fiduciary, as defined, below, in Section III(m), within a reasonable period of time after any change in such facts occur.

(2) Notwithstanding anything to the contrary in this Section III(g), a fiduciary of a plan is not independent:

(i) If such fiduciary directly or indirectly controls, is controlled by, or is under common control with DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, or the Affiliated Trustee;

(ii) If such fiduciary directly or indirectly receives any compensation or other consideration from DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, or the Affiliated Trustee for his or her own personal account in connection with any transaction described in this exemption;

(iii) If any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the asset management affiliate of DB responsible for the transactions described, above, in Section I of this exemption, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the sponsor of the plan or of the fiduciary responsible for the decision to authorize or terminate authorization for the transactions described, above, in Section I. However, if such individual is a director of the sponsor of the plan or of the responsible fiduciary, and if he or she abstains from participation in: (A) the choice of the plan's investment manager/adviser; and (B) the decision to authorize or terminate authorization for transactions described, above, in Section I, then Section III(g)(2)(iii) shall not apply.

(3) The term, ''officer,'' means a president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), or any other officer who performs a policy-making function for DB or any affiliate thereof.

(h) The term, ''Securities,'' shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a–2(36)(1996)). For purposes of this exemption, mortgage-backed or other asset-backed securities rated by one of the Rating Organizations, as defined, below, in Section III(k), will be treated as debt securities.

(i) The term, ''Eligible Rule 144A Offering,'' shall have the same meaning as defined in SEC Rule 10f–3(a)(4) (17 CFR 270. 10f–3(a)(4)) under the 1940 Act.

(j) The term, ''qualified institutional buyer,'' or the term, ''QIB,'' shall have the same meaning as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

(k) The term, ''Rating Organizations,'' means Standard & Poor's Rating Services, Moody's Investors Service, Inc., FitchRatings, Inc., Dominion Bond Rating Service Limited, and Dominion Bond Rating Service, Inc.; or any successors thereto.

(l) The term, ''Affiliated Trustee,'' means any bank or trust company affiliate, as defined, above, in Section III(c)(1), of the Applicants, as defined, below, in Section III(p), that serves as trustee of a trust that issues Securities, as defined, above, in Section III(h), which are asset-backed securities or as indenture trustee of Securities which are either asset-backed securities or other debt securities that meet the requirements of this exemption. For purposes of this exemption, other than Section II(t), performing services as custodian, paying agent, registrar, or in similar ministerial capacities is also considered serving as trustee or indenture trustee.

(m)(1) The term, ''Appointing Fiduciary,'' means the fiduciary that establishes and maintains an ''Advised Fund,'' as defined, above, in Section III(a), that is directly responsible for the selection and termination of an asset management affiliate of DB to exercise discretionary authority or discretionary control over the management or disposition of some or all of the assets of employee benefit plan(s) subject to the Act and/or Code which are invested in such Advised Fund, or to render investment advice, as described in section 3(21)(A)(ii) of the Act with respect to some or all of the assets of such Advised Fund, and which fiduciary is unrelated to and independent of DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, and the Affiliated Trustee. For purposes of this exemption, an Appointing Fiduciary of an Advised Fund will be deemed to be unrelated to, and independent of DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, and the Affiliated Trustee, if such Appointing Fiduciary represents that it is not an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, or the Affiliated Trustee, and represents that such Appointing Fiduciary shall advise the asset management affiliate of DB within a reasonable period of time after any change in such facts occur.

(2) Notwithstanding anything to the contrary in Section III(m), an Appointing Fiduciary is not independent:

(i) If any provision, as set forth, above, in Section III(g)(2)(i)–(ii), in the definition of an Independent Fiduciary, is applicable to such Appointing Fiduciary, if the term, ''Appointing Fiduciary,'' were substituted for the term, ''fiduciary'' in such provision; or

(ii) If any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, or the Affiliated Trustee is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of such Appointing Fiduciary.

(3) The term, ''officer,'' is defined as in Section III(g)(3), above.

(4) An Appointing Fiduciary:

(i) Must have been in continuous operation for not less than three years, including the operation of any predecessors;

(ii) Must qualify as a ''qualified professional asset manager'' (QPAM), as that term is defined under Part V(a) of PTE 84–14. Notwithstanding the fact that the Appointing Fiduciary satisfies the requirements, as set forth in Part V(a) of PTE 84–14, such Appointing Fiduciary must also have total client assets under its management and control in excess of $5 billion, as of the last day of it most recent fiscal year and shareholders' or partners' equity in excess of $1 million. Furthermore, the requirement that the Appointing Fiduciary must have total client asset under its management and control in excess of $5 billion, as of the last day of it most recent fiscal year and shareholders' or partners' equity in excess of $1 million, as set forth in this Section II(m), applies whether such Appointing Fiduciary qualifies as a QPAM, pursuant to Part V(a)(1), V(a)(2), V(a)(3) or V(a)(4) of PTE 84–14.

(n)(1) the term, ''Master Trustee,'' means a fiduciary with respect to a group of Client Plans maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, which Client Plans are pooled for investment purposes in a single Master Trust, (as the term, ''Master Trust,'' is defined, below, in Section III(o)), and which fiduciary is unrelated to, and independent of DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, and the Affiliated Trustee. For purposes of this exemption, a Master Trustee will be deemed to be unrelated to, and independent of DB, the asset

management affiliate of DB, the Affiliated Broker-Dealer, and the Affiliated Trustee, if such Master Trustee satisfies the requirements set forth, above, in Section III(g)(1) of this exemption in the definition of an Independent Fiduciary, if the term, ''Master Trustee,'' were substituted for the term, ''fiduciary,'' in such provision.

(2) Notwithstanding anything to the contrary in this Section III(n), the Master Trustee is not independent, if any provision, as set forth, above, in Section III(g)(2)(i) through (iii), in the definition of an Independent Fiduciary, is applicable to such Master Trustee, if the term, ''Master Trustee,'' were substituted for the term, ''fiduciary,'' in such provision.

(3) The term, ''officer,'' is defined as in Section III(g)(3), above.

(4) The Master Trustee: (i) Must be any officer, director, partner, or employee of an employer or controlled group of employers, as defined in section 407(d)(7) of the Act which sponsor a group of Client Plans the assets of which are commingled for investment purposes in the Master Trust, (as the term, ''Master Trust,'' is defined, below, in Section III(o); or an affiliate, as defined, above, in Section III(c)(1) of such employer or controlled group of employers which has been in continuous operation for not less than three (3) years, including the operation of any predecessor; and

(ii) in the case of an affiliate of such employer or controlled group of employers, must have, as of the last day of its most recent fiscal year total assets under its management and control in excess of $50 million, exclusive of the $50 Million Net Asset Requirement, (or, in the case of an Eligible Rule 144A Offering, the $100 Million Net Asset Requirement), as set forth in Section II(o), above, attributable to the aggregate assets of the Client Plans which are commingled in such Master Trust;

(o) The term, ''Master Trust,'' means a trust in which the assets of a group of Client Plans maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act are commingled for investment purposes, and which trust satisfies the net asset requirements, as set forth, above, in Section II(o).

(p) The term, ''the Applicants,'' means DB and its affiliates, as defined, above, in Section III(c).

(q) The term, ''In-House Plan(s),'' means an employee benefit plan(s) that is subject to the Act and/or the Code, and that is sponsored by the Applicants, as defined, above, in Section III(p) for their own employees.

Effective Date: If granted, this proposed exemption will be effective as of the date the final exemption is published in the **Federal Register**.

Preamble

This document contains a Notice of pendency (the Notice) before the Department of a proposed individual exemption filed on behalf of DB and its affiliates (the Applicants), which, if granted, would supersede Prohibited Transaction Exemption 2003–24 (PTE 2003–24) (68 FR 48637, August 14, 2003, *as amended*, 68 FR 55993, September 29, 2003) with respect to the Applicants. Accordingly, the entire text of this proposed exemption is set forth in this Notice.

PTE 2003–24 permits purchases of securities by an asset manager on behalf of employee benefit plans (or entities that hold plan assets) for which such asset manager acts as a fiduciary: (i) From any person other than the asset manager or an affiliate during the existence of an underwriting or selling syndicate where a broker-dealer affiliated with the asset manager participates as a manager or a member of such syndicate (affiliated underwriter transactions); and/or (ii) from a trust that issues asset-backed securities where a trustee affiliated with the asset manager serves as trustee of the trust (affiliated trustee transactions).

The Department notes that on June 23, 2001, an authorization (FAN 2001–19E) was issued, pursuant to PTE 96–62 (61 FR 39988, July 31, 1996), to DB and its affiliates with regard to affiliated underwriter transactions. FAN 2001–19E was based on five (5) individual exemptions, granted by the Department in June 2000, which permitted the following entities to engage in affiliated underwriter transactions: (a) PTE 2000–25 issued to Morgan Guaranty Trust Company of New York, and to J.P. Morgan Investment Management, Inc., (65 FR 35129, June 1, 2000); (b) PTE 2000–26 issued to Goldman, Sachs & Co., and its Affiliates, (65 FR 35129, June 1, 2000); (c) PTE 2000–27 issued to the Chase Manhattan Bank, (65 FR 35129, June 1, 2000); (d) PTE 2000–28 issued to Citigroup Inc., (65 FR 35129, June 1, 2000); and (e) PTE 2000–29 issued to Morgan Stanley Dean Witter & Co. and its Affiliates, (65 FR 35129, June 1, 2000).

The Department notes that in 2002, DB and its affiliates and JPMorgan Chase Bank (formerly, Morgan Guaranty Trust Company of New York and the Chase Manhattan Bank) each submitted an application for exemption (D–11004 and D–11106, respectively) requesting additional relief for affiliated trustee transactions. The relief requested by both financial institutions was encompassed in one exemption, PTE 2003–24, which provided relief for affiliated underwriter transactions and for affiliated trustee transactions. In this regard, PTE 2003–24 amended and replaced PTE 2000–27, PTE 2000–25, and FAN 2001–19E that had previously been issued to Morgan Guaranty Trust Company of New York and J.P. Morgan Investment Management, Inc., to the Chase Manhattan Bank, and to DB and its affiliates, respectively.

In June 2005, DB and its affiliates submitted to the Department the subject application for exemption (D–11324) proposing to amend PTE 2003–24. The Department will separately consider exemptions requesting similar relief from the following entities or from any other applicant: (a) JPMorgan Chase Bank, relating to PTE 2003–24, (b) Goldman, Sachs & Co. and its affiliates, relating to PTE 2000–26; (c) Citigroup Inc., relating to PTE 2000–28; (d) Morgan Stanley Dean Witter, & Co., relating to PTE 2000–29; (e) Barclays Global Investors N.A., Barclays Capital, Inc. and their Affiliates, relating to FAN 2001–24E issued October 6, 2001; (f) TCW Group, Inc., and its Affiliates, relating to FAN 2002–09E issued September 14, 2002; (g) Rothchild Asset Management, Inc., relating to FAN 2005–09E issued May 7, 2005; and (h) Lehman Brothers Holding Inc., and Lehman Brothers Inc., *et al.*, relating to PTE 2003–22 (68 FR 40694, July 8, 2003).

The proposed exemption would provide relief similar to the relief provided by PTE 2003–24. In addition, the proposed exemption also: (a) Would permit covered transactions by certain plans invested in common or collective trust funds or pooled investment funds which are not established and maintained by DB or an affiliate but for which an asset management affiliate of DB exercises discretionary control or discretionary authority over the management or disposition of some or all of the plan assets in a fund or renders investment advice, as described in section 3(21)(A)(ii) of the Act with respect to some or all of the assets of such fund, provided certain conditions are satisfied; (b) would permit a master trustee of a master trust, as the terms, ''master trustee,'' and ''master trust,'' are defined herein, to receive disclosures and to consent to covered transactions on behalf of certain employee benefit plans invested in such master trust; and (c) would permit, for purposes of satisfying the net asset requirement of PTE 2003–24 in the case of certain funds, as defined herein, the inclusion

of government plans within the meaning of section 3(32) of the Act. If adopted, this proposed exemption would affect the participants and beneficiaries of the plans involved in such transactions and the fiduciaries with respect to such plans.

Summary of Facts and Representations

The facts and representations contained in the application are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the Applicants.

1. DB is a German banking corporation and a leading commercial bank. DB provides a wide range of banking, fiduciary, record keeping, custodial, brokerage, and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans, and private investors worldwide. As of December 31, 2004, DB had total assets of over 840 billion euros and shareholders' equity equaling 25.9 billion euros. Deutsche Bank's Institutional Asset Management Division had 3,722 customers in 2004 and was ranked among the top five asset managers in the world. DB is regulated by the Bundesanstalt fuer inanzdienstleistungsaufsicht in Germany.

2. The Applicants seek a new exemption which would amend an existing individual exemption, PTE 2003–24. PTE 2003–24 deals with the situation where an asset manager purchases securities acting as a fiduciary on behalf of employee benefit plans, including plans invested in pooled funds maintained by the asset manager or an affiliate, from any person other than the asset manager or an affiliate during the existence of an underwriting or selling syndicate with respect to such securities: (i) Where the asset manager's affiliate is a manager or a member of the underwriting syndicate for such securities; and/or (ii) where a trustee affiliated with the asset manager serves as trustee of a trust that issues asset-backed securities.

3. DB and its affiliates initially requested an effective date of August 14, 2003, for the proposed exemption. In this regard, August 14, 2003, is the date that the Department published in the **Federal Register** the final exemption for PTE 2003–24. Subsequently, DB notified the Department that it does not require retroactive relief and withdrew the request. Accordingly, if this proposed exemption is granted, the final exemption, will be effective as of the date such final exemption is published in the **Federal Register**.

4. The proposed exemption, if granted, will supersede PTE 2003–24 with regard to DB and its affiliates and will apply to DB and its affiliates only. It is the Department's position that the relief provided by PTE 2003–24 will remain available to JPMorgan Chase Bank, provided the conditions set forth therein are satisfied by JPMorgan Chase Bank.

5. The Applicants have requested that the proposed exemption be applicable only to DB, its current and future branches, and its current and future affiliates and subsidiaries, throughout the world.

With regard to current and future branches of DB, it is the Department's opinion that any reference to DB in the proposed exemption would include a reference to the current and future branches of DB. With regard to the current and future affiliates of DB, it is the Department's position that the proposed exemption would include any current or future affiliate of DB that satisfies the definition of the term, ''affiliate,'' as set forth in Section III(c) of the proposed exemption.

6. The description of covered transactions, as set forth in PTE 2003–24, rather than refer individually to DB and its affiliates, and/or to JPMorgan Chase Bank, refers instead to an Asset Manager. The term, ''Asset Manager,'' as defined in Section II(a) of PTE 2003–24, means ''any asset management affiliate of the Applicants (as ''affiliate'' is defined in paragraph (c)) that meets the requirements of this exemption.'' To make clear that the proposed exemption applies only to DB and its affiliates, the Department has throughout the proposed exemption substituted the phrase, ''an asset management affiliate of DB,'' instead of the words, ''Asset Manager,'' which appeared in PTE 2003–24. In addition, in this proposed exemption the Department has deleted the definition of the term, ''Asset Manager,'' as set forth in Section II(a) of PTE 2003–24, and has substituted instead in Section III(a) of the proposed exemption a definition of the term, ''Advised Fund(s).''

7. The Applicants request relief for situations where DB or an affiliate has discretionary authority over the assets of a common or collective trust fund or a pooled investment fund as an advisor or as a sub-advisor.

The Department has determined to provide additional exemptive relief and to require additional safeguards with respect to the transactions described herein. In this regard, the proposed exemption provides relief for AUT and/or ATT transactions engaged in by common or collective funds or pooled investment funds maintained by an asset management affiliate of DB. The proposed exemption also provides relief for AUT and ATT transactions engaged in by common or collective funds or pooled investment funds which are established and maintained by an Appointing Fiduciary, as defined in Section III(m). Such Appointing Fiduciary must have the power to appoint and terminate an asset management affiliate of DB to exercise discretionary control or discretionary authority over the management or disposition of some or all of the assets of plans in such fund, or to render investment advice, as described in section 3(21)(A)(ii) of the Act with respect to some or all of the assets of such fund. However, the Department did not propose relief for AUT and/or ATT transactions in situations engaged in by a common or collective trust fund or pooled investment fund in which employee benefit plan(s) subject to the Act and/or Code invest, which is established and maintained by an Appointing Fiduciary but for which an entity, other than the Appointing Fiduciary, has selected an asset management affiliate of DB to exercise discretionary control or discretionary authority over the management or disposition of plan assets or to render investment advice, as described in section 3(21)(A)(ii) of the Act with respect to some or all of the assets of such fund and for which such entity serves as a fiduciary. In addition to the foregoing, the proposed exemption does not apply to any AUT and ATT transactions involving plan assets which are invested in certain multi-tiered pooled arrangements. In this regard, if a common or collective trust fund or other pooled investment fund (except for a Master Trust, as defined, below, in Section III(o)) containing the assets of employee benefit plans(s) subject to the Act and/or the Code, invests, directly or indirectly, some or all such plan assets in another Pooled Fund, as defined, below, in Section III(f), or in an Advised Fund, as defined, in this Section III(a), then the exemption does not apply to any AUT or ATT transactions engaged in by such Pooled Fund or such Advised Fund.

8. The Applicants request that the definition of ''Pooled Fund,'' be expanded in the proposed exemption. Specifically, the Applicants request that Section III(f) of the proposed exemption should read as follows:

> The term, ''Pooled Fund,'' means a common or collective trust fund or pooled investment fund maintained, advised or sub-advised by the Asset Manager.

The Department has decided not to accept the Applicants' suggestion to expand of definition of the term, ''Pooled Fund'' to include funds advised or sub-advised by DB or its affiliate. Instead, the Department has adopted the definition of ''Pooled Fund,'' as set forth in Section III(f) of the proposed exemption.

9. As discussed above, the Department has determined to propose relief for situations where DB or an affiliate exercises discretionary control or discretionary authority over the management or disposition of some or all of the assets of employee benefit plans subject to the Act and/or Code invested in a common or collective trust funds or pooled investment funds or renders investment advice, as described in section 3(21)(A)(ii) of the Act with respect to some or all of the assets of such fund which is established and maintained by an entity other than DB or its affiliates. In this regard, the Department has introduced the term, ''Advised Fund,'' and has adopted the definition of the term, ''Advised Fund,'' as set forth in Section III(a) of the proposed exemption.

10. In the view of the Department, the definition of the term, ''Appointing Fiduciary,'' applies to the individual or entity that selects DB or an affiliate as an advisor but does not apply to the individual or entity that selects DB or an affiliate to serve as a sub-advisor. Accordingly, the Department has adopted the language, as set forth in Section III(m) of the proposed exemption which defines the term, ''Appointing Fiduciary.'' The definition also describes the independence of the Appointing Fiduciary. With regard to the qualifications of the Appointing Fiduciary, the Department believes that the Appointing Fiduciary must have been in continuous operation for not less than three years, including the operation of any predecessors. Further, the Department has determined that the Appointing Fiduciary must qualify as a ''qualified professional asset manager'' (QPAM), as that term is defined under Part V(a) of PTE 84–14. In addition, the Appointing Fiduciary must have total client asset under its management and control in excess of $5 billion, as of the last day of it most recent fiscal year and shareholders' or partners' equity in excess of $1 million, as set forth in Section II(m), whether such Appointing Fiduciary, qualifies as a QPAM, pursuant to Part V(a)(1), V(a)(2), V(a)(3) or V(a)(4) of PTE 84–14.

11. The Applicants request that the Appointing Fiduciary be permitted to receive disclosures and to consent to the covered transactions on behalf of a fund that is not maintained by DB or an affiliate.

The Department has limited the definition of Advised Funds to funds established and maintained by the Appointing Fiduciary for which DB or an affiliate exercises discretionary authority or discretionary control over the management or disposition of some or all of the assets of plans invested in such fund, or renders investment advice, as described in section 3(21)(A)(ii) of the Act with respect to some or all of the assets of such fund. Further, the Department has decided that consent for an Advised Fund to engage in any covered transaction may not be obtained from the Appointing Fiduciary that establishes and maintains such Advised Fund. Instead, in the case of existing plan investors or Master Trust investors or In-House Plan investors in an Advised Fund, Section II(k) of the proposed exemption provides that an Advised Fund may not engage in any covered transactions pursuant to this proposed exemption, unless the independent fiduciary of such existing plan investors, the Master Trustee of such Master Trust investors, or the fiduciary of such In-House Plan investors, as the case may be, receive certain disclosures and are given the opportunity to withdraw from such fund prior to such fund engaging in the covered transactions. Existing plan investors, Master Trust investors, or In-House investors that do not withdraw within a certain period of time will be deemed to have authorized the covered transactions. Further, in the case of plan investors, or the Master Trust investors, or In-House Plan investors whose assets are proposed to be invested in an Advised Fund after such fund has begun to engage in the covered transactions, Section II(l) of the proposed exemption provides that the Appointing Fiduciary must obtain written authorization from the independent fiduciary of each such prospective plan investor, from the Master Trustee of each such prospective Master Trust investor, and from the fiduciary of each such prospective In-House Plan investor after providing such independent fiduciary, Master Trustee, or fiduciary of such In-House Plan, as the case may be, with certain disclosures prior to investment in such fund by such plan, Master Trust, or In-House Plan.

12. The Department has not provided relief in this proposed exemption for funds sub-advised by DB or its affiliates to engage in affiliated underwriter transactions or affiliated trustee transactions, nor has the Department provided relief in this proposed exemption for certain multi-tiered pooled arrangements, as discussed above. The Department has determined that the Appointing Fiduciary who establishes and maintains the Advised Fund and who selects DB or an affiliate to exercise discretionary control or discretionary authority over the management or disposition of the assets of plans in such fund or to render investment advice, as described in section 3(21)(A)(ii) of the Act with respect to some or all of the assets of such fund, must contractually obligate itself to distribute the written disclosures and reports required by the proposed exemption. In this regard, the Department believes that the contractual agreement must bind the Appointing Fiduciary to provide not only the disclosures, required by Section II(k), but also the disclosures, required by Section II(l).

Further, the Appointing Fiduciary must be contractually obligated to provide the report, required by Section II(n), and must also be subject to the requirement of Section II(m) to provide reasonably available information regarding the covered transactions upon request. Accordingly, the Department has included Section II(u), as set forth in the proposed exemption.

13. The Department has altered the definition of the term, ''Client Plan,'' in the proposed exemption. In this regard, in Section II(e) of PTE 2003–24, the definition of the term, ''Client Plan,'' reads as follows:

> The term ''Client Plan'' means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act and whose assets [*sic.*] under the management of the Asset Manager, including a plan investing in a Pooled Fund (as ''Pooled Fund'' is defined in paragraph (f) below).

The Department has deleted from the definition above, the phrase, ''including a plan investing in a Pooled Fund (as ''Pooled Fund'' is defined in paragraph (f) below).'' In this regard, the Department has determined to clarify that the term, ''Client Plan,'' refers only to the singular or the plural for such plan(s). With regard to Client Plans investing in a Pooled Fund or investing in an Advised Fund, the Department has separately made reference to such funds, as appropriate in the proposed exemption. The Department has also decided to clarify that, in addition to plans subject to the fiduciary responsibility provisions of the Act, the term, ''Client Plans,'' includes plans which are subject to 4975 of the Code. Accordingly, the Department has defined the term, ''Client Plan,'' as set forth in Section III(e) of the proposed exemption.

14. The Department agrees with the Applicant's request that a master trustee may consent on behalf of plans whose assets are pooled in a master trust. Specifically, a master trustee may engage in the covered transactions on behalf of a master trust or may consent to such master trust investing in Pooled Funds and in Advised Funds which engage in the covered transactions, provided that such master trustee and such master trust satisfy certain definitional requirements. The Department has included a definition for the term, ''Master Trust,'' in Section III(o) of this proposed exemption.

Further, the Department has also included a definition of the term, ''Master Trustee,'' in Section III(n) of this proposed exemption. Specifically, among other requirements, this definition of the term, ''Master Trustee,'' states: (i) that the Master Trustee must be an officer, director, partner, employee of an employer or controlled group of employers that sponsor such Client Plans or an affiliate of such employer or controlled group of employers, and (ii) that the Master Trustee must satisfy certain independence, sophistication, and experience requirements.

15. The Department, as discussed more fully below, has made certain changes to the net asset requirements, as set forth in Section II(o) of the proposed exemption, which will apply to single Client Plans and Master Trusts and will apply to Client Plans, Master Trusts, and In-House Plan whether participating in a Pooled Fund maintained by DB or an affiliate or participating in an Advised Fund, as defined herein, which is established and maintained by an Appointing Fiduciary, as defined herein.

Under Section I(o) of PTE 2003–24, in order to engage in covered transactions, a Client Plan must have total net assets with a value of at least $50 million (or in the case of an Eligible Rule 144A Offering, total net assets of at least $100 million in securities, as determined pursuant to SEC Rule 144A (17 CFR 230.144A)). For Pooled Funds, PTE 2003–24 contains an exception to the $50 million net asset requirement, described above, which, in part, reads, as follows,

> In the case of a Pooled Fund, the $50 million requirement will be met, if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund as [*sic.*] held by plans having total net assets with a value of at least $50 million, or if each such Client Plan in the Pooled Fund has total assets of at least $50 million.

Further, the language in PTE 2003–24 indicates that for purchases involving an Eligible Rule 144A Offering on behalf of a Pooled Fund, the $100 million requirement is met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having at least $100 million in assets, or if each such Client Plan in the Pooled Fund has total assets of at least $100 million, and the Pooled Fund itself qualifies as a ''QIB,'' as determined pursuant to SEC Rule 144A.

In the proposed exemption, the Department has made clear that the 50 percent (50%) exception to the net asset requirement is applicable to an Advised Fund, as well as to a Pooled Fund, and also has clarified the language of the net asset requirements in the proposed exemption. Specifically, the Department has adopted the language, as set forth in Section II(o) in the proposed exemption.

Further, the Department has determined that for purposes of the 50 percent (50%) exception to the net asset requirement, that government plans be considered ''Client Plans'' under the proposed exemption; provided that each such government plan has net assets with a value of at least $50 million (or in the case of an Eligible Rule 144A Offering, $100 million in securities of issuers that are not affiliated with such government plan). Accordingly, the Department has adopted the language in Section II(o), as set forth in this proposed exemption.

16. The Department believes that the net asset requirements set forth in Section II(o) of this proposed exemption provide an important safeguard for the protection of plans which engage in AUT and/or ATT transactions, either individually or through a Master Trust, a Pooled Fund, or an Advised Fund.

With regard to an Advised Fund which is established and maintained by an entity other than DB, the Department believes that the Appointing Fiduciary of such Advised Fund should be contractually obligated, pursuant to a written agreement with the asset management affiliate of DB, to ensure compliance with Section II(o) of this proposed exemption, to maintain records thereto, and to provide written confirmation of compliance with the net asset requirements, as set forth in Section II(o) of this exemption, upon request from the asset management affiliate of DB. In this regard, the Department has modified Section II(o) of the proposed exemption accordingly.

17. The proposed exemption is in the interest of participants and beneficiaries of plans that engage in the covered transactions. In this regard, it is represented that the proposed exemption will increase investment opportunities and will reduce administrative costs for such plans.

18. The proposed exemption will expand the ability of Pooled Funds and Advised Funds to participate in the covered transactions. With respect to the authorization requirements for Master Trusts, the proposed exemption will allow a Master Trustee who acts on behalf of the individual plans invested in a Master Trust to approve the covered transactions.

19. The proposed exemption is protective of the rights of the participants and beneficiaries of affected plans. In this regard, the proposed exemption contains sufficient safeguards that apply to the covered transactions engaged in by plan investors under the proposed exemption.

20. In summary, the Applicants represent that the proposed exemption satisfies the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The proposed exemption will increase investment opportunities and will reduce administrative costs for plans that engage in the covered transactions;

(b) The proposed exemption will expand the ability of Pooled Funds and Advised Funds to participate in the covered transactions;

(c) The proposed exemption recognizes the practical aspects of a Master Trustee acting on behalf on each of the plans invested in a Master Trust that engages in the covered transactions;

(d) Prior to engaging in any of the covered transactions, an Independent Fiduciary of each plan, (or Master Trustee of each Master Trust or fiduciary of each In-House Plan) will receive certain disclosures and will be given an opportunity to consent to the covered transactions, either through affirmative or negative consent;

(e) The Independent Fiduciary of each Client Plan (or the Master Trustee of each Master Trust or the fiduciary of each In-House Plan) will receive periodic reports with respect to all Securities purchased pursuant to the proposed exemption;

(f) Each Client Plan, In-House Plan, Master Trust, Pooled Fund, or Advised Fund participating in the covered transactions will be subject to certain net asset requirements;

(g) The asset management affiliate of DB and the Appointing Fiduciary must each qualify as a QPAM, in addition to satisfying certain additional requirements; and

(h) The proposed exemption contains sufficient safeguards for the protection

of the rights of the participants and beneficiaries of affected plans.

Interested persons are referred to application number D–11324 on file with the Department for the complete discussion of the facts and representations of the Applicants relating to this proposed exemption.

Copies of all documents with respect to this proposed exemption and all documents relating to PTE 2003–24 are available for public inspection and may be obtained by interested persons from the Public Documents Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

The Applicants believe that the number of potentially affected plans is so large that notice by mailing is impracticable and inadequate. Accordingly, the only practical means of notifying such plans of this proposed exemption is by the publication of this Notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number).

Kern County Electrical Pension Trust (the Pension Plan); Kern County Electrical Joint Apprenticeship and Training Trust (the Apprenticeship Plan); Kern County Electrical Health and Welfare Plan (the Welfare Plan)[4] and The International Brotherhood of Electrical Workers Local Union 428 (the Local Union), Located in Bakersfield, California

[Exemption Application Nos: D–11383; L–11384; and D–11385]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I: Transactions

If the proposed exemption is granted:

(a) the restrictions of sections 406(a)(1) (A) through (D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E)[5] shall not apply to the sale by the Pension Plan of a parcel of unimproved real property (Parcel #1) to the Local Union, a party in interest with respect to the Pension Plan; provided that the conditions in Section II (a), (d), (f), (h), and (i), as set forth below, are satisfied;

(b) the restrictions of sections 406(a)(1) (A) through (D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) shall not apply to the sale to the Apprenticeship Plan by the Pension Plan of a parcel of unimproved real property (Parcel #2) which is adjacent to Parcel #1; provided that the conditions in Section II (b), (c), (e), (g), (h), (i), and (j), as set forth below, are satisfied; and

(c) the restrictions of sections 406(a)(1) (A) through (D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Act shall not apply to the lease (the Lease) by the Apprenticeship Plan of office space (the Premises) in a training facility (the Training Center) to be constructed by the Apprenticeship Plan on (Parcel #2) to Construction Benefits Administration, Inc. (CBA), a party in interest with respect to the Plans, as service provider, whose directors are also trustees of the Plans and officers of the Local Union; provided that the conditions in Section II (i), (k), (l), (m), (n), and (o), as set forth below, are satisfied.

Section II: Conditions

The relief proposed, herein, is conditioned upon the adherence to the material facts and representations set forth in the application files and upon compliance with the conditions, as set forth in this proposed exemption.

(a) The sale by the Pension Plan of Parcel #1 to the Local Union is a one-time transaction for cash;

(b) The sale by the Pension Plan of Parcel #2 to the Apprenticeship Plan is a one-time transaction for cash;

(c) An independent, qualified fiduciary (the I/F), acting on behalf of the Apprenticeship Plan:

(1) after negotiating, reviewing, and analyzing the terms of the purchase of Parcel #2, approves such purchase by the Apprenticeship Plan;

(2) after negotiating, reviewing, and analyzing the construction of the Training Center on Parcel #2, approves the construction of the Training Center by the Apprenticeship Plan;

(3) determines that the acquisition of Parcel #2 and the construction of the Training Center by the Apprenticeship Plan would be feasible, in the interest of, and protective of the Apprenticeship Plan and its participants and beneficiaries; and

(4) is responsible for monitoring compliance with the terms and condition of this exemption and the terms and conditions of the acquisition of Parcel #2 and the construction of the Training Center by the Apprenticeship Plan;

(d) The purchase price paid by the Local Union for Parcel #1 is equal to the fair market value of such parcel, as determined by an independent, qualified appraiser, as of the date of the sale;

(e) The purchase price paid by the Apprenticeship Plan for Parcel #2 is equal to the fair market value of such parcel, as determined by an independent, qualified appraiser, as of the date of the sale;

(f) The terms of the sale by the Pension Plan of Parcel #1 to the Local Union are no less favorable to the Pension Plan than terms negotiated under similar circumstances at arm's length with unrelated third parties;

(g) The terms of the sale by the Pension Plan of Parcel #2 to the Apprenticeship Plan are no less favorable to the Pension Plan and no less favorable to the Apprenticeship Plan than terms negotiated under similar circumstances at arm's length with unrelated third parties;

(h) The Plans will not provide any construction financing or permanent financing to the Local Union in connection with the acquisition by the Local Union of Parcel #1 and the construction of a building on Parcel #1 (the Union Building) by the Local Union, nor will the Pension Plan, the Welfare Plan, or the Local Union provide any construction financing or permanent financing to the Apprenticeship Plan in connection with the acquisition by the Apprenticeship Plan of Parcel #2 and the construction of the Training Center on Parcel #2 by the Apprenticeship Plan;

(i) The Plans will not pay any commissions, fees, or other similar payments to any party in connection with any of the subject transactions;

(j) The terms of any loan from an unrelated third party obtained by the Apprenticeship Plan for the purpose of acquiring Parcel #2 or constructing the

[4] The Apprenticeship Plan, the Pension Plan, and the Welfare Plan are, herein, collectively referred to as the Plans.

[5] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Training Center provides recourse to such unrelated third party lender only against the Apprenticeship Plan's interest in Parcel #2 and not against the general assets of the Apprenticeship Plan;

(k) Prior to entering into the Lease, the I/F, acting on behalf of the Apprenticeship Plan, determines that the leasing transaction is feasible, in the interest of, and protective of the Apprenticeship Plan and its participants and beneficiaries; and approves the leasing transaction in accordance with the fiduciary provisions of the Act;

(l) Throughout the duration of the Lease, the I/F, acting on behalf of the Apprenticeship Plan, monitors compliance with the terms and conditions of the Lease, ensures that such terms and conditions are at all times satisfied, and is responsible for legally enforcing the payment of the rent and the proper performance by CBA under the terms of the Lease and for taking any and all steps necessary to ensure that the Apprenticeship Plan is protected, including but not limited to reviewing, negotiating, and approving the initial Lease and any amendment, renewal, or extension of such Lease;

(m) Under the provisions of the Lease, the leasing transaction is at all times on terms that are at least as favorable to the Apprenticeship Plan and to CBA, as terms that would have been negotiated under similar circumstances at arm's length with unrelated third parties;

(n) The rental rate under the terms of the initial Lease and under the terms of any amendment, renewal, or extension of the Lease, is adjusted at least every three (3) years in which such Lease is in effect, and the rental rate reflects the fair market rental value of the Premises, as determined by an independent, qualified appraiser; and

(o) Notwithstanding anything to the contrary in the Lease, the Apprenticeship Plan may at any time upon ninety (90) days prior written notice given to CBA, terminate the Lease and CBA's occupancy of the Premises, effective as of the date specified in such written notice, which date shall be at least ninety (90) days after the date such written notice is given to CBA.

Summary of Facts and Representations

1. The Pension Plan, the Apprenticeship Plan, and the Welfare Plan are Taft-Hartley governed multi-employer plans established and maintained under a collective bargaining agreement between the Local Union and various electrical contractors who are members of the National Electrical Contractors Association, Bakersfield Chapter, Inc. (NECA).

2. The Pension Plan is a defined benefit pension plan located in Bakersfield, California. The Pension Plan was established in 1964. The Pension Plan has approximately 849 plan participants, both active and retired. As of April 2006, the Pension Plan had assets with a value of $75,445,820. The fair market value of the Property which is the subject of this exemption constitutes 1.4 percent (1.4%) of the assets of the Pension Plan.

3. The Apprenticeship Plan is an employee welfare benefit plan located in Bakersfield, California. The Apprenticeship Plan was established in 1962. The Apprenticeship Plan is designed to provide programs to recruit and train electrical workers and to provide continuing education for journeymen.

It is represented that currently, the Apprenticeship Plan offers training to between 80 to 105 apprentices on an annual basis. The Apprenticeship Plan operates a five-year program for inside wiremen apprentices which is approved and regulated by the Division of Industrial Relations in the State of California. In addition, the Apprenticeship Plan also provides a three-year training program to apprentices in voice-data-video.

The Apprenticeship Plan also offers training to between 50 to 100 journeymen on an annual basis. In this regard, journeymen receive training in instrumentation, PLC, advanced motor controls, advanced conduit bending, National Electrical Code, certification prep classes, as well as OSHA training and welding from the Apprenticeship Plan.

As of April 30, 2006, the Apprenticeship Plan had assets with a value of $2,762,025. The fair market value of Parcel #2, if acquired by the Apprenticeship Plan, would constitute approximately 9.29 percent (9.29%) of the assets of such plan. It is represented that the preliminary budget, including the cost of acquiring Parcel #2 and the cost of constructing the Training Center is $2,143,400 dollars which amount would constitute approximately 77.6 percent (77.6%) of the assets of the Apprenticeship Plan.

4. The Welfare Plan is an employee welfare benefit plan located in Bakersfield, California. The Welfare Plan is designed to provide health and welfare benefits to participants. The Welfare Plan has approximately 406 plan participants. As of September 30, 2006, the Welfare Plan had assets with a value of $2,452,435.

5. The Pension Plan is managed by a Board of Trustees (the Pension Board). The members of the Pension Board are parties in interest and fiduciaries with respect to the Pension Plan, pursuant to section 3(14)(A) of the Act. The Pension Board consists of six (6) individuals with three (3) members selected by the Local Union and three (3) members selected by NECA.

The Apprenticeship Plan is managed by a Board of Trustees (the Apprenticeship Board). The members of the Apprenticeship Board are parties in interest and fiduciaries with respect to the Apprenticeship Plan, pursuant to section 3(14)(A) of the Act. The Apprenticeship Board consists of six (6) individuals with three (3) members selected by the Local Union and three (3) members selected by NECA.

The Welfare Plan is managed by a Board of Trustees (the Welfare Board). The members of the Welfare Board are parties in interest and fiduciaries with respect to the Welfare Plan, pursuant to section 3(14)(A) of the Act. The Welfare Board consists of six (6) individuals with three (3) members selected by the Local Union and three (3) members selected by NECA.

It is represented that the same six (6) individuals serve on the Pension Board, the Apprenticeship Board, and the Welfare Board. The members of the Pension Board, the Apprenticeship Board, and the Welfare Board that have been selected by NECA are James A. Chilko, Carl Jarrett, and Rodney Bailey. Mr. Chilko is employed by NECA and is the business director of the Pension Fund. Mr. Jarrett is a self-employed electrical contractor. Mr. Bailey is a non-bargaining participant in the Pension Plan and a self-employed electrical contractor.

The members of the Pension Board, the Apprenticeship Board, and the Welfare Board that have been selected by the Local Union are Don Rush, Danny Kane, and Jim S. Elrod. Mr. Kane, Mr. Elrod, and Mr. Rush are members of the Local Union and also participants in both the Pension Plan and the Apprenticeship Plan. Mr. Kane is an elected, paid official of the Local Union and serves in the capacity as business director. Mr. Elrod is the training director of the Apprenticeship Plan, President of the Local Union, and is employed by the Local Union as business agent. Mr. Rush is employed by various electrical contractors who are signatory to a collective bargaining agreement with the Local Union and works for an hourly wage in the trade.

6. The Local Union was chartered in 1903. It is represented that the Local Union currently has approximately 515 members. The members of the Local Union are covered by the Pension Plan, the Apprenticeship Plan, and the

Welfare Plan. As an employee organization any of whose members are covered by the Pension Plan, the Apprenticeship Plan, and the Welfare Plan, the Local Union is a party in interest with respect each of these Plans, pursuant to section 3(14)(D) of the Act.

The organizational structure of the Local Union is typical of most electrical unions. The business manager is elected by the general membership and functions as the CEO. The business manager appoints business agents to assist him in his duties. The President, Vice President, Recording Secretary, and Treasurer of the Local Union are also elected by the general membership along with an Executive Board. The Executive Board is composed of members of the Local Union. The Executive Board handles disciplinary matters, operations, and finances of the Local Union.

7. The Pension Plan owns real estate (the Property) located at the corner of Sillect Avenue and Arrow Street in an incorporated area of central Bakersfield, California, within the Rio Mirada Industrial Park (the Industrial Park). The Industrial Park totals approximately 120 acres. It is represented that the Industrial Park is approximately 80 percent (80%) to 85 percent (85%) built out. The size of the remaining parcels in the Industrial Park typically range from two (2) to fifteen (15) acres and are held by individual investors. Existing uses within the Industrial Park consist of light manufacturing, office-warehouse, and commercial office uses.

The Property which is the subject of this proposed exemption is vacant and unimproved. The Property is zoned for light manufacturing, professional office, and neighborhood commercial and general commercial uses in conformity with surrounding development.

The Property comprises an area of 7.95 acres. The Property originally comprised 29.04 acres and was purchased by the Pension Plan in August of 1988, at a price of $1,581,772 from an unrelated third party. It is represented that since 1988 a majority of the Property has been sold to various unrelated third parties. It is represented that the Pension Plan now retains title to only 7.95 acres of the original 29.04 acres. It is represented that although the remaining portion of the Property has been actively marketed over the years, no dispositions have resulted.

8. The Pension Plan and the Local Union have requested an administrative exemption which would permit the Pension Plan to sell a portion of the Property (Parcel #1), consisting of 6.05 acres to the Local Union. It is anticipated that the Local Union will construct the Union Building, consisting of a 10,000 square foot office building and meeting hall, on approximately 1.5 acres of the 6.05 acres of Parcel #1 to be acquired by the Local Union from the Pension Plan. The Local Union intends to hold the remaining 4.55 acres of Parcel #1 for investment purposes.

9. The Pension Plan and the Apprenticeship Plan have also requested an administrative exemption which would permit the Pension Plan to sell to the Apprenticeship Plan a portion of the Property (Parcel #2), consisting of 1.9 acres, of the remaining 7.95 acres of the Property owned by the Pension Plan. It is anticipated that the Apprenticeship Plan will build a new 15,000 square foot Training Center on Parcel #2.

As discussed more fully below, the aggregate fair market value of the entire 7.9 acre Property has been determined to be $1,074,000. The Local Union will pay a purchase price for Parcel #1 of $816,968 or $3.10 per square foot. The Apprenticeship Plan will pay a purchase price for Parcel #2 of $256,568 or $3.10 per square foot. Based on these figures, it is represented that the Local Union and the Apprenticeship Plan will pay 76.2 percent (76.2%) and 23.8 percent (23.8%), respectively of the fair market value of the Property.

10. It is represented that the purchase price to be paid for Parcel #1 by the Local Union to the Pension Plan and the purchase price to be paid for Parcel #2 by the Apprenticeship Plan to the Pension Plan will be the fair market value of each such parcel, as determined by an independent, qualified appraiser, as of the date each of the proposed sale transactions is entered.

The application files contain an appraisal report, dated February 23, 2005, of the fair market value of a fee simple interest in the Property in ''as is'' condition. This appraisal report was prepared by Michael C. Burger (Mr. Burger), MAI, of Michael Burger & Associates in Bakersfield, California. Mr. Burger is qualified to appraise the Property in that since 1987 he has engaged in appraising all types of real estate, including single family homes, apartments, agricultural, commercial and industrial properties, and right-of-way properties. Mr. Burger holds an MAI designation from the Appraisal Institute. Mr. Burger is registered with the State of California, as a Certified General Real Estate Appraiser.

Mr. Burger is independent in that he has no present or prospective interest in the Property and no personal interest or bias with respect to the parties involved in the subject transactions. In addition, Mr. Burger's assignment and compensation were not contingent upon developing or reporting a predetermined value or direction in value. Less than one percent (1%) of Mr. Burger's gross income is from business with the Union and the Plans.

In his February 23, 2005, appraisal report, Mr. Burger represents that he previously appraised the Property on December 31, 2001, for the Pension Plan. In narrating the marketing history of the Property, Mr. Burger states that the Property has been on and off the market within the last several years. In this regard, according to Mr. Burger, the Property was listed in January 28, 1998, for $949,000 and was taken off the market in January 4, 1999. The Property was re-listed in October 14, 2000, for $948,000. As of February 23, 2005, the Property was listed for $1,250,000 or $3.61 per square foot, which in the opinion of Mr. Burger was excessive.

After inspecting the Property, and based only on the sales comparison approach to value, Mr. Burger determined that, as of February 23, 2005, the fair market value of the Property was $952,000 or $2.75 per square foot. Subsequently, in a letter dated June 15, 2005, Mr. Burger updated the February 23, 2005, appraisal report of the fair market value of the Property, based on two (2) new comparable sales in the area. In this regard, as of June 15, 2005, Mr. Burger estimated that the fair market value of the Property was $1,040,000 or $3.00 per square foot.

11. It is represented that the proposed purchase of Parcel #1 by the Local Union and the proposed purchase of Parcel #2 by the Apprenticeship Plan are feasible in that each purchase will be a one-time transaction for cash. Further, neither the Pension Plan nor the Apprenticeship Plan will pay any commissions, sales fees, or other similar payments to any party in connection with the subject transactions.

12. It is represented that the proposed sale of the Property is in the interest of the participants and beneficiaries of the Pension Plan. In this regard, it is represented that the Pension Plan will benefit from additional cash proceeds from the sale of Parcel #1 to the Local Union and the sale of Parcel #2 to the Apprenticeship Plan. Further, the Pension Plan will be divesting itself of the Property which will reduce the percentage of the Pension Plan's portfolio dedicated to illiquid, undeveloped real estate. It is represented that such divestiture will help the Pension Plan meet its investment goals.

13. It is represented that the proposed purchase of Parcel #2 by the Apprenticeship Plan, the construction

of the Training Center, and the leasing of the Premises in the Training Center to CBA is protective of the Apprenticeship Plan, because American Realty Advisors (ARA) has been retained to serve as the I/F to act on behalf of the Apprenticeship Plan. In general, ARA, acting as the I/F, has acknowledged that it is acting as a fiduciary under the Act with regard to all decision making responsibility for the Apprenticeship Plan, including the purchase of Parcel #2, the development of Parcel #2, the construction of the Training Center on Parcel #2, and any leasing arrangements of space in such Training Center.

It is represented that ARA is qualified to serve as the I/F, in that since 1988 when it was founded, ARA has developed significant expertise in property acquisition and disposition, acting as an independent fiduciary on behalf of Taft-Hartley clients. Specifically, ARA represents that it has acted on behalf of more than 200 multi-employer clients and has been involved as the fiduciary investment manager under the Act in real estate transactions worth over $3 billion. ARA assumes and acknowledges its status as a fiduciary for its plan clients, as defined in section 3(21)(A) of the Act. ARA has completed numerous assignments as a QPAM and satisfies all of the requirements of a QPAM, as defined in PTCE 84–14. In addition, ARA is a registered investment advisor with the Securities and Exchange Commission.

It is represented that ARA is independent in that it has no business or personal relationship with any of the parties to the subject transactions. In addition ARA is independent in that amounts paid or to be paid to ARA by the Apprenticeship Plan constitute less than one percent (1%) of ARA's gross annual revenues in the year that the subject transactions are entered.

With regard to the purchase of Parcel #2 by the Apprenticeship Plan, ARA evaluated the appraisal reports submitted by Mr. Burger, dated February 23, 2005, and June 15, 2005. In the opinion of ARA, given the fact that the Property is vacant land, Mr. Burger's use of only the sales comparable approach in arriving at the value of the Property in both appraisals is appropriate, as the cost and income approaches to value are not warranted for this type of real estate. It is represented by ARA that although Mr. Burger considered the entire site in the valuation, as opposed to only the portion of the Property to be purchased by the Apprenticeship Plan, uniform conditions exist throughout the site.

However, with regard to the February 23, 2005 appraisal report prepared by Mr. Burger, in the opinion of ARA, the sales price per square foot appears to be overstated in three of the five comparables, while in two of the five comparables the sales price per square foot appears to be understated. With regard to the updated appraisal report of June 15, 2005, prepared by Mr. Burger, ARA states that it is difficult to tell whether the comparable sales had closed at the prices stated in such report. In conclusion, ARA has determined that the fair market value of the Property, as of March 10, 2006, was $1,074,000 or $3.10 per square foot.

Included in its duties as the I/F, ARA is responsible for providing a written report to the Department. In preparing the written report for the Department, ARA represents that it: (a) Collected all available information from the Apprenticeship Plan, including financial information; (b) visited the Property, as well as visited the Apprenticeship Plan's existing training facility; (c) interviewed various individuals, including the training director of the Apprenticeship Plan, the business director of the Pension Fund, the business director of the Local Union, CBA, the Pension Plan's real estate broker, several other real estate brokers, and an attorney; (d) evaluated both of the appraisals reports prepared by Mr. Burger of the fair market value of the Property; (e) evaluated the real estate market to determine land values, rents, and values for comparable properties in the market; (f) evaluated the Property in terms of zoning, setback requirements, site coverage, covenants, conditions, and restrictions, access, and location for the purpose of assessing the value of the Property in relation to the needs of the Apprenticeship Plan; (g) reviewed all development drawings and documented discussions pertaining to the development of the Property; (h) derived a value for the Property on a per square foot basis; (i) evaluated the potential development costs of Parcel #2; (j) evaluated the development feasibility of Parcel #2; (k) evaluated the financial capacity of the Apprenticeship Plan to potentially acquire and proceed with the development of Parcel #2; (l) determined whether the proposed acquisition and development of Parcel #2 is in the best interests of the beneficiaries of the Apprenticeship Plan; (m) determined whether the proposed acquisition and development of Parcel #2 is feasible and protective of the Apprenticeship Plan; and (n) provided an opinion on whether the Apprenticeship Plan should acquire and develop Parcel #2.

Further, ARA represents that it will perform the following tasks if the proposed exemption is granted: (a) Monitor the acquisition of Parcel #2 through completion; (b) engage, if necessary, a Phase I Environmental Site Assessment of Parcel #2; (c) engage, if necessary, a survey of Parcel #2; (d) obtain a preliminary title report for Parcel #2 with copies of all title exceptions; (e) evaluate any legal or title issues relating to Parcel #2; (f) review and evaluate any and all architectural drawings; and (g) review and evaluate all the financial statements of the Apprenticeship Plan on an ongoing basis through the development of Parcel #2. In addition, ARA represents that the sales contract will be made contingent upon obtaining a satisfactory Geotechnical Analysis of Parcel #2 which confirms the suitability of the soil for development.

14. In fullfilling its duties as the I/F, ARA evaluated the existing Apprenticeship Plan training facility to help ascertain the amount and type of space needed for the new Training Center. In this regard, ARA represents that the existing facility of the Apprenticeship Plan consists of two (2) buildings (Building A and Building B; collectively the Existing Buildings) located, respectively, at 401 and 325 19th Street in Bakersfield, California. Building A, constructed in 1967, contains approximately 4,500 square feet. Building B, constructed in 1962, contains approximately 4,300 square feet, for a combined total of 8,800 square feet.

ARA represents that the Existing Buildings are inadequate for the following reasons: (a) The Existing Buildings are functionally inadequate due to small classroom size and layout, given that training needs have changed over time; (b) the Existing Buildings are over 30 years old and exhibit major wear; (c) upgrading the Existing Buildings is not feasible due to the small size of the underlying land area and the functional obsolescence of the Existing Buildings; (d) the Existing Buildings have 28 parking spaces which are inadequate for the number of apprentices using such buildings, especially during times of outdoor training where a portion of the parking lot is occupied by a trailer that accommodates the training activities; (e) the classroom space in the Existing Buildings enables only a small number of students per class and also requires significant ''clean-up'' time to reorganize class materials at the end of every class; (f) there is limited shop

space in the Existing Buildings, requiring daily that equipment used in certain activities must be moved to accommodate training with other equipment; (g) the Existing Buildings have inadquate ventilation and lack of air conditioning in the shop areas; (h) the Existing Buildings lack storage areas which results in equipment and learning materials being placed in any available open area, only to be moved to accommodate training; and (i) the location of the Existing Buildings is no longer as close to the pool of potential apprentices as such buildings once were.

The architectural firm of Ordiz Melby Architects Inc. has provided preliminary drawings containing options for the layout and design of the new Training Center to be constructed for the Apprenticeship Plan on Parcel #2. It is represented that no detailed drawings of such Training Center have been finalized due to the fact that ARA believes it is not in the best interest of the Apprenticeship Plan to expend significant additional costs prior to obtaining a final exemption.

ARA has also prepared a preliminary development budget for the new Training Center. ARA considered the cost of acquiring Parcel #2, as well as construction costs for the Training Center. In this regard, ARA has as a preliminary matter budgeted a total project cost of $2,143,400 for the acquisition of Parcel #2 and the construction of the Training Center.

ARA has reviewed income statements for the Apprenticeship Plan for the past five years, as well as the most recent balance sheet, dated July 31, 2006. In the opinion of ARA the Apprenticeship Plan has sufficient assets to acquire Parcel #2 and to construct the new Training Center. In this regard, ARA represents that approximately $2,500,000 of the total assets of the Apprenticeship Plan are being held in cash. ARA notes that the Apprenticeship Plan will obtain a cash inflow when the Existing Buildings are sold. In the opinion of ARA, a reasonable value estimate for both of the Existing Buildings ranges from $300,000 to $400,000 or $35 to $45 per square foot based on approximately 8,800 square feet.

ARA represents that net income of the Apprenticeship Plan for July 31, 2006, totaled approximately $53,000 with year-to-date income of approximately $133,000. Further, ARA represents that operating expenses for the Apprenticeship Plan totaled approximately $33,000 for July 31, 2006, and $241,000 year-to-date.

It is represented that labor and management agreed several years ago to an increased hourly assessment for the Apprenticeship Plan so that funds could be accumulated for the construction of the new Training Center. For this reason, a significant cash balance is being held by the Apprenticeship Plan. In the opinion of ARA, this balance is more than adequate to construct the new Training Center without the Apprenticeship Plan incurring any debt. Further, in the opinion of ARA, the hourly contributions are now far more than adequate to operate the Apprenticeship Plan. Further, according to ARA, the Apprenticeship Plan is expected to be in a solid financial footing even after investing the majority of its cash reserves in the new Training Center.

In summary, ARA collected, reviewed, and evaluated all available information on Parcel #2, financial information from the Apprenticeship Plan, market information pertaining to land and building values, as well as evaluated the Apprenticeship Plan's Existing Buildings and need for space. ARA also evaluated the potential development costs and feasibility of acquiring Parcel #2. ARA believes the purchase price of Parcel #2 is reflective of current market conditions and represents a fair market price. To maintain efficient operations while accommodating the growth of the Apprenticeship Plan, it is ARA's opinion that it is in the best interest of the Apprenticeship Plan and its participants and beneficiaries, to develop Parcel #2, since the transaction is reflective of the market and it is unlikely that a less costly and equally beneficial solution can be found. It is ARA's judgment that the acquisition of Parcel #2 and the construction of a Training Center would be beneficial to the participants and beneficiaries of the Apprenticeship Plan. ARA has determined that the development of Parcel #2 is within the financial capacity of the Apprenticeship Plan and would be protective of the Apprenticeship Plan in this regard. Accordingly, ARA recommends the acquisition and development of Parcel #2 and will oversee and monitor all aspects of the sale of Parcel #2 and the construction of the new Training Center.

15. It is represented that the proposed purchase of Parcel #2 and the development of Parcel #2 are in the interest of the Apprenticeship Plan. In this regard, it is represented that the Apprenticeship Plan will obtain additional space in the new Training Center for classroom and training facilities and will obtain room for expansion in the future. In this regard, it is represented that the increase in population in the Bakersfield area of California and the need to train new technologies require an increased capacity in the Existing Buildings to accommodate the programs offered by the Apprenticeship Plan.

It is further represented that the Apprenticeship Plan will exercise control over the improvements, costs of operation, and maintenance of the Training Center to be constructed on Parcel #2. In this regard, it is represented that the new Training Center will incorporate underground conduit systems in shop areas to teach wire pulling. The new Training Center will have solar generating panels which will be used to teach solar installations. Car swipe access systems will be added in the new Training Center to teach new security technologies. In addition, various HVAC and lighting controls will be offered in order to teach new energy saving systems. Mock-ups of actual electrical installations and new shop space will be constructed in the Training Center and used for instructional purposes.

16. The applicants have requested an administrative exemption which would permit the Lease between the Apprenticeship Plan and CBA upon completion of construction of the Training Center. CBA (formerly, known as Kern County Electrical Workers Benefits Administration, Inc.) was established in 1977 from seed money from all three Plans, in the amount of $5,000 from each of the Plans. It is represented that CBA is qualified under California law as a non-profit mutual benefit corporation, and as such has no shareholders. It is represented that CBA's only asset is office equipment.

The Board of Directors of CBA (the CBA Board) is composed of the same individuals who serve as trustees of the Pension Board, the Apprenticeship Board, and the Welfare Board. It is represented that the members of the CBA Board receive no compensation for their services.

CBA provides third party administrator services to each of the Plans, pursuant to separate written agreements containing identical provisions between each such plan and CBA.[6] As a service provider to the

[6] The applicants rely on the relief provided by the statutory exemption, pursuant to section 408(b)(2) of the Act for the provision of services by CBA to the Plans. The Department, herein, is offering no view, as to whether the provisions of services rendered to the Plans by CBA is covered by the statutory exempetion provided in section 408(b)(2) of the Act and the Department's regulations, there-under, pusuant to 29 CFR 2550.408b–2. Further, the

Plans, CBA is a party in interest with respect to each of the Plans, pursuant to section 3(14)(B) of the Act.

CBA employs three (3) individuals to provide record keeping services and administrative services to each of the Plans. The wages of such employees are paid weekly from CBA's bank account. It is represented that the only source of income to CBA is through billing each of the Plans for services provided to each such plan. It is represented that CBA bills only actual expenses for operation and employee wages. The expenses are allocated to and paid by each of the Plans. It is represented that CBA performs cost accounting time studies quarterly to determine the percentage of the expenses to be charged to each of the Plans, based upon how much time is spent in any one quarter by the employees of CBA in providing services to each such plan. It is represented that currently the allocation of expenses is 41 percent (41%) to the Pension Plan, 19 percent (19%) to the Apprenticeship Plan, 40 percent (40%) to the Welfare Plan. The allocation of expenses to each of the Plans is reviewed by and must be approved by the auditor of such plan.

17. Although CBA presently leases office space from an unrelated third party, CBA desires to lease certain Premises in the new Training Center to facilitate the provision of services to the Plans in the new location.

It is represented that the Premises to be occupied by CBA will constitute approximately 350 to 450 rentable square feet of office space out of a total of 15,000 square feet of space in the Training Center. The Lease provisions include a three (3) year initial term that can be renewed for an additional term of three (3) years by both parties upon a ninety (90) days written notice. Under the provisions of the Lease, the leasing transaction will be on terms and at all times will remain on terms that are at least as favorable to the Apprenticeship Plan and to CBA, as terms that would have been negotiated under similar circumstances at arm's length with unrelated third parties. The rental rate under the terms of the Lease and under the terms of any amendment, renewal, or extension of the Lease will be adjusted at least every three (3) years in which the Lease is in effect. Further, the rental rate will reflect the fair market rental value of the Premises, as determined by an independent, qualified appraiser. Notwithstanding anything to the contrary in the Lease, the Apprenticeship Plan may without penalty at any time upon ninety (90) days prior written notice given to CBA terminate the Lease and CBA's occupancy of the Premises, effective as of the date specified in such written notice, which date shall be at least ninety (90) days after the date such written notice is given to CBA.

It is represented that the Lease will be protective in that ARA, the I/F acting on behalf of the Apprenticeship Plan, will represent the interests of the Apprenticeship Plan, and will in accordance with the fiduciary provisions of the Act determine that the Lease is feasible, in the interest of, and protective of the Apprenticeship Plan. Specifically, prior to entering into the Lease, the terms of such Lease will be reviewed, negotiated, and approved by ARA. Further, ARA will monitor compliance with the terms of the Lease throughout the duration of the Lease and will be responsible for legally enforcing the proper performance under the terms of such Lease. Further, ARA will be responsible for reviewing, negotiating, approving, and monitoring the initial lease and any amendment, renewal, or extension of the Lease.

18. The applicants maintain that the proposed transactions are in the interest of the Plans. In this regard, it is represented that acquisition of Parcel #1 and construction by the Local Union the Union Building, the acquisition of Parcel #2 and construction of the Training Center by the Apprenticeship Plan on an adjacent site, and the leasing of the Premises in the Training Center to CBA will lend continuity of operation and training and consolidation of administration to the participants of the Apprenticeship Plan, as well as participants in the Pension Plan and the Welfare Plan. Specifically, the offices of the Local Union, the Pension Plan, the Apprenticeship Plan, CBA, and the Training Center will be consolidated in one location.

19. In summary, the applicants represent that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The sale by the Pension Plan of Parcel #1 to the Local Union and the sale of Parcel #2 by the Pension Plan to the Apprenticeship Plan will be one-time transactions for cash;

(b) ARA, acting as the I/F on behalf of the Apprenticeship Plan, will negotiate, review, analyze, and approve the terms of the purchase of Parcel #2; the construction of the Training Center; and the Lease of the Premises to CBA.

(c) ARA will determine whether the acquisition of Parcel #2, the construction of the Training Center, and the Lease of the Premises to CBA will be feasible, in the interest of, and protective of the participants and beneficiaries of the Apprenticeship Plan;

(d) ARA will be responsible for monitoring compliance with the terms and condition of this exemption and the terms and conditions of the acquisition of Parcel #2 by the Apprenticeship Plan, the construction of the Training Center, and the Lease of the Premises to CBA;

(e) The purchase price paid by the Local Union for Parcel #1 and the purchase price paid by the Apprenticeship Plan for Parcel #2 will be equal to the fair market value of each such parcel, as determined by an independent, qualified appraiser, as of the date of each sale;

(f) The terms of the sale by the Pension Plan of Parcel #1 to the Local Union and the sale by the Pension Plan of Parcel #2 to the Apprenticeship Plan will be no less favorable to the Pension Plan and the Apprenticeship Plan, respectively, than terms negotiated under similar circumstances at arm's length with unrelated third parties;

(g) The Plans will not provide any construction financing or permanent financing to the Local Union in connection with the acquisition by the Local Union of Parcel #1 and the construction of the Union Building, nor will the Pension Plan, the Welfare Plan, or the Local Union provide any construction financing or permanent financing to the Apprenticeship Plan in connection with the acquisition by the Apprenticeship Plan of Parcel #2 and the construction of the Training Center;

(h) The Plans will not pay any commissions, fees, or other similar payments to any party in connection with any of the subject transactions;

(i) The terms of any loan from an unrelated third party obtained by the Apprenticeship Plan for the purpose of acquiring Parcel #2 or constructing the Training Center will provide recourse to such unrelated third party lender only against the Apprenticeship Plan's interest in Parcel #2 and not against the general assets of the Apprenticeship Plan;

(j) the leasing transaction will be on terms and at all times remains on terms that are at least as favorable to the Apprenticeship Plan and to CBA, as terms that would have been negotiated under similar circumstances at arm's length with unrelated third parties;

(k) The rental rate under the terms of the Lease and under the terms of any amendment, renewal, or extension of the Lease will be adjusted at least every three (3) years in which the Lease is in

Department is not providing, herein, any relief with respect to the provision of services to the Plans by CBA.

effect and the rental rate will reflect the fair market rental value of the Premises, as determined by an independent, qualified appraiser; and

(m) Notwithstanding anything to the contrary in the Lease, the Apprenticeship Plan may without penalty at any time upon ninety (90) days prior written notice given to CBA terminate the Lease and CBA's occupancy of the Premises.

Notice to Interested Persons

Those persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include all contributing employers to the Pension Plan, the Apprenticeship Plan, and the Welfare Plan and all participants and beneficiaries of the Pension Plan, the Apprenticeship Plan, and the Welfare Plan.

It is represented that these several classes of interested persons will be notified of the publication of the Notice through different methods. In this regard, notification will be provided within 15 (15) calendar days of the date of publication of the Notice in the **Federal Register**, by posting at locations customarily used for notices regarding labor-management matters for review at the hiring hall and at the business office of the Local Union, at the office of the Apprenticeship Plan and at the Existing Buildings of the Apprenticeship Plan; at the administrative offices for the Pension Plan, Apprenticeship Plan, and the Welfare Plan, and at the offices of NECA. Such postings will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the supplemental statement (the Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2), which will advise interested persons of their right to comment and to request a hearing.

It is represented that notification will also be provided to all participants and beneficiaries of the Pension Plan, the Apprenticeship Plan, and the Welfare Plan by first class mail, within fifteen (15) calendar days of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise all participants and beneficiaries of the Pension Plan, the Apprenticeship Plan, and the Welfare Plan of their right to comment and to request a hearing.

It is represented that notification will also be provided to all contributing employers to the Pension Plan, the Apprenticeship Plan, and the Welfare Plan by first class mail. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), and a letter to such contributing employers requesting that the Notice and Supplemental Statement be posted immediately upon receipt in the locations within the principal places of employment of such contributing employers which are customarily used for notices regarding labor-management matters for review.

The Department must receive all written comments and requests for a hearing no later than thirty (30) days from the *later of:* (1) The date a copy of the Notice and a copy the Supplemental Statement are posted; or (2) the date of the mailing of a copy of the Notice and a copy of the Supplemental Statement to all contributing employers of the Pension Plan, the Apprenticeship Plan, and the Welfare Plan; or (3) the date of the mailing of a copy of the Notice and a copy of the Supplemental Statement to all participants and beneficiaries of the Pension Plan, the Apprenticeship Plan, and the Welfare Plan.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540 (This is not a toll-free number).

OPET Health Care and Life Insurance Plans RM3A and RM5A (Together, the H&L Plans); and OPET Prescription Drug Plan RRx (Plan RRx; All Three Together, the Plans), Located in Portland, Oregon

[Application Nos. L–11302 and L–11303]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act shall not apply to the purchase by the Plans' participants and beneficiaries of prescription drugs from the Labor Center Pharmacy (LCP), a party in interest with respect to the Plans, provided the following conditions are satisfied:

(a) The terms of the transactions are at least as favorable to the Plans as those the Plans could obtain in similar transactions with an unrelated party;

(b) any decisions by the Plans to enter into agreements governing the subject purchases have been and will be made by Plan fiduciaries independent of LCP;

(c) at least 50% of the preferred providers participating in the Preferred Provider Network (PPN) involving LCP are unrelated to LCP or any other party in interest with respect to the Plans;

(d) LCP will be treated no differently than any other pharmacy participating in the PPN (e.g., subject to the same reimbursement rates and oversight as the other participating pharmacies); and

(e) the transactions are not part of an agreement, arrangement or understanding designed to benefit LCP or any other party in interest with respect to the Plans.

Effective Date: The proposed exemption, if granted, will be effective as of January 1, 2001.

Summary of Facts and Representations

1. The Plans are multi-employer welfare benefit plans. The H&L Plans have been in existence since July 1, 1982. Plan RRx has been in existence since May 1, 1978. The Plans provide health and welfare benefits, including prescription drug coverage, to eligible employees and their dependents. The Plans are directed by an eight person Board of Trustees. The four trustees representing labor are appointed by the participating unions, which are: (a) Teamsters Food Processors, Drivers, Warehousemen, and Helpers Local Union No. 670 (Teamsters Local 670); (b) Teamsters Dairy, Bakery and Food Processors, Industrial, Technical, and Automotive Local Union No. 305; (c) General Teamsters, Warehousemen, and Cannery Workers Local Union No. 556; and (d) Chauffeurs, Teamsters and Helpers Union No. 58. The four employer trustees are appointed by participating employers in the food processing industry. The Plans currently have approximately 2,700 participants and $9.1 million in total assets.

2. Teamsters Local 670 Health Division Cannery Distributors Co., Inc. (the Health Division) is a taxable corporation that is wholly owned by Teamsters Local 670. The applicant represents that Teamsters Local 670 is a party in interest because it is an employee organization whose members participate in the Plans. The applicant represents that the Health Division is a party in interest with respect to the Plans because it is wholly owned by an employee organization whose members participate in the Plans. The Health Division operates the LCP.

3. Under the Plans, participants have three alternative ways to receive a prescription drug benefit. *One,* a participant may have a prescription filled at a non-participating pharmacy,

pay the pharmacy the full charge at the time of dispensing, and then submit a claim to the claims administrator. The Plans would then reimburse the participant the lesser of: (a) 80% of the average wholesale price (AWP); or (b) the actual cost of the drug. *Two*, a participant in Tillamook, Oregon, may have a prescription filled at the local pharmacy, pay an amount up to the Plan's annual deductible to the pharmacy, and have any balance submitted to the claims administrator by the pharmacy for payment directly to the pharmacy. This special arrangement is designed to serve a group of participants who work at a local creamery in Tillamook, which is approximately 74 miles from the nearest preferred provider pharmacy. *Three*, a participant may have a prescription filled at any of the preferred provider pharmacies and pay a co-pay of $16 for brand name drugs and $6 for generic drugs.

4. Effective September 1, 1992, the trustees of the Plans implemented the Plans' first preferred provider network (PPN) for prescription drugs to manage prescription drug prices and costs, provide ready participant access to reliable pharmacy services and professional advice, and to minimize eligibility policing problems. The trustees had obtained opinion of ERISA counsel dated November 25, 1991 that such an arrangement would be permissible under the Act if, among other things, all amounts paid by the Plans to a union-sponsored pharmacy were reasonable, and all decisions made by the Plans to enter into agreements with party in interest pharmacies were made by fiduciaries independent of the party in interest. Despite the reliance by the trustees on the advice of ERISA counsel, the Department's San Francisco Regional Office determined that the subject transactions constituted prohibited transactions. Accordingly, the applicant has requested retroactive relief for the transactions described herein.

5. The trustees entered into agreements with four preferred provider pharmacies: The LCP in Salem, Oregon; Baker City Pill Box in Baker City, Oregon; Hi-School Pharmacy in Hood River, Oregon; and Safeway Pharmacy in The Dalles, Oregon. Each of the preferred provider pharmacies is located in an agricultural area where a significant number of the Plans' participants live and work. The LCP is operated by the Health Division, which is a party in interest with respect to the Plans. The other three pharmacies are not parties in interest, and the agreements were negotiated at arm's-length. All four agreements are identical. The applicant represents that as of January 1, 2007, the Safeway Pharmacy in the Dalles, Oregon, has withdrawn from the PPN. The other three pharmacies, including the LCP, remain in the PPN.

6. The preferred provider pharmacies agree to provide prescription drugs to participants and beneficiaries in the Plans at a lower cost than they charge other purchasers in exchange for the potential to realize an expanded customer base due to their status as preferred provider pharmacies with respect to the Plans. The material terms of the agreements are:

(a) Participants and beneficiaries pay a $6 co-payment for generic drugs and a $16 co-payment for brand name drugs;

(b) The Pharmacy does not (and cannot) charge the participants and beneficiaries any amount in excess of the co-payment;

(c) The pharmacy must use its best efforts to provide generic drugs whenever legally possible, and must, when filling prescriptions, achieve a generic frequency rate of 20% or higher;

(d) OPET pays the pharmacy the lesser of:

(i) the actual dispensing cost to the pharmacy for the drug; or

(ii) a $2 dispensing fee plus the following amount based on the AWP for the specified type of drug:

(A) for a generic drug, AWP minus 20%;

(B) for a brand name drug, AWP minus 12%.

(e) The pharmacy's billings to OPET must provide adequate information to enable OPET to monitor payments and generic frequency rates;

(f) The pharmacy must submit to an audit at the request of the OPET trustees; and

(g) The agreement may be terminated by either party without cause with 30 days advance written notice.

7. The applicant represents that OPET's reimbursement rates for the preferred pharmacies are reasonable and are consistent with the reimbursement rates that other similar plans are negotiating with their preferred provider pharmacies. OPET's consultant, Mr. Jackson A. Loos, Chief Consulting Officer—Health and Welfare, with the firm of Rael & Letson in Edmonds, Washington, has confirmed this representation.

8. The Plans seek to maximize the benefits that can be provided to participants and their beneficiaries. Reducing the costs paid by the Plans for prescription drugs assists the Plans in meeting this goal. In addition, the applicant represents that including the LCP in the PPN provides substantial benefits to participants and beneficiaries, including:

(a) The claims administrator for the Plans maintains a claims processing office in the same office as the LCP, which means the LCP can immediately confirm the eligibility of participants and beneficiaries. Because the on-site claims analysts are familiar with the Plans, the LCP can direct the participant or beneficiary to the claims processing office for assistance in resolving any eligibility or coverage questions;

(b) The access mentioned in Paragraph (a), immediately above, is especially important because many participants speak Spanish as their first language and do not understand English. The on-site claims processing office is staffed with claims analysts who are familiar with the Plans, giving people ready access to people who are fluent in Spanish; and

(c) The LCP, like the other preferred provider pharmacies, agrees to process participants' prescriptions upon receiving from the individual a brief form setting forth information necessary to verify eligibility and the amount of co-payment prescribed by the Plans. Participants are required to pay only the co-payment in order to fill a prescription. Therefore, participants (most of whom have low incomes) do not have to pay the full cost of the prescriptions at the pharmacy and wait for later reimbursement from the Plans.

9. The applicant represents that at least 50% of the pharmacies in the PPN will be pharmacies that are not parties in interest with respect to the Plans. Currently, only one of the three preferred provider pharmacies is operated by a party in interest with respect to the Plans. All decisions made by the Plans with respect to the LCP have been made, and in the future will be made, only by trustees unrelated to the LCP, the Health Division, and Teamsters Local 670. In this regard, any trustee affiliated with the LCP, the Health Division, or Teamsters Local 670 will remove himself or herself from all consideration by the Plans whether or not to engage in any transaction with the Health Division and/or the LCP. Lastly, the applicant represents that the transactions between the Plans and the Health Division are not part of an agreement, arrangement or understanding designed to benefit a party in interest with respect to the Plans.

10. In summary, the applicant represents that the subject transactions satisfy the criteria contained in section 408(a) of the Act because: (a) The terms of the transactions are at least as

favorable to the Plans as those the Plans could obtain in similar transactions with an unrelated party; (b) any decision by the Plan to enter into the agreements governing the subject purchases have been and will be made by fiduciaries of the Plans who are not related to LCP, the Health Division, or Teamsters Local 670; (c) at least 50% of the preferred provider pharmacies participating in the PPN are and will be unrelated to LCP, the Health Division and any other party in interest with respect to the Plans; (d) the LCP will provide prescription drugs to eligible participants under the identical conditions and for the identical prices as will be the case for any pharmacy participating in the PPN; and (e) the transactions are not part of an agreement, arrangement or understanding designed to benefit a party in interest.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 6th day of February, 2007.

Ivan Strasfel,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E7–2243 Filed 2–12–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA), Grants for Program Year 2006

Announcement Type: New.

Notice of availability of funds and solicitation for grant applications for Women in Apprenticeship and Nontraditional Occupations (WANTO) grants.

Funding Opportunity Number: SGA/DFA–PY–06–01.

Catalog of Federal Domestic Assistance Number: 17.201.

Key Dates: The closing date for receipt of applications is April 16, 2007.

SUMMARY: The Women's Bureau and the Employment and Training Administration's (ETA) Office of Apprenticeship, U.S. Department of Labor (DOL), announce the availability of $972,180 to establish a grant program for the purpose of assisting employers and labor unions in the placement and retention of women in apprenticeship and nontraditional occupations. This program year 2006 SGA is authorized under the Women in Apprenticeship and Nontraditional Occupations (WANTO) Act of 1992, Pub. L. 102–530, 29 U.S.C. 2501 *et seq.* To that end, the OA and the WB plan to disburse 2006 WANTO grant funds to three community-based organizations (CBOs) including faith-based organizations (FBOs)/registered apprenticeship program (RAP) consortia to conduct innovative projects to improve the recruitment, selection, training, employment, and retention of women in apprenticeships in the construction industry. Each CBO/RAP consortium must consist of a minimum of: (1) a construction industry Registered Apprenticeship Program sponsor, and (2) a CBO (which may be faith based) with demonstrated experience in securing job training services from established training institutions such as community colleges, and providing placement and support services to women in construction industry jobs.

It is anticipated that awards will be in the amount of approximately $300,000.

SUPPLEMENTARY INFORMATION: This SGA consists of eleven (11) sections:

- Section I provides the funding opportunity description.
- Section II describes the size and nature of the anticipated awards.
- Section III describes applicant eligibility criteria.
- Section IV outlines the application submission and withdrawal requirements.
- Section V describes the application review information.
- Section VI outlines additional award administration information.
- Section VII lists the Agency Contact.
- Section VIII provides other information, including acronyms and definitions.

I. Funding Opportunity Description

A. Background

The Women in Apprenticeship and Nontraditional Occupations (WANTO) Act of 1992, Pub. L. 102–530 29 U.S.C. 2501 *et seq.* authorizes the U.S. Department of Labor (DOL) to disburse technical assistance grants to promote the recruitment, training, and retention of women in apprenticeship and nontraditional occupations. The Women's Bureau (WB) co-administers the WANTO program with the DOL ETA Office of Apprenticeship (OA). The OA and the WB have the responsibility for implementing this grant process.

B. Purpose

The WANTO Act's purpose is to provide technical assistance to employers and labor unions (E/LU) to encourage employment of women in apprenticeships and nontraditional occupations (A/NTO). One of the means of providing technical assistance is through competitive grants which focus on conducting innovative projects to improve the recruitment, selection, training, employment, and retention of women in apprenticeships in the construction industry. WANTO grants are awarded to community-based organizations (CBOs), which may include faith-based, union-related

organizations and employer-related nonprofit organizations, among others. DOL has found that placement and retention of women in A/NTO pose significant challenges. For example, on average, only three percent of all newly registered and active apprentices in construction occupations are women. Approximately 75 percent of all registered apprenticeship programs are in the construction industry. Therefore, the Department is focusing this notice on registered apprenticeship opportunities for women in the construction industry. From 1994 to 2002, the DOL funded WANTO grants annually to CBOs and FBOs that delivered technical assistance to employers and labor organizations to prepare them to successfully recruit, train, employ and retain women. The outcomes of these prior WANTO grants consisted largely of training and resource manuals, as well as recruitment videos. Numbers of women placed in registered apprenticeships through WANTO grant activities were lower than expected. Therefore, the FY 2006 WANTO grants are intended to help connect women with the significant employment opportunities available in registered apprenticeship programs in the construction industry. Additionally, to ensure women served by these PY 2006 WANTO grants have access to a full range of supportive services and training, as well as specific employment opportunities, this SGA requires applicants to demonstrate establishment of a consortium consisting of CBOs and RAP sponsors whereby the employers and RAP sponsors will be responsible partners for placing women into their programs. For the purposes of this notice, all apprenticeable occupations in the construction industry meet the definition of NTO.

II. Award Information

A. Grant Awards

The OA and the WB anticipate awarding two-year grants totaling approximately $300,000 each to up to three CBO/RAP consortia, each consisting of a minimum of one each of: (1) A construction industry RAP sponsor, and (2) a CBO (which may be faith based) with demonstrated experience in securing job training services from established training institutions such as community colleges, and providing placement and support services to women in construction industry jobs. The grants will be funded in increments of $150,000 for each year. Funding for the second year will be contingent upon satisfactory progress toward grant requirements for placement of women in registered apprenticeship programs as discussed in Section V.

B. Period of Performance

The period of performance will be up to 24 months from the date of execution of the grant documents. DOL ETA may approve a request for a no cost extension to grantees for an additional period of time based on the success of the project and other relevant factors.

III. Eligibility Information

A. Eligible Applicants

Under this announcement only CBO/RAP consortia, as defined in sections II and VIII of this SGA, may apply for and receive a grant award. This requirement does not prevent the participation of other entities which are integral to the implementation of the project.

IV. Application and Submission Information

A. Address To Request Application Package

Please note that this announcement includes all the information and forms needed to apply for this funding opportunity. Additionally, all application materials will be made available on the following Web sites: *http://www.doleta.gov/sga/* and *http://www.grants.gov*.

B. Content and Form of Application

Each application must include the original signed application and two hard copies. The proposal must consist of two separate and distinct parts: Part A—Financial Proposal; and Part B—Technical Proposal. Both parts must be included in each copy of a complete application. Applications that fail to adhere to the instructions in this section may be deemed non-responsive and may not be considered for funding.

1. Requirements for the Technical Proposal

The technical proposal text is limited to twenty (20) double-spaced, single-sided 8.5 inches by 11 inch pages with 12 point text font and one-inch margins. Pages must be numbered. Only those attachments listed below as ''Required Attachments'' will be excluded from the page limit. The ''Required Attachments'' must be affixed as separate, clearly identified appendices to the application. The ''Required Attachments'' are as follows:

(a) A Table of Contents, listing the application sections.

(b) Documentation of applicant eligibility, as described in Part III of this notice. CBOs should provide proof of their status as a private nonprofit organization as defined under section 101(7) of the Workforce Investment Act of 1998, Pub. L. 105–220, 29 U.S.C. 2801 *et seq.* DOL ETA will verify that RAP sponsors are registered with DOL ETA or a DOL ETA-recognized State Apprenticeship Agency.

(c) A two-page abstract, summarizing the proposed project.

(d) Documentation of its experience, capability, and qualifications for recruiting, training, hiring and retaining women in A/NTO, as described in Part V, Section A1, ''Organizational Overview'' of this notice.

(e) An organizational chart, resumes, or key personnel, and complete staffing plans. Resumes of all key staff (e.g., Executive Director, Project Director etc.) must include a description of each individual's roles and responsibilities, his/her current employment status and previous work experience, including position title, duties, dates in position, employing organizations and educational background. Staffing plans must identify all key tasks, the person(s) or days required to complete each task and the percentage of time allocated to the program by individuals assigned to the task, including sub-contractors and consultants.

(f) A list of all items for which grant funds will be expended *and what organization will be responsible for each item*. Only expenditure items, not cost information, should be included.

(g) The consortium of organizations must include a copy of the consortium agreement and must identify the consortium member that will act as the administrative entity for the project as well as the project lead. No member of a consortium shall make a separate application under this grant program. In addition, the agreement must specify the consortium's arrangements for handling the administrative and financial responsibilities for the program.

Note: Optional attachments will be counted toward the page limitation. Such optional attachments must be limited to meaningful information that contributes to and/or verifies the proposed activities, such as letters of commitment.

2. Requirements for the Cost Proposal

Application for Federal Assistance SF–424. The SF–424 must clearly identify the applicant and be signed by an individual with authority to enter into a grant agreement on behalf of the applicant. Upon confirmation of an award, the individual signing the SF–424 on behalf of the applicant shall represent the responsible entity. All

applications for Federal grant and funding opportunities are required to have a Dun and Bradstreet (DUNS) number. Applicants must supply their DUNS number in item #8 of SF–424. The DUNS number is easy to obtain and there is no charge. To obtain a DUNS number, access *http://www.dnb.com* or call 1–866–705–5711.

Budget Information for SF–424A. Standard Form 424A must contain a detailed cost break-out on each of the expenditures under Section B of the form, including Federal and non-Federal funds. As noted in Section II.A, the budget should be prepared for the first year of the grant. Copies of all required forms along with the instructions for completing the forms are provided at the appendices of this SGA.

Note: The Application for Federal Assistance (SF–424) is available at *http://www.grants.gov/techlib/424_20090131.doc* and the Budget Information Form (SF–424A) is available at *http://www.doleta.gov/sga/forms/form424a.pdf.*

EEO Survey. Applicants are also required to submit OMB Survey N. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants, which can be found at *http://www.doleta.gov/sga/forms.cfm.*

Cost Categories. Expenditures must fall under one of two cost categories: Administrative, which is to be divided between headquarters and local; and Program Costs, which includes wages, fringe benefits, and other participant costs.

Transition and Training Costs. Applicants are required to provide a line item for transition costs (i.e., start-up [costs], participant transfers, year-end closeout), as well as for sufficient training costs for local staff that may be required by the DOL ETA throughout the program year. Procurement procedures must comply with OMB Circular A–122, Cost Principles for Non-Profit Organizations, and any additional Federal cost principles, as applicable.

Applicants are to include in their cost proposal the cost of any requested travel to Washington, DC.

C. Submission Dates, Times and Addresses

Applications may be submitted in either method described below, and must be received no later than 4:45 p.m., Eastern Time on the closing date. The application will not be considered if an applicant fails to adhere to the submission instructions below.

Electronic Submissions. The Department requests that applicants apply online at *http://www.grants.gov.* The Department strongly recommends that applicants immediately initiate and complete the ''Get Started'' steps to register with grants.gov at *http://www.grants.gov/GetStarted.* Please note that these steps could take several days to complete, and this time should be factored into plans for electronic application submission in order to avoid facing unexpected delays that could result in the rejection of an application. Documents should be saved as .doc or .pdf prior to electronic submission through grants.gov.

U.S. Postal Mail and Overnight Submissions. Submit one (1) blue-ink signed, typewritten original of the application, and two (2) signed photocopies in one package to: U.S. Department of Labor, Employment and Training Administration, Attention: James Stockton, Mail Stop: N–4716, 200 Constitution Avenue, NW., Washington, DC 20210.

Other Methods of Submission. Applications submitted by email, telegram, or facsimile will not be accepted.

Late Applications. Any application received after the closing date will not be considered, unless it is received before awards are made and:

(a) It was sent by U.S. Postal Service registered or certified mail no later than the fifth calendar day before the closing date (*e.g.*, an application required by the 20th of the month must be postmarked by the 15th of that month); 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 the mishandling by the Federal Government after receipt at the U.S. Department of Labor at the address indicated.

Acceptable Evidence for Late Applications. 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 closing date and time shall be considered, as if mailed late.

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.

''Postmarked'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, with further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation, ''bull's eye,'' postmark on both the receipt and the envelope or wrapper.

Mail Advisory in the DC Area. All applicants are advised that U.S. mail delivery in the Washington, DC area is erratic. Packages addressed to the U.S. Department of Labor are subject to radiation screening before delivery. All applicants must take this into consideration when preparing to meet the application closing date, as each applicant assumes the risk for ensuring a timely submission of its application. The Department recommends that applicants confirm receipt of their applications by contacting James Stockton, U.S. Department of Labor, Employment and Training Administration, Office of Grants and Contract Management, telephone (202) 693–3335 before the closing date. This is not a toll-free number.

Applications may be withdrawn by written notice or telegram (including mailgram) at any time before the Department makes an award. An applicant may withdraw its submissions in person by the applicant or through an authorized representative of the applicant if: (1) The applicant makes the representative's identity known to the Grant Officer, and (2) the representative signs a receipt when he or she receives the withdrawn application.

D. Funding Restrictions

Administrative Costs. The primary use of grant funds should be to support the actual project. Therefore, applicants receiving grant funds under this solicitation may not use more than 10 percent of the amount requested for Administrative costs associated with the project. Administrative costs are defined at 20 CFR 667.220.

Indirect Cost Rate. An indirect cost rate is required when an organization operates under more than one grant or other activity whether federally-assisted or not. Organizations must use the indirect cost rate supplied by the cognizant Federal agency. If an organization requires a new indirect cost rate or has a pending indirect cost

rate, the Grant Officer will award a billing rate for 90 days until a provisional rate can be issued.

Allowable Costs. The Department shall determine what constitutes allowable costs in accordance with the following Federal cost principles, as applicable: (1) State and Local Government—OMB Circular A–87; (2) Educational Institutions—OMB Circular A–21; (3) Nonprofit Organizations—OMB Circular A–122; and (4) Profit-making Commercial Firms—48 CFR part 31.

Legal rules pertaining to inherently religious activities by organizations that receive Federal financial assistance. The government is generally prohibited from providing direct Federal financial assistance for inherently religious activities. See 29 CFR part 2, subpart D. Grants under this solicitation may not be used for religious instruction, worship, prayer, proselytizing, or other inherently religious activities. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of grant recipients and must be employed by grantees in the selection of sub-recipients.

V. Application Review Information

A. Evaluation Criteria

All applicants are required to use the rating criteria format when developing their proposals. The technical panel will review grant applications against the criteria listed below. Up to 135 points may be awarded to an application. This total is based on up to 100 points for the required information described in A.1, 2, and 3 below, and up to 35 bonus points for special program emphasis described in A.4 below. In order to receive full credit, applicants must provide quality information that does more than reiterate the requirement statement or merely state how it will be accomplished. Therefore, responses must be thoughtful and reflect a strategic vision for how these requirements will be achieved. In addition, an applicant that describes only what has been accomplished in the past but lacks full description what it will be doing during the grant period will not receive credit for the response.

Points Summary:

1. Organizational Overview—20 points.

2. Placement of Women in Registered Apprenticeship Programs—30 points.

3. Scope of WANTO Project and Projected Outcomes—50 points.

4. Bonus—35 points.

a. Incorporation of more than one RAP in the consortium—10 points.

b. Incorporation of more than one construction industry discipline in the RAP partners—5 points.

c. Incorporation of multiple geographic areas into the consortium—10 points.

d. Incorporation of Technology-Based Learning into the project to support/facilitate participant's training and preparation for apprenticeship—10 points. See Section VIII for a definition and examples of Technology-Based Learning.

1. Organizational Overview (Up to 20 Points)

The applicant must demonstrate its experience, capability and qualifications for administering a grant project. To be considered fully responsive, the applicant must address all of the following:

(a) Describe the consortium members' experience and leadership for the purpose of recruiting, selecting, training, placing and retaining women in apprenticeships in the construction industry.

(b) The applicant must describe how the management structure and staffing of the organization are aligned with the grant requirements, vision, and goals; and how the structure and staffing are designed to assure responsible general management of the organization.

(c) Identify all key tasks, the hours required for the completion of such tasks, and the persons responsible for completing each task.

(d) Indicate if tradeswomen or women in nontraditional occupations serve as active members of the consortium members, as either employed staff or as board members.

(e) Where applicable, differentiate between the applicant consortium and any proposed consultants or subcontractors, providing information on each of the above.

2. Placement of Women in Registered Apprenticeship Programs (Up to 30 Points)

The consortium must demonstrate how it will place 100 women in RAP(s) each year of the grant. For full credit under this element, the applicant must provide detailed information for the following:

(1) Strategies for identifying the occupations in which RAP(s) plan to train and employ women; (2) a description of the types of construction apprenticeable occupations in which the RAP(s) plans to train and employ women; (3) the number of apprentices registered by the RAP(s) per year for the last five years; and (4) assurances that there are or will be suitable and appropriate positions available in the construction industry RAP(s)

3. Scope of WANTO Project and Projected Outcomes (Up to 50 Points)

The applicant must demonstrate comprehensive, targeted, and effective technical assistance to be provided to the RAP(s) with WANTO funding. The OA and the WB consider the successful placement of 100 women in construction industry apprenticeships the primary successful outcome a grantee can achieve with WANTO funding.

To be considered fully responsive, the applicant must:

(a) Provide in detail the types of technical assistance (TA) that will be provided to the RAP(s). Examples of such TA include: (1) Outreach strategies and orientation sessions to recruit women into the RAP(s) occupations and specific openings in RAP(s); (2) pre-apprentice occupational skills training to prepare women for apprenticeship, including English as a Second Language instruction; (3) ongoing orientations for the RAP(s) and workers on creating a successful environment for women in apprenticeship; (4) support groups and facilitating networks for women in apprenticeship, on or off the job site, to improve their retention; (5) liaison services between tradeswomen and the RAP(s) to address workplace issues related to gender; and (6) conducting exit interviews with tradeswomen to evaluate their on-the-job experience and to assess the effectiveness of the program.

(b) Document any leveraged resources or funding anticipated for the accomplishment of the proposed project and a description of how the funds will be used.

(c) Describe the outcomes the applicant anticipates as a result of WANTO funding. This must include the number of women to be placed in: (1) pre-apprenticeships, and (2) apprenticeships.

4. Bonus Points (Up to 35 Points)

Bonus points will be awarded for proposals that demonstrate experience or indicate their plans to provide one or more of the following:

a. Incorporation of more than one RAP in the consortium. (10 points).

b. Incorporation of more than one construction industry discipline in the RAP partners. (5 points).

c. Inclusion of multiple geographical areas into the consortium. (10 points).

d. Incorporation of Technology-Based Learning into to support and facilitate the project participant's training and

preparation for apprenticeship. (10 points).

B. Review and Selection Process

Selection Process. The Grant Officer will organize evaluation panels to review and evaluate the applications, using the point scoring system and Rating Criteria format specified in Section A above. The Grant Officer will rank applications based on the score assigned by the panels through the evaluation process. The ranking will be the primary basis used to identify applicants as potential grantees; however, the review panel's recommendations are advisory in nature and not binding on the Grant Officer. The Government will consider applications rated by the evaluation panels with a score of 80 or above to be eligible for a grant award. Applicants that score less than 80 will not be eligible for a grant award.

Other Evaluation Factors. The submission of a successful previous application for a WANTO grant from any prior year does not guarantee an award under this solicitation. Final awards will be made based on the best interests of the Federal Government, including, but not limited to, such factors as technical quality, geographic balance, occupational and/or industrial impact, availability of funds, uniqueness of project and past grant performance. A previous grantee's failure to complete a WANTO grant project within the grant award period, or failure to provide required reports in a timely manner are aspects of past grant performance that may result in denial of a 2006 grant. The Federal Government reserves the right to ask for clarification or hold discussion, but may elect to award a grant without such discussion. Should a grant be awarded without discussions, the award will be based on the applicant's signature on the SF 424, which constitutes a binding offer by the applicant. The Grant Officer's determination of award under this SGA is the final agency action.

VI. Additional Award Administration Information

A. Award Notices

All award notifications will be posted on ETA Homepage (*http://www.doleta.gov*). The Grant Officer expects to announce the results of this competition approximately sixty days after the closing date for receipt of applications.

B. Administrative and National Policy Requirements

1. Administrative Program Requirements

All grantees, including faith-based organizations will be subject to all applicable Federal laws (available at *http://thomas.loc.gov*), regulations (available at *http://gpoaccess.gov/cfr*) and the applicable Office of Management and Budget (OMB) Circulars (available at *http://www.whitehouse.gov/omb/circulars*). The grants awarded under this SGA will be subject to administrative standards and provisions as applicable, including but not limited to, the following:

- All Grant Recipients—20 Code of Federal Regulations (CFR) Part 667.220 (Administrative Costs).
- Non-Profit Organizations—OMB Circulars A–122 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).
- Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).
- All entities must comply with 29 CFR Parts 37, 93, and 98, and where applicable 29 CFR Parts 96 and 99.

2. Administrative Standards and Provisions

Except as specifically provided, DOL ETA acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB Grants Management circulars require, and an entity's procurement procedures must require, that all procurement transactions will be conducted, as practical, to provide full and open competition. If a proposal identifies a specific entity to provide the services, the DOL ETA award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition.

C. Reporting

The grantee is required to provide the reports and documentation listed below.

Quarterly Financial Reports. A Quarterly Financial Status Report (SF 269) is required until such time as all funds have been expended or the grant period has expired. Quarterly reports are due 30 days after the end of each calendar year quarter. Grantees must use DOL ETA's On-Line Electronic Reporting System.

Quarterly Progress Reports. The grantee must submit a quarterly progress report to the designated Federal Project Officer within 30 days after the end of each calendar year quarter. Two copies are to be submitted providing a detailed account of activities undertaken during that quarter. DOL ETA may require additional data elements to be collected and reported on either a regular basis or special request basis. Grantees must agree to meet DOL ETA reporting requirements. The quarterly progress report should be in narrative form and should include:

(a) A comparison of actual accomplishments with the goals and objectives established for the period. This must include discussion of placements in pre-apprenticeship programs, apprenticeships and nontraditional jobs, giving the name and address of each workplace and company involved; and TA provided to RAP(s) as well as the nature of the TA provided.

(b) Reasons why established goals were not met, if appropriate.

(c) Any problems that may impede the performance of the grant and the proposed corrective action.

(d) Any changes in the proposed work to be performed during the next reporting period.

In addition, between scheduled reporting dates, the grantee(s) shall immediately inform the OA and the WB of significant developments affecting the ability to accomplish the work.

Final Report. No later than 90 days after the expiration of the grant award, the grantee(s) shall submit two copies of the camera-ready final report, each bound in a professional manner in a loose-leaf notebook. These materials must be paid for with grant funds. Instructions for the final report will be issued and may include performance data, outcome results, an assessment of the grant project, any employer or labor organization plans for follow-up of participants, and Executive Summary of no more than three (3) pages. Upon request of either the OA and the WB or the grantee, the grantee shall submit a draft final report no more than 60 days after to the expiration date of the grant. The OA and the WB will then review the draft report, and provide written comments to the grantee within 15 days of receipt.

VII. Agency Contacts

For further information regarding this SGA, please contact James Stockton, Grant Officer of the Division of Federal Assistance, at (202) 693–3335. This is not a toll-free number. Applicants may fax questions about the program or information in this SGA to (202) 693–2879 and must specifically address the fax to James Stockton and should include SGA/DFA PY–06–01, a contact name, fax and phone number, and an e-

mail address. The mailing address is: U.S. Department of Labor, Employment and Training Administration, Attention: James Stockton, Room N–4716, 200 Constitution Avenue, NW., Washington, DC 20210.

VIII. Other Information

A. Questions About the Program or SGA

Questions and responses submitted to the Grant Officer regarding this SGA will be posted on the Employment and Training Administration Web site at *http://www.doleta.gov/grants*. Questions will be received for one month after publication only. DOL ETA will not respond to duplicate questions or questions that are not within the scope of this SGA. Please do not direct questions to the OA or the WB.

B. Post Grant Award Conference

No later than eight (8) weeks after an award, the grantees shall meet with the OA and the WB at the Post-Award Conference to discuss the project, related components and TA; timelines; technical assistance outcomes; assessment for comment; and final approval. The grantees, the OA and the WB will discuss and make decisions on the following program activities:

1. The proposed TA commitments for registered apprenticeship, and related skilled nontraditional occupation activities and responsibilities; the number of targeted RAP(s); and the number of women who will become placed in a registered apprenticeship program.

2. The methodology the proposed partnership will use to support/change management and employee attitudes to promote female workers in A/NTO.

3. The types of systemic change anticipated by the TA strategies that will be incorporated into ongoing employer recruitment, hiring, training, and promotion of women in A/NTO.

4. The occupational, industrial, and geographical impact anticipated.

5. The supportive services to be provided to employers and women after successful placement into A/NTO.

The OA and the WB will provide further input orally or in writing, if necessary, within ten (10) working days after the Post-Award Conference.

C. Grant Plan of Action

If revisions have been necessary, no later than ten (10) weeks after an award, the grantees and the OA and the WB will confirm the ''plan of action'' and detailed time-line for program implementation.

D. Grant Implementation

No later than twelve (12) weeks after an award, the grantee(s) shall have begun to recruit, select, train, place, retain, and otherwise prepare women for registered apprenticeships in the construction industry, with progress to be measured in terms of placement and retention in registered apprenticeships.

E. Veterans Priority

The Jobs for Veterans Act (Pub. L. 107–288) provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the U.S. Department of Labor. In circumstances where WANTO grant recipient must choose between two equally qualified candidates for training, one of whom is a veteran, the Jobs for Veterans Act requires that WANTO grant recipients give the veteran priority of service by admitting him or her into the program. Please note that, to obtain priority of service, a veteran must meet the program's eligibility requirement. ETA Training and Employment Guidance Letter (TEGL) No. 5–03 (September 16, 2003) provides guidance on the scope of the Jobs for Veterans Act and its effect on current employment and training programs. TEGL No. 5–03, along with additional guidance, is available at the ''Jobs for Veterans Priority of Service'' Web site (*http://www.doleta.gov/programs/vets*).

F. Acronyms and Definitions

The following terms are defined for the convenience of prospective applicants:

WANTO refers to Women in Apprenticeship and Nontraditional Occupations.

A/NTO refers to apprenticeship and nontraditional occupations.

E/LU refers to employers and labor unions.

OA refers to the Office of Apprenticeship, U.S. Department of Labor, Employment and Training Administration.

WB refers to the Women's Bureau, U.S. Department of Labor.

TA refers to technical assistance.

NTO (Nontraditional Occupations) are those where women account for less than 25 percent of all persons employed in a single occupational group. For the most recent listing of nontraditional jobs, see the WB Web site at *http://www.dol.gov/wb/stats/main.htm*.

RAP refers to Registered Apprenticeship Program.

Pre-Apprenticeship Programs are those programs that prepare individuals for registered apprenticeship. Depending on the apprenticeable occupation for which the program is preparing students, the curriculum would vary. For example, a curriculum for a construction industry occupation may include pre-vocational identification and use of tools, blueprint reading, basic shop skills, safety procedures, math skills, and physical conditioning. English as a Second Language and team-building skills might also be included.

Registered Apprenticeship is a formal employment relationship designed to promote skill training and learning on the job. ''Hands on'' learning takes place in conjunction with related theoretical instruction (often in a classroom setting). An apprentice who successfully completes an OA registered program, which usually requires 3 to 5 years, is awarded a certificate of completion of apprenticeship. An OA registered program is one in which employers, or groups of employers, and unions design, organize, manage, and finance apprenticeship programs under the standards developed and registered with OA or an OA-recognized State Apprenticeship Agency. Employers, or groups of employers, and unions also select apprentices who are trained to meet certain predetermined occupational standards. For more information, see the OA Web site at *http://www.doleta.gov/oa/*.

CBO (Community-Based Organization) is a private nonprofit organization, which may be faith-based, that is representative of a community or a significant segment of a community, and which provides job-training services and has demonstrated experience administering programs that train women for A/NTO. (A CBO, as defined in the WANTO Act, means a ''community-based organization as defined in section 101(7) of the Workforce Investment Act of 1998 (29 U.S.C. 2801 (7)), that has demonstrated experience administering programs that train women for apprenticeable occupations or other nontraditional occupations.'' WIA states, ''The term 'community-based organizations' means 'private nonprofit organizations which are representative of communities or significant segments of communities and which provide job training services.' '' The WIA definition provides examples of organizations which meet the definition, including ''union-related organizations'' and ''employer-related nonprofit organizations.'')

Consortium refers to a group formed to undertake a project.

CBO/RAP Consortium refers to a group consisting of a minimum of: (1) A

construction industry registered apprenticeship program (RAP) sponsor; and (2) a CBO (which may be faith based) with demonstrated experience in securing job training services from established training institutions such as community colleges, and providing placement and support services to women in construction industry jobs.

Technology-Based Learning (TBL) can be defined as the learning of content via all-electronic technology, including the Internet, intranets, satellite broadcasts, audio and video tape, video and audio conference, Internet conferencing, chat rooms, bulletin boards, web casts, computer-based instruction, and CD–ROM. It encompasses related terms, such as online learning, Web-based learning, computer-based learning, and e-learning.

Signed at Washington, DC, this 6th day of February 2007.

James W. Stockton,

Grant Officer of the Division of Federal Assistance.

[FR Doc. E7–2400 Filed 2–12–07; 8:45 am]

BILLING CODE 4510–30–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 07–02]

Report on Countries That Are Candidates for Millennium Challenge Account Eligibility in Fiscal Year 2007 and Countries That Would Be Candidates but for Legal Prohibitions—Update

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: MCC is providing an update to the report originally submitted on August 11, 2006 and updated on October 18, 2006, to reflect a change in the statutory eligibility status of candidate countries.

Report on Countries That Are Candidates for Millennium Challenge Account Eligibility for Fiscal Year 2007 and Countries That Would Be Candidates but for Legal Prohibitions—Update

Report on Countries That Are Candidates for Millennium Challenge Account Eligibility for Fiscal Year 2007 and Countries That Would Be Candidates but for Legal Prohibitions—Update

Summary

MCC is providing an update to the report originally submitted on August 11, 2006, as updated on October 18, 2006, to reflect a change in the statutory eligibility status of candidate countries. This report to Congress is provided in accordance with section 608(a) of the Millennium Challenge Act of 2003, 22 U.S.C. 7701, 7707 (a) (''Act'').

The Act authorizes the provision of Millennium Challenge Account (''MCA'') assistance to countries that enter into compacts with the United States to support policies and programs that advance the progress of such countries toward achieving lasting economic growth and poverty reduction. The Act requires the Millennium Challenge Corporation (''MCC'') to take a number of steps in determining the countries that will be eligible for MCA assistance for fiscal year (FY) 2007, based on their demonstrated commitment to just and democratic governance, economic freedom, and investing in their people, and the opportunity to reduce poverty and generate economic growth in the country. These steps include the submission of reports to the congressional committees specified in the Act and the publication of notices in the **Federal Register** that identify:

1. The countries that are ''candidate countries'' for MCA assistance for FY 2007 based on their per capita income levels and their eligibility to receive assistance under U.S. law and countries that would be candidate countries but for specified legal prohibitions on assistance (section 608(a) of the Act);
2. The criteria and methodology that the MCC Board of Directors (''Board'') will use to measure and evaluate the relative policy performance of the ''candidate countries'' consistent with the requirements of subsections (a) and (b) of section 607 of the Act in order to select ''MCA eligible countries'' from among the ''candidate countries'' (section 608(b) of the Act); and
3. The list of countries determined by the Board to be ''MCA eligible countries'' for FY 2007, with a justification for such eligibility determination and selection for compact negotiation, including which of the MCA eligible countries the Board will seek to enter into MCA Compacts (section 608(d) of the Act).

This report is the first of three required reports listed above.

Candidate Countries for FY 2007

The Act requires the identification of all countries that are candidates for MCA assistance for FY 2007 and the identification of all countries that would be candidate countries but for specified legal prohibitions on assistance. Sections 606(a) and (b) of the Act provide that for FY 2007 a country shall be a candidate for the MCA if it:

- Meets one of the following two income level tests:
- Has a per capita income equal to or less than the historical ceiling of the International Development Association eligibility for the fiscal year involved (or $1,675 gross national income (GNI) per capita for FY 2007) (the ''low income category''); or
- Is classified as a lower middle income country in the then-most recent edition of the World Development Report for Reconstruction and Development published by the International Bank for Reconstruction and Development and has an income greater than the historical ceiling for International Development Association eligibility for the fiscal year involved (or $1,676 to $3,465 GNI per capita for FY 2007) (the ''lower middle income category''); and
- Is not ineligible to receive U.S. economic assistance under part I of the Foreign Assistance Act of 1961, as amended (''Foreign Assistance Act''), by reason of the application of the Foreign Assistance Act or any other provision of law.

Pursuant to section 606(c) of the Act, the Board has identified the following countries as candidate countries under the Act for FY 2007. In so doing, the Board has anticipated that prohibitions against assistance as applied to countries in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Pub. L. 109–102) (FY 2006 FOAA) will again apply for FY 2007, even though the Foreign Operations, Export Financing and Related Programs Appropriations Act for FY 2007 has not yet been enacted and certain findings under other statutes have not yet been made. As noted below, MCC will provide any required updates on subsequent changes in applicable legislation or other circumstances that affects the status of any country as a candidate country for FY 2007.

Candidate Countries: Low Income Category

1. Afghanistan
2. Angola
3. Armenia
4. Azerbaijan
5. Bangladesh
6. Benin
7. Bhutan
8. Bolivia
9. Burkina Faso
10. Burundi
11. Cameroon
12. Central African Republic
13. Chad

14. Comoros
15. Congo, Democratic Republic of the
16. Congo, Republic of the
17. Djibouti
18. East Timor
19. Egypt
20. Eritrea
21. Ethiopia
22. Gambia, The
23. Georgia
24. Ghana
25. Guinea
26. Guinea-Bissau
27. Guyana
28. Haiti
29. Honduras
30. India
31. Indonesia
32. Iraq
33. Kenya
34. Kiribati
35. Kyrgyzstan
36. Laos
37. Lesotho
38. Liberia
39. Madagascar
40. Malawi
41. Mali
42. Mauritania
43. Moldova
44. Mongolia
45. Mozambique
46. Nepal
47. Nicaragua
48. Niger
49. Nigeria
50. Pakistan
51. Papua New Guinea
52. Paraguay
53. Philippines
54. Rwanda
55. Sao Tome and Principe
56. Senegal
57. Sierra Leone
58. Solomon Islands
59. Sri Lanka
60. Tajikistan
61. Tanzania
62. Togo
63. Turkmenistan
64. Uganda
65. Ukraine
66. Vanuatu
67. Vietnam
68. Yemen
69. Zambia

Candidate Countries: Lower Middle Income Category

1. Albania
2. Algeria
3. Belarus
4. Brazil
5. Bulgaria
6. Cape Verde
7. Colombia
8. Dominican Republic
9. Ecuador
10. El Salvador
11. Guatemala
12. Jamaica
13. Jordan
14. Kazakhstan
15. Macedonia
16. Maldives
17. Marshall Islands
18. Micronesia, Federated States of
19. Montenegro
20. Morocco
21. Namibia
22. Peru
23. Samoa
24. Suriname
25. Swaziland
26. Tonga
27. Tunisia
28. Tuvalu

Countries That Would Be Candidate Countries but for Legal Prohibitions That Prohibit Assistance

Countries that would be considered candidate countries for FY 2007, but are ineligible to receive United States economic assistance under part I of the Foreign Assistance Act by reason of the application of any provision of the Foreign Assistance Act or any other provision of law are listed below. As noted above, this list is based on legal prohibitions against economic assistance that apply for FY 2006 and that are anticipated to apply again for FY 2007.

Prohibited Countries: Low Income Category

1. Burma is subject to numerous restrictions, including but not limited to section 570 of the FY 1997 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 104–208) which prohibits assistance to the government of Burma until it makes progress on improving human rights and implementing democratic government, and due to its status as a major drug-transit or major illicit drug producing country for 2005 (Presidential Determination No. 2005–36 (9/15/2005)) and a Tier III country under the Trafficking Victims Protection Act (Presidential Determination No. 2005–37 (9/21/2005)).

2. Cambodia's central government is subject to section 554 of the FY 2006 FOAA.

3. The Cote d'Ivoire is subject to section 508 of the FY 2006 FOAA which prohibits assistance to the government of a country whose duly elected head of government is deposed by decree or military coup.

4. Cuba is subject to numerous restrictions, including but not limited to section 620A of the Foreign Assistance Act which prohibits assistance to governments supporting international terrorism, provisions of the Cuban Liberty and Democratic Solidarity Act of 1996 (PL 104–114), and section 507 of the FY 2006 FOAA.

5. North Korea is subject to numerous restrictions, including but not limited to section 620A of the Foreign Assistance Act which prohibits assistance to governments supporting international terrorism, and section 507 of the FY 2006 FOAA.

6. Somalia is subject to section 620(q) of the Foreign Assistance Act and section 512 of the FY 2006 FOAA, which prohibit assistance to countries in default in payment to the U.S. in certain circumstances.

7. Sudan is subject to numerous restrictions, including but not limited to section 620A of the Foreign Assistance Act which prohibits assistance to governments supporting international terrorism, section 512 of the FY 2006 FOAA and section 620(q) of the Foreign Assistance Act which prohibit assistance to countries in default in payment to the U.S. in certain circumstances, section 508 of the FY 2006 FOAA which prohibits assistance to a country whose duly elected head of government is deposed by military coup or decree, and section 569 of the FY 2006 FOAA.

8. Syria is subject to numerous restrictions, including but not limited to section 620A of the Foreign Assistance Act which prohibits assistance to governments supporting international terrorism, section 507 of the FY 2006 FOAA, and section 512 of the FY 2006 FOAA and section 620(q) of the Foreign Assistance Act which prohibit assistance to countries in default in payment to the U.S. in certain circumstances.

9. Uzbekistan's central government is subject to section 586 of the FY 2006 FOAA, which requires that funds appropriated for assistance to the central government of Uzbekistan may be made available only if the Secretary of State determines and reports to the Congress that the government is making substantial and continuing progress in meeting its commitments under a framework agreement with the United States.

10. Zimbabwe is subject to section 620(q) of the Foreign Assistance Act and section 512 of the FY 2006 FOAA which prohibit assistance to countries in default in payment to the United States in certain circumstances.

Prohibited Countries: Lower Middle Income Category

1. Republika Srpska, which is part of the country of Bosnia and Herzegovina, is subject to section 561 of the FY 2006

FOAA, which prohibits assistance to any country, entity, or municipality whose competent authorities have failed, as determined by the Secretary of State, to take necessary and significant steps to implement its international legal obligations with respect to the International Criminal Tribunal for the former Yugoslavia.

2. China, according to the Department of State, is not eligible to receive economic assistance from the United States, absent special authority, because of concerns relative to China's record on human rights.

3. Fiji Islands are subject to section 508 of the FY 2006 FOAA which prohibits assistance to the government of a country whose duly elected head of government is deposed by decree or military coup.

4. Iran is subject to numerous restrictions, including but not limited to section 620A of the Foreign Assistance Act which prohibits assistance to governments supporting international terrorism, and section 507 of the FY 2006 FOAA.

5. Serbia is subject to section 561 of the FY 2006 FOAA, which prohibits assistance to any country, entity, or municipality whose competent authorities have failed, as determined by the Secretary of State, to take necessary and significant steps to implement its international legal obligations with respect to the International Criminal Tribunal for the former Yugoslavia. In addition, section 563 of the FY 2006 FOAA restricts certain assistance for the central Government of Serbia if the Secretary does not make a certification regarding, among other things, cooperation with the International Criminal Tribunal for the former Yugoslavia.

6. Thailand is subject to section 508 of the FY 2006 FOAA which prohibits assistance to the government of a country whose duly elected head of government is deposed by decree or military coup.

Countries identified above as candidate countries, as well as countries that would be considered candidate countries but for the applicability of legal provisions that prohibit U.S. economic assistance, may be the subject of future statutory restrictions or determinations, or changed country circumstances, that affect their legal eligibility for assistance under part I of the Foreign Assistance Act by reason of application of Foreign Assistance Act or any other provision of law for FY 2007. MCC will include any required updates on such statutory eligibility that affect countries' identification as candidate countries for FY 2007, at such time as it publishes the notices required by sections 608(b) and 608(d) of the Act or at other appropriate times. Any such updates with regard to the legal eligibility or ineligibility of particular countries identified in this report will not affect the date on which the Board is authorized to determine eligible countries from among candidate countries which, in accordance with section 608(a) of the Act, shall be no sooner than 90 days from the date of publication of this report.

Dated: February 7, 2007.

William G. Anderson, Jr.,

Vice President and General Counsel.

[FR Doc. E7–2446 Filed 2–12–07; 8:45 am]

BILLING CODE 9211–03–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 07–03]

Notice of Quarterly Report (October 1, 2006–December 31, 2006)

AGENCY: Millennium Challenge Corporation.

SUMMARY: The Millennium Challenge Corporation (MCC) is reporting for the quarter October 1, 2006 through December 31, 2006 with respect to both assistance provided under section 605 of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D (the Act)), and transfers of funds to other federal agencies pursuant to section 619 of that Act. The following report shall be made available to the public by means of publication in the **Federal Register** and on the Internet Web site of the MCC (*http://www.mcc.gov*) in accordance with section 612(b) of the Act.

ASSISTANCE PROVIDED UNDER SECTION 605

Projects	Obligated	Objectives	Quarterly disbursements	Measures
Country: Madagascar Year: 2007 Entity To Which The Assistance Is Provided: MCA Madagascar Total Quarterly Disbursement: $4,823,000				
Land Tenure Project	$37,803,000	Increase Land Titling and Security.	$0	Legislative proposal ("loin de cadrage") reflecting the PNF submitted to Parliament and passed Percentage of land documents inventoried, restored, and/or digitized. Average time and cost required to carry out property-related transactions at the local and/or national land services offices. Time/cost to respond to information request, issue titles and to modify titles after the first land right. Number of land disputes reported and resolved in the target zones and sites of implementation. Percentage of land in the zones that is demarcated and ready for titling. Promote knowledge and awareness of land tenure reforms among inhabitants in the zones (surveys).
Finance Project	$35,888,000	Increase Competition in the Financial Sector.	$0	Submission to Parliament and passage of new laws recommended by outside experts and relevant commissions. CPA Association (CSC) list of accountants registered. Maximum check clearing delay. Volume of funds in payment system and number of transactions.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objectives	Quarterly disbursements	Measures
Agricultural Business Investment Project.	$17,683,000	Improve Agricultural Projection Technologies and Market Capacity in Rural Areas.	$0	Public awareness of new financial instruments (surveys). Report of credit and payment information to a central database. Number of holders of new denomination T-bill holdings, and T-bill issuance outside Antananarivo as measured by Central Bank report of redemption date. Volume of production covered by warehouse receipts in the zones. Volume of MFI lending in the zones. MFI portfolio-at-risk delinquency rate. Number of new bank accounts in the zones. Number of rural producers receiving or soliciting information from ABCs about the opportunities. Zones identified and description of beneficiaries within each zone submitted. Number of cost-effective investment strategies developed. Number of plans prepared. Number of farmers and business employing technical assistance received.
Program Administration* and Control, Monitoring and Evaluation.	$18,399,000	.....	$0	
To be allocated**	$0	.....	$4,823,000	

Country: Honduras Year: 2007 Quarter 1
Total Obligation: $215,000,000
Entity To Which the Assistance Is Provided: MCA Honduras Total Quarterly Disbursement: $1,297,000

Rural Development Project	$72,195,000	Increase the productivity and business skills of farmers who operate small and medium-size farms and their employees.	$0	Hours of technical assistance delivered to Program Farmers (thousands) Funds lent by MCA-Honduras to financial institutions (cumulative). Hours of technical assistance to financial institutions (cumulative). Lien Registry equipment installed. Kilometers of farm-to-market road upgraded (cumulative).
Transportation Project	$125,700,000	Reduce transportation costs between targeted production centers and national, regional and global markets.	$0	Kilometers of highway upgraded. Kilometers of secondary road upgraded. Number of weight stations built.
Program Administration* and Control, Monitoring and Evaluation.	$17,105,000	.....	$0	
To be allocated**	$0	.....	$1,297,000	

Country: Cape Verde Year: 2007
Entity To Which the Assistance Is Provided: MCA Cape Verde Total Quarterly Disbursement: $0

Watershed and Agricultural Support.	$10,848,000	Increase agricultural production in three targeted watershed areas on three islands.	$0	Productivity: Horticulture (tons per hectare). Value-added for farms and agribusiness (millions of dollars).
Infrastructure Improvement	$78,760,000	Increase integration of the internal market and reduce transportation costs.	$0	Volume of goods shipped between Praia and other islands (tons). Mobility Ratio: Percentage of beneficiary population who take at least 5 trips per month. Savings on transport costs from improvements (million dollars).

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objectives	Quarterly disbursements	Measures
Private Sector Development.	$7,200,000	Spur private sector development on all islands through increased investment in the priority sectors and through financial sector reform.	$0	Value added in priority sectors above current trends (escudos). Volume of private investment in priority sectors above current trends.
Program Administration* and Control, Monitoring and Evaluation.	$13,270,000	.....	$0	
Country: Nicaragua Year: 2007 Quarter 1 Total Obligation: $174,925,000 Entity To Which the Assistance Is Provided: MCA Nicaragua Total Quarterly Disbursement: $1,316,000				
Property Regularization Project.	$26,400,000	Increase Investment by strengthening property rights.	$0	Automated registry-cadastre database installed Number of parcels with a registered title, rural and urban (total of 21,000 and 22,000, rural and urban, respectively). Projected areas demarcated. Number of projected area management plans implemented. Number of conflicts resolved by program mediation.
Transportation Project	$92,800,000	Reduce transportation costs between Leon and Chinandega and national, regional and global markets.	$0	N–1 Road: Kilometers of road upgraded. Secondary Roads: Kilometers of secondary road upgraded.
Rural Business Development Project.	$33,500,000	Increase the value added of farms and enterprises in the region.	$0	Rural business development centers: Value of TA and support services delivered to program businesses. Improvement of water supply for farming and forest production: Watershed Management Action Plan. Funds disbursed for improvement of water supply for farming and forest production projects.
Program Administration*, Due Diligence, Monitoring and Evaluation.	$22,225,000	.....	$0	
To be allocated**	$0	.....	$1,316,000	
Country: Georgia Year: 2007 Quarter 1 Total Obligation: $294,693,000 Entity To Which the Assistance Is Provided: MCA Georgia Total Quarterly Disbursement: $11,768,000				
Regional Infrastructure Rehabilitation.	$211,700,000	Key Regional Infrastructure Rehabilitated.	$0	Reduction in journey time: Akhalkalaki-Ninotsminda-Teleti (hours). Reduction in vehicle operating costs (cumulative). Increase in internal regional traffic volumes (cumulative). Decreased technical losses. Reduction in the production of greenhouse gas emissions measured in tons of CO2 equivalent. Increased in collection rate of GGIC. Number of household beneficiaries served by RID projects (cumulative). Actual operations and maintenance expenditures (USD).
Regional Enterprise Development.	$47,500,000	Enterprises in Regions Developed.	$0	Increase in annual revenue in portfolio companies (in (1,000 USD). Increase in number of portfolio company employees and number of local suppliers. Increase in portfolio companies' wages and payments to local suppliers (in 1,000 USD). Jobs created. Increase in aggregate incremental net revenue to project assisted firms (in 1,000 USD and cumulative over five years). Direct household net income (in 1,000 USD cumulative over five years). Direct household net income for market information initiative beneficiaries (in 1,000 USD cumulative over five years).

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objectives	Quarterly disbursements	Measures
				Number of beneficiaries.
Program Administration*, Due Diligence, Monitoring and Evaluation.	35,493,000	.....	$0	
To be allocated**	$0	.....	$11,768,000	
Country: Vanuatu Year: 2007 Quarter 1 Total Obligation: $65,690,000				
Entity To Which the Assistance Is Provided: MCA Vanuatu Total Quarterly Disbursement:				
Transportation Infrastructure Project.	$60,690,000	Facilitate transportation to increase tourism and business development.	$0	Traffic volume (average annual daily traffic). Days road is closed (number per annum). Number of S–W Bay, Malekula flights cancelled due to flooding (per annum). Time of wharf (hours/vessel).
Program Administration*, Due Diligence, Monitoring and Evaluation.	$5,000,000	.....	$0	
Country: Armenia Year: 2007 Quarter 1 Total Obligation: $235,150,000 Entity To Which the Assistance Is Provided: MCA Armenia Total Quarterly Disbursement: $882,000				
Irrigated Agriculture Project	$145,680,000	Increase agricultural productivity and improve quality of irrigation.	$0	Increase in hectares covered by HVA crops (i.e., vegetables, potato, fruits, grapes). Percentage of respondents satisfied with irrigation services. Share of WUA water charges compared WUA annual operations and maintenance cost (percentage). Number of farmers using better on-farm water management: drip irrigation; ET Gage, and soil moisture monitoring. Loans provided under the project (USD in thousands).
Rural Road Rehabilitation Project.	$67,100,000	Better access to economic and social infrastructure.	$0	Annual increase in irrigated land in Project area (hectares). State budget expenditures on maintenance of irrigation system (AMD in millions). Reduction in kilowatt hours used (thousand KWh). Share of water losses compared to total water intake (percentage). Share of WUA water charges compared to WUA annual operations and maintenance cost (percentage).
Program Administration*, Due Diligence, Monitoring and Evaluation.	$22,370,000	.....	$0	
To be allocated**	$0	.....	$882,000	
Country: Benin Year: 2007 Quarter 1 Total Obligation: $305,761,000 Entity To Which the Assistance Is Provided: MCA Benin Total Quarterly Disbursement: $2,097,000				
Access to Financial Services.	$19,650,000	Expand Access to Financial Services.	$0	Strengthen capacity of select financial institutions. Strengthen monitoring capacity of Supervisory Authority. Total incremental increase in value of new credit extended and savings received by financial institutions participating in the project. Share value of all loans outstanding that have one or more installments of principal past due over 30 days. Total number of loans guaranteed by land titles, per year.
Access to Justice	$34,270,000	Improved Ability of Justice System to Enforce Contracts and Reconcile Claims.	$0	Increase efficiency and improved services of courts and the arbitration center. Increase access to court system.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objectives	Quarterly disbursements	Measures
				Improve enterprise registration center.
Access to Land	$36,020,000	Strengthen property rights and increase investment in rural and urban land.	$0	Value of investments made to rural land parcels per year; land investment data will come from self-reported data through EMICoV. Value of investments made to urban land parcels per year; land investment data will come from self-reported data through EMICoV.
Access to Markets	$168,020,000	Improve Access to Markets through Improvements to the Port of Cotonou.	$0	Total volume of exports and imports passing through Port of Cotonou, per year in million metric tons.
Program Administration*, Due Diligence, Monitoring and Evaluation.	$22,370,000		$0	
To be allocated**	$0		$2,097,000	

619 Transfer Funds

U.S. Agency to which funds were transferred	Amount	Country	Description of program or project
USAID	$149,670,094		Threshold Program.

*Program administration funds are used to pay items such as salaries, rent, and the cost of office equipment.
**These amounts represent disbursements made that will be allocated to individual projects in the subsequent quarter(s) and reported as such in subsequent quarterly report(s).

Dated: February 7, 2007.

Frances C. McNaught,

Vice President, Congressional & Public Affairs, Millennium Challenge Corporation.

[FR Doc. E7–2447 Filed 2–12–07; 8:45 am]

BILLING CODE 9211–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Thursday, February 15, 2007.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Quarterly Insurance Fund Report.
2. Report to Congress on the Study of Possible Changes to the Deposit Insurance System.
3. Appeal from Delaware Federal Credit of the Regional Director's Denial of Conversion from a Multiple Common Bond to a Community Charter.
4. Final Rule: Part 701 of NCUA's Rules and Regulations, General Lending Maturity Limit and Other Financial Services.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. 07–653 Filed 2–8–07; 4:20 pm]

BILLING CODE 7535–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

Agenda

TIME AND DATE: 9:30 a.m., Wednesday, February 21, 2007.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED: 7774A: Highway Accident Report—Motorcoach Fire on Interstate 45 During Hurricane Rita Evacuation, Near Wilmer, Texas, September 23, 2005.

NEWS MEDIA CONTACT: Public Affairs, Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Chris Bisett at (202) 314–6305 by Friday, February 16, 2007.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: February 9, 2007.

Vicky D'Onofrio,

Federal Register Liaison Officer

[FR Doc. 07–682 Filed 2–9–07; 1:53 pm]

BILLING CODE 7533–01–M

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 January 19, 2007, to February 1, 2007. The last biweekly notice was published on January 30, 2007 (72 FR 4304).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the

following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 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)7ndash;(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 26, 2006.

Description of amendment request: The proposed change deletes reference to the containment fan cooler (CFC) condensate flow switch from Technical Specification (TS) 3.4.5.1, ''Reactor Coolant System Leakage—Leakage Detection Instrumentation,'' and to modify or delete associated 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. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Reactor Coolant System (RCS) leakage detection systems are passive monitoring systems therefore the proposed changes do not affect reactor operations or accident analyses and have no radiological consequences. The proposed change continues to require diverse methods of monitoring leakage. The gaseous radioactivity monitor, although not included in the TSs and the CFC condensate flow switches, which are proposed for removal from the TSs, will be maintained functional and available.

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 introduces no new mode of plant operation or any plant modification. The RCS leakage detection instrumentation is used solely for monitoring purposes and is not part of plant control instruments or engineered safety feature actuation circuits. The change does not vary or affect any plant operating condition or parameter.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not modify any of the RCS leakage detection instrumentation. The proposed change continues to require diverse methods of monitoring leakage. In addition, although not required by TS, multiple means of diverse monitoring RCS leakage will remain functional and available.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: David Terao.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: January 18, 2007.

Description of amendment request: The proposed change will revise the description of Grand Gulf Nuclear Station Technical Specification 4.2.2, ''Control Rod Assemblies,'' to allow to the use of hafnium as an additional type of control material.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The NRC has specifically approved the use of hafnium as neutron absorbing material for use in BWR [boiling-water reactor] control rod assemblies. The use of hafnium in control rods as a neutron absorber material does not significantly alter the neutronic or mechanical functional characteristics of the control rods. Control rod designs using hafnium have been successfully used in other BWRs. Since control rods that utilize hafnium have a longer lifetime, the probability of some accidents involving the handling, on-site storage, and shipping of irradiated rods will actually be reduced. The proposed change does not alter the required number of control rods nor does it affect any of the specifications related to the control rods (e.g., the shutdown margin and scram timing requirements are unaffected).

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 application of a control rod design using hafnium as an absorber material does not produce any new mode of plant operation or alter the control rods in such a way as to affect their function or operability since the new control rods are designed to be compatible with the existing control rods.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not significantly affect the neutronic or mechanical characteristics of the control rods since the hafnium containing controls rods are designed to be compatible with the existing design and reload licensing criteria; therefore, there is no significant change in the margin of safety. It does not change the required number of existing control rods. It does not affect the existing Technical Specifications related to control rods (e.g., required shutdown margin and scram time, etc.).

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: David Terao.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant (CR–3), Citrus County, Florida

Date of amendment request: October 11, 2006.

Description of amendment request: The proposed amendment would modify the plant Improved Technical Specifications (ITSs) to implement a more conservative requirement in ITS 3.7.7, ''Nuclear Services Closed Cycle Cooling Water (SW) System.'' The current Action A allows the plant to operate for up to 72 hours before initiating a shutdown when one required SW heat exchanger is inoperable. The proposed revision will only allow operation to continue for 8 hours before initiating a shutdown when one required SW heat exchanger is inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The limiting design basis accident for CR–3 includes, as an assumption, adequate heat removal capability by the SW system. The amendment is being proposed to ensure the SW system performs its design basis function. Adequate heat removal is provided by three OPERABLE SW heat exchangers. The 8 hour completion time will reduce the window that the plant can operate with only two SW heat exchangers before a shutdown is required. The proposed change does not increase the probability of an accident previously evaluated since the amendment is not a modification to plant systems, nor a change to plant operation that could initiate an accident. Therefore, granting the LAR [license amendment request] does not involve a significant increase in the probability or consequences of an accident previously evaluated. The dose consequences of all design basis accidents are unchanged by this proposed amendment.

(2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated?

The function of the SW system considered in the design basis is to remove process and operating heat from safety-related components during normal as well as transient conditions. The proposed amendment to limit the allowed ACTION Completion Time to 8 hours will ensure the function of the SW system is consistent with the design basis and will not result in changes to the design, physical configuration of the plant or the assumptions made in the safety analysis. The requirement does not change the function of the system nor its ability to perform its design function. No alteration to plant configuration or operation is proposed. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does not involve a significant reduction in a margin of safety?

CR–3's design basis considers adequate heat removal by the SW system to cool the containment fan assembly cooling coils and fan motors, spent fuel pool, SW pump motors and other equipment which must function following an accident. This proposed amendment will not alter the current design basis. By limiting the allowed ACTION Completion Time to 8 hours, the proposed amendment to ITS 3.7.7 will limit the time the safety function of the SW system can be compromised. Therefore, the amendment does not result in a reduction of the margin of safety.

The NRC staff has reviewed the analysis provided for Florida Power Corporation 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: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief (Acting): Margaret H. Chernoff.

GPU Nuclear, Inc., Docket No. 50–320, Three Mile Island Nuclear Station, Unit 2, Dauphin County, Pennsylvania

Date of amendment request: December 13, 2006.

Description of amendment requests: The amendment application proposes to delete Technical Specification (TS) 6.8.1.3, which provides the requirement for submittal of the annual occupational radiation exposure report.

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? No

The proposed change eliminates the Technical Specification reporting requirement for occupational radiation exposure information, which is in excess to that required to be submitted by regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents. 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? No

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety? No

This change is an administrative change to reporting requirements of occupational radiation exposure data and will not reduce a margin of safety because it has no effect on any safety analyses assumptions. Hence, this change is administrative in nature. For these reasons, the proposed change does 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.

NRC Branch Chief: Claudia Craig.

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 amendment request: December 21, 2006.

Description of amendment request: The proposed amendment revises the licensing basis to reflect a revision to the spent fuel pool criticality analysis methodology and a new criticality analysis. In addition, associated changes are proposed to Technical Specifications 3.7.12, ''Spent Fuel Storage,'' and 4.3.1, ''Criticality,'' to reflect the results of the new criticality analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

Operation of the facility in accordance with the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated. The presence of soluble boron in the Spent Fuel Pool (SFP) water being used for criticality control does not increase the probability of a dropped fuel assembly accident within the pool. The handling of the fuel assemblies in the SFP has always been performed and will continue to be performed in borated water.

There is no increase in the probability of the accidental misloading of fuel assemblies into the SFP fuel storage racks when considering the presence of soluble boron in the pool water for criticality control. Fuel assembly placement will continue to be controlled pursuant to approved fuel handling procedures and in accordance with the spent fuel storage rack limitations specified in the Technical Specifications (TS). There is no increase in the consequences for an accidental misloading of fuel assemblies in the SFP fuel storage racks because the criticality analyses demonstrate that the pool will remain subcritical following an accidental misloading.

Soluble boron credit is used to provide margin to offset uncertainties, tolerances, and off-normal/accident conditions, and to provide subcritical margin such that the SFP k_{eff} [effective neutron multiplication constant] is maintained less than or equal to 0.95. The plant-specific criticality analysis results demonstrate that the spent fuel rack k_{eff} will remain<1.0 (at a 95/95 percent probability and confidence level) even with the SFP flooded with unborated water.

There is no increase in the probability of the loss of normal cooling to the SFP water when considering the presence of soluble boron in the pool water for subcriticality control since a high concentration of soluble boron has always been maintained in the SFP water.

A loss of normal cooling to the SFP water causes an increase in the temperature of the water passing through the stored fuel assemblies. This causes a decrease in water density, which would result in a net increase in reactivity when soluble boron is present in the water. However, the additional negative reactivity provided by the 2100 ppm [parts per million] boron concentration limit, above that provided by the concentration required (805 ppm) to maintain k_{eff} less than or equal to 0.95, will compensate for the increased reactivity which could result from a loss of SFP cooling event. Because adequate soluble boron will be maintained in the SFP water the consequences of a loss of normal cooling to the SFP will not be increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

Under the proposed amendment, no changes are being made to the fuel storage racks themselves, to any other systems, or to the physical structures of the Primary Auxiliary Building. Therefore, there are no changes proposed to the plant configuration, equipment design, or installed equipment.

Criticality accidents in the SFP are not new or different types of accidents. They have been analyzed in the FSAR [Final Safety Analysis Report] and in fuel storage criticality analysis reports associated with specific licensing amendments. The proposed new SFP storage limitations are consistent with the assumptions made in the new criticality analysis, and will not have any significant effect on normal SFP operations and maintenance, and do not create the possibility of a new or different kind of accident. Verifications will continue to be performed to ensure that the SFP loading configuration meets specified requirements.

The current TS includes a SFP boron concentration limit that conservatively bounds the boration assumption of the new criticality analysis. Since soluble boron has always been maintained in the SFP water, implementation of this requirement for SFP criticality control purposes has have no effect on normal pool operations and maintenance. Also, since soluble boron has always been present in the SFP, a dilution event has always been a possibility. The loss of substantial amounts of soluble boron from the SFP that could lead to k_{eff} exceeding 0.95 was evaluated as part of the analyses in support of this license amendment request. The evaluation demonstrates that a dilution of the SFP boron concentration from the minimum TS concentration of 2100 to 805 ppm is not credible.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed amendment result in a significant reduction in a margin of safety?

Response: No

The proposed Technical Specification changes providing the resulting spent fuel storage operation limits provide adequate safety margin to ensure that the stored fuel assembly array always remains subcritical. These limits are based on a plant-specific criticality analysis performed in accordance with the present Westinghouse spent fuel rack criticality analysis methodology which allows credit for soluble boron.

The criticality analysis takes credit for soluble boron to ensure that k_{eff} will be less than or equal to 0.95 under normal circumstances. While the criticality analysis used credit for soluble boron, storage configurations have been defined using 95/95 k_{eff} calculations to ensure that the spent fuel rack k_{eff} is less than unity (0.995) with no soluble boron. Soluble boron credit is used to provide safety margin to offset uncertainties, tolerances, and off-normal/accident conditions, and to provide subcritical margin such that the SFP k_{eff} is maintained less than or equal to 0.95.

The loss of substantial amounts of soluble boron from the SFP that could lead to k_{eff} exceeding 0.95 was evaluated as part of the analyses in support of this license amendment request. The evaluation demonstrates that a dilution of the SFP boron concentration from the minimum TS concentration of 2100 to 805 ppm is not credible. Also, the plant-specific criticality analysis results demonstrate that even if a complete dilution were to occur the spent fuel rack k_{eff} would remain <1.0 (at a 95/95 percent probability and confidence level) with the SFP flooded with unborated water. The plant-specific criticality analysis performed in accordance with the conservative analysis methodology of the Westinghouse licensing topical report demonstrates that the requirements of 10 CFR 50.68 and 10 CFR 50, Appendix A, General Design Criterion 62 will be satisfied. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Acting Branch Chief: Patrick D. Milano.

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 amendment request: December 29, 2006.

Description of amendment request: The proposed amendments would

revise Technical Specification (TS) 5.5.8 to indicate that the Inservice Testing Program shall include testing frequencies applicable to the American Society of Mechanical Engineers Code for Operations and Maintenance (ASME OM Code), and to indicate that there may be some non-standard frequencies specified as 2 years or less in the Inservice Testing Program to which the provisions of Surveillance Requirement (SR) 3.0.2 are applicable. The proposed changes are consistent with NRC-approved Technical Specification Task Force (TSTF) Travelers TSTF–479, Revision 0, ''Changes to Reflect Revision of 10 CFR 50.55a,'' and TSTF–497, Revision 0, ''Limit Inservice Testing Program SR 3.0.2 Application to Frequencies of 2 Years or Less.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes revise TS 5.5.8, ''Inservice Testing Program,'' for consistency with 10 CFR 50.55a(f)(4) requirements regarding inservice testing of pumps and valves. The proposed change incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves.

The proposed changes do not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. They do not involve the addition or removal of any equipment, or any design changes to the facility. Therefore, the proposed changes do not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. [Do] the proposed change[s] create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed changes do not involve a modification to the physical configuration of the plant (i.e., no new equipment will be installed) or change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. Additionally, there is no change in the types or increases in the amounts of any effluent that may be released off-site and there is no increase in individual or cumulative occupational exposure. Therefore, this proposed change does not create the possibility of an accident of a different kind than previously evaluated.

3. [Do] the proposed change[s] involve a significant reduction in a margin of safety?

Response: No

The proposed changes revise TS 5.5.8, ''Inservice Testing Program,'' for consistency with the requirements of 10 CFR 50.55a(f)(4) regarding the inservice testing of pumps and valves. The proposed change incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves. The safety function of the affected pumps and valves will be maintained. Therefore, this 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 requests involve no significant hazards consideration.

Attorney for licensee: Antonio Fernandez, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Branch Chief: David Terao.

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 amendment requests: December 29, 2006.

Description of amendment requests: The proposed amendments will revise Technical Specification (TS) 5.5.16 for consistency with the requirements of 10 CFR 50.55a(g)(4) for components classified as Code Class CC. This regulation requires licensees to update their containment inservice inspection requirements in accordance with Subsections IWE and IWL of Section XI, Division I of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code as limited by 10 CFR 50.55a(b)(2)(vi) and modified by 10 CFR 50.55a(b)(2)(viii) and 10 CFR 50.55a(b)(2)(ix). This license amendment request is consistent with NRC-approved Industry/Technical Specification Task Force (TSTF) Traveler number TSTF–343, ''Containment Structural Integrity.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the Technical Specification (TS) administrative controls programs for consistency with the requirements of 10 CFR [Part] 50, paragraph 55a(g)(4) for components classified as Code Class CC.

The proposed change affects the frequency of visual examinations that will be performed for the concrete surfaces of the containment for the purpose of the Containment Leakage Rate Testing Program. In addition, the proposed change allows those examinations to be performed during power operation as opposed to during a refueling outage. The frequency of visual examinations of the concrete surfaces of the containment and the mode of operation during which those examinations are performed has no relationship to or adverse impact on the probability of any of the initiating events assumed in the accident analyses. The proposed change would allow visual examinations that are performed pursuant to NRC-approved ASME [Code,] Section XI requirements (except where relief has been granted by the NRC) to meet the intent of visual examinations required by Regulatory Guide 1.163, without requiring additional visual examinations pursuant to the Regulatory Guide. The intent of early detection of deterioration will continue to be met by the more rigorous requirements of the Code-required visual examinations. As such, the safety function of the containment as a fission product barrier is maintained.

The proposed change does not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. It does not involve the addition or removal of any equipment, or any design changes to the facility.

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 accident from any accident previously evaluated?

Response: No.

The proposed change revises the TS Administrative Controls programs for consistency with the requirements of 10 CFR [Part] 50, paragraph 55a(g)(4) for components classified as Code Class CC.

The change affects the frequency of visual examinations that will be performed for the concrete surfaces of the containments. In addition, the proposed change allows those examinations to be performed during power operation as opposed to during a refueling outage. The proposed change does not involve a modification to the physical configuration of the plant (*i.e.*, no new equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or a malfunction mechanism. Additionally, there is no change in the types or increases in the amounts of any effluent that may be released offsite and there is no increase in individual or cumulative occupational exposure.

Therefore, the proposed change does not create the possibility of a new or different kind 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 change revises the TS Administrative Controls programs for consistency with the requirements of 10 CFR [Part] 50, paragraph 55a(g)(4) for components classified as Code Class CC.

The change affects the frequency of visual examinations that will be performed for the concrete surfaces of the containments. In addition, the proposed change allows those examinations to be performed during power operation as opposed to during a refueling outage. The safety function of the containment as a fission product barrier will be maintained.

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 requests involve no significant hazards consideration.

Attorney for licensee: Antonio Fernández, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Branch Chief: David Terao.

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 amendment requests: December 29, 2006.

Description of amendment requests: The proposed amendments will revise Technical Specification (TS) 3.4.1, ''RCS [Reactor Coolant System] Pressure, Temperature, and Flow Departure from Nucleate Boiling (DNB) Limits,'' and TS 5.6.5, ''CORE OPERATING LIMITS REPORT (COLR). This license amendment request proposes to relocate the RCS DNB parameters for pressurizer pressure and RCS average temperature to the COLR. This relocation is consistent with Technical Specification Task Force Traveler TSTF–339, Revision 2, ''Relocate TS Parameters to COLR.'' TS 5.6.5 is revised to add topical reports WCAP–8567–P–A, ''Improved Thermal Design Procedure,'' and WCAP–11596–P–A, ''Qualification of the PHOENIX–P/ANC Nuclear Design System for Pressurized Water Reactor Cores,'' by name and title only. These changes are consistent with TSTF–363, Revision 0, ''Revise Topical Report References in ITS 5.6.5, COLR.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [Do] the proposed change[s] involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes are programmatic and administrative in nature, and do not physically alter safety-related systems or affect the way in which safety-related systems perform their functions. The proposed changes relocate cycle-specific parameters from Technical Specification (TS) 3.4.1 to the Core Operating Limits Report (COLR). This does not change plant design or affect system operating parameters. The proposed changes do not, by themselves, alter any of the parameters. Removal of the cycle-specific parameters from the TS does not eliminate existing requirements to comply with the parameters. Also, TS 5.6.5 is revised to add topical reports WCAP–8567–P–A, ''Improved Thermal Design Procedure,'' and WCAP–11596–P–A, ''Qualification of the PHOENIX–P/ANC Nuclear Design System for Pressurized Water Reactor Cores,'' as they are approved analytical methods for determining core operating limits.

Although relocation of the cycle-specific parameters to the COLR would allow revision of the affected parameters without prior NRC approval, there is no significant effect on the probability or consequences of an accident previously evaluated. Future changes to the COLR parameters could result in event consequences that are either slightly less or slightly more severe than the consequences for the same event using the present parameters. The differences would not be significant and would be bounded by the existing requirement of TS 5.6.5c to meet the applicable limits of the safety analyses.

The cycle-specific parameters being transferred from the TS to the COLR will continue to be controlled under existing programs and procedures. The Final Safety Analysis Report Update (FSARU) accident analyses will continue to be examined with respect to changes in the cycle-dependent parameters obtained using NRC reviewed and approved reload design methodologies to ensure that the transient evaluation of new reload designs are bounded by previously accepted analyses. This examination will continue to be performed pursuant to 10 CFR 50.59 requirements, ensuring that future reload designs use NRC-approved methodologies and do not involve more than a minimal increase in the probability or consequences of an accident previously evaluated in the FSARU.

The proposed changes do not allow for an increase in plant power levels, do not increase the production, and do not alter the flow path or method of disposal of radioactive waste or byproducts. Therefore, the proposed changes do not change the type or increase the amount of effluents released offsite.

The proposed changes to TS 5.6.5b to reference only the topical report number and title for five of the topical reports do not alter the analytical methods that have been previously reviewed and approved by the NRC. This method of referencing topical reports would allow the use of current topical reports to support limits in the COLR without having to submit a request for an amendment to the operating license. Implementation of revisions to these topical reports would still be reviewed in accordance with 10 CFR 50.59 and, where required, revisions would be submitted to the NRC for approval prior to implementation.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. [Do] the proposed change[s] create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

The proposed changes that relocate cycle-specific parameters from the TS to the COLR, thus removing the requirement for prior NRC approval of revisions to those parameters, do not involve a physical change to the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. No changes are being made to the parameters within which the plant is operated, other than their relocation to the COLR. No protective or mitigative action setpoints are affected by the proposed changes. The proposed changes will not alter the manner in which equipment operation is initiated, nor will the functional demands on credited equipment be changed. No change to procedures that ensure the plant remains within analyzed limits are being proposed, and no change is being made to procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced.

Relocation of cycle-specific parameters does not influence, impact, or contribute in any way to the possibility of a new or different kind of accident. The relocated cycle-specific parameters will continue to be calculated using the NRC-reviewed and approved methodology. The proposed changes do not alter assumptions made in the safety analysis, and operation within the core operating limits will continue.

The proposed changes to reference only the topical report number and title do not alter the use of the analytical methods that have been previously reviewed and approved by the NRC. This method of referencing topical reports would allow the use of current topical reports to support limits in the COLR without having to submit a request for an amendment to the operating license. Implementation of revisions to topical reports would still be reviewed in accordance with 10 CFR 50.59 and, where required, would receive NRC review and approval.

The addition of WCAP–8567–P–A and WCAP–11596–P–A to TS 5.6.5 is a clarification to provide a complete listing of approved analytical methods used for determining core operating limits.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. [Do] the proposed change[s] involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are

initiated. The proposed changes do not physically alter safety-related systems, nor do they affect the way in which safety-related systems perform their functions. No protective or mitigative action setpoints are affected by the proposed changes. Therefore, sufficient equipment remains available to actuate upon demand for the purpose of mitigating an analyzed event. As the proposed changes to relocate cycle-specific parameters to the COLR will not affect plant design or system operating parameters, there is no detrimental impact on any equipment design parameter, and the plant will continue to be operated within prescribed limits.

The development of cycle-specific parameters for future reload designs will continue to conform to NRC-reviewed and approved methodologies, and will be performed pursuant to 10 CFR 50.59 to assure that the plant operates within cycle-specific parameters.

The proposed changes to reference only the topical report number and title do not alter the use of the analytical methods used to determine core operating limits that have been reviewed and approved by the NRC. This method of referencing topical reports would allow the use of current NRC-approved topical reports to support limits in the COLR without having to submit a request for an amendment to the operating license. Implementation of revisions to topical reports would still be reviewed in accordance with 10 CFR 50.59 and, where required, receive NRC review and approval.

The addition of WCAP–8567–P–A and WCAP–11596–P–A to TS 5.6.5 is a clarification to provide a complete listing of approved analytical methods used for determining core operating limits.

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 requests involve no significant hazards consideration.

Attorney for licensee: Antonio Fernández, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Branch Chief: David Terao.

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 amendment requests: January 11, 2007.

Description of amendment requests: The proposed amendments would revise the Technical Specifications (TSs) to support replacement of the steam generators (SGs) at Diablo Canyon Power Plant, Unit Nos. 1 and 2. Revisions are proposed to TS 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' TS 5.5.9, ''Steam Generator (SG) Program,'' and TS 5.6.10, ''Steam Generator (SG) Tube Inspection Report.'' The replacement SGs are to be installed during the Diablo Canyon Power Plant, Unit No. 2, 14th refueling outage (2R14), currently scheduled for February 2008, and the Unit No. 1, 15th refueling outage (1R15), currently scheduled for January 2009.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [Do] the proposed change[s] involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The revised engineered safety feature actuation system (ESFAS) steam generator (SG) Water Level-High High feedwater isolation Nominal Trip Setpoint and Allowable Value have been determined using the existing setpoint methodology approved for Diablo Canyon Power Plant. The setpoint analysis for the replacement steam generators (RSGs) accounts for the setpoint uncertainties specific to the RSG design. The revised Feedwater Isolation SG Water Level-High High (P–14) Nominal Trip Setpoint and Allowable Value are applied using a conservative surveillance requirement methodology. The function of the ESFAS instrumentation is unchanged. The Feedwater Isolation SG Water Level-High High (P–14) ESFAS instrumentation will continue to function in a manner consistent with the plant design basis and satisfy all the requirements of the safety analyses.

The probability and consequences of accidents previously evaluated in the Final Safety Analysis Report (FSAR) Update are not adversely affected because the revised Feedwater Isolation SG Water Level-High High (P–14) Nominal Trip Setpoint and Allowable Value continue to assure a conservative plant response to high SG level, consistent with the safety analyses and licensing basis.

The proposed changes revise and clarify the surveillance requirements for ESFAS Function 5.b, Feedwater Isolation SG Water Level-High High (P–14). These changes ensure that this function will actuate as assumed in the safety analyses.

The proposed changes to TS 5.5.9 delete the alternate repair criteria (ARC) for the existing SGs, incorporate tube inspection periods applicable to Alloy 690 thermally treated tubes, and delete the TS 5.6.10 reporting requirements for ARC. The TS 5.5.9 SG structural integrity, accident induced leakage, and operational leakage performance criteria will continue to be met for the RSGs. Meeting the SG performance criteria provides reasonable assurance that the SG tubes will remain capable of maintaining reactor coolant pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident. Removal of the ARC for the existing SGs will ensure that all tubes found by inservice inspection to contain flaws with a depth equal to or exceeding 40 percent of the nominal tube wall thickness will be plugged as required by TS 5.5.9.c. With the revised SG tube inspection period, the SGs will continue to meet the SG program defined by NEI [Nuclear Energy Institute] 97–06, ''Steam Generator Program Guidelines,'' which incorporates a balance of prevention, inspection, evaluation, repair, and leakage monitoring.

Removal of the ARC will reduce the allowable accident induced leakage following a main steamline break accident. The proposed changes do not have any impact on the accident induced leakage assumed in the other design basis accidents. The changes do not have any impact on the allowable SG operational leakage, allowable reactor coolant system activity, or the allowable SG secondary activity.

The proposed changes will not affect the probability of any accident initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident. There will be no change to accident mitigation performance. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR Update.

Therefore the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. [Do] the proposed change[s] create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

The proposed changes will not affect the normal method of plant operation or create new methods of plant operation related to the Feedwater Isolation SG Water Level-High High (P–14) ESFAS setpoints. The proposed changes to the Feedwater Isolation SG Water Level-High High (P–14) instrumentation surveillance requirements will provide assurance that the plant will operate within the limits assumed in the safety analyses. The assumptions made in the setpoint analyses for the Feedwater Isolation SG Water Level-High High (P–14) ESFAS instrument do not create any new accidents, accident initiators, or failure mechanisms.

The proposed changes, which delete the TS 5.5.9 ARC for the existing SGs, incorporate tube inspection periods for Alloy 690 thermally-treated tubes in TS 5.5.9, and delete the ARC reporting requirements in TS 5.6.10, will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The primary-to-secondary leakage that may be experienced during all plant conditions will be monitored to ensure it remains within current safety analysis assumptions. The proposed changes do not adversely affect the method of operation of the SGs or the primary or secondary coolant controls and do not impact other plant systems or components.

Therefore, the proposed changes do not create the possibility of a new or different accident from any accident previously evaluated.

3. [Do] the proposed change[s] involve a significant reduction in a margin of safety?

Response: No.

The FSAR Update Excessive Heat Removal due to Feedwater System Malfunctions event credits the Feedwater Isolation SG Water Level-High High (P–14) ESFAS instrumentation. The safety analysis limit assumed for the Feedwater Isolation SG Water Level-High High (P–14) ESFAS instrumentation for this event has not changed for the safety analyses for the RSGs. None of the acceptance criteria for Excessive Heat Removal due to Feedwater System Malfunctions event are changed as a result of the revised Feedwater Isolation SG Water Level-High High (P–14) Nominal Trip Setpoint and Allowable Value. The instrument surveillance requirement changes for the Feedwater Isolation SG Water Level-High High (P–14) function ensure that the instrumentation will actuate as assumed in the safety analysis.

The safety function of the SGs is maintained by ensuring the integrity of the tubes. SG tube integrity is a function of the design, environment, and the physical condition of the SG tubes. The proposed changes, which delete the TS 5.5.9 ARCs for the existing SGs, incorporate tube inspection periods for Alloy 690 thermally treated tubes in TS 5.5.9, and delete the ARC reporting requirements in TS 5.6.10, do not adversely impact the SG tube design or operating environment. SG tube integrity will continue to be maintained by implementing the SG Program to manage SG tube inspection, assessment, and repair. The requirements established by the SG program are consistent with those in the applicable design codes and standards.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Antonio Fernández, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Branch Chief: David Terao.

Pacific Gas and Electric Co., Docket No. 50–133, Humboldt Bay Power Plant (HBPP), Unit 3 Humboldt County, California

Date of amendment request: May 17, 2006.

Description of amendment request: The licensee has proposed to modify the Physical Security Plan (PSP) to allow leaving certain security posts temporarily under emergency conditions requiring personnel to evacuate occupied plant areas for their health and safety.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Allowing the security posts and monitoring requirements of PSP, Sections 3.1.4 and 4.3, and Table 7–1, to not be continuously maintained has no impact on the probability of an accident from occurring, especially acts of nature such as earthquakes and tsunamis.

The HBPP Defueled Safety Analysis Report, Appendix A, and NRC Safety Evaluation Report (SER), Section 10, dated April 29, 1987, evaluate various accidents at HBPP. Because all fuel has been removed from the reactor vessel and stored in the spent fuel pool, the majority of accidents analyzed pertain to events that could only affect spent fuel or the spent fuel pool. All accidents affecting spent fuel or the spent fuel pool do not require security personnel action to protect the public health and safety, or to maintain offsite radiological doses well within regulatory limits. In addition, NRC SER, Section 10.7, ''Impact of Tsunami Flooding,'' analyzes the impact of tsunami flooding. That analysis identifies a likely impact of the tsunami to be a release of the radwaste tank radionuclide contents to the bay and some damage to the reactor building. For both situations, no security personnel action is required to maintain offsite radiological doses well within regulatory limits.

Allowing the security posts and monitoring requirements of PSP, Sections 3.1.4 and 4.3, and Table 7–1, to not be continuously maintained temporarily, under emergency conditions, does not create problems that could increase the consequences of an accident. The primary function of the manning and monitoring requirements of PSP, Sections 3.1.4 and 4.3, and Table 7–1, is to monitor, detect and assess unauthorized intrusion into the protected area, and has nothing to do with the probability or consequences of plant accidents.

If security personnel evacuate PSP, Section 3.1.4 and Table 7–1, security posts during a tsunami, those security personnel will be able to return to the PSP, Section 3.1.4 and Table 7–1, security posts after the tsunami and assess damage or intrusion by observing alarms and/or physical conditions as well as resume implementation of security post and monitoring requirements of PSP, Sections 3.1.4 and 4.3, and Table 7–1. In addition, upon evacuation, security personnel notify offsite security backup personnel of the evacuation and the need for the offsite personnel to remotely monitor HBPP security system alarms. Conversely, if security personnel remain at the PSP, Section 3.1.4 and Table 7–1, security posts during a tsunami and become injured, those security personnel would be unable to assist in the resumption of implementation of security post and monitoring requirements of PSP, Sections 3.1.4 and 4.3, and Table 7–1. Therefore, not continually manning the PSP, Section 3.1.4 and Table 7–1, security posts during a tsunami does not increase the consequences of the tsunami.

(2) Does the change create the possibility of a new or different kind of accident from any accident evaluated?

Response: No.

As discussed in the response to Question 1 above, none of the analyzed accidents require security personnel action to keep offsite radiological doses well within regulatory limits. In addition, allowing security personnel to not continuously maintain security post and monitoring requirements of PSP, Sections 3.1.4 and 4.3, and Table 7–1, after an emergency situation has occurred has no impact on the possibility of a new or different kind of accident from occurring. The primary function of the manning and monitoring requirements of PSP, Sections 3.1.4 and 4.3, and Table 7–1, is to monitor, detect, and assess unauthorized intrusion into the protected area, and has nothing to do with the possibility of a different kind of plant accident occurring.

(3) Does the change involve a significant reduction in a margin of safety?

Response: No.

NRC SER, Section 10.8, ''Accident Analysis Conclusions,'' summarizes the consequences from accidents in terms of offsite radiological doses. SER, Section 10.8, includes the statement, ''The (NRC) staff has determined that offsite radiological consequences due to a tsunami are within acceptable dose guideline values.'' As discussed in the response to Question 1 above, none of the analyzed accidents require security personnel action to keep offsite radiological doses well within regulatory limits. Therefore, allowing security personnel to not continuously maintain security post and monitoring requirements of PSP, Sections 3.1.4 and 4.3, and Table 7–1, after an emergency situation has occurred has no impact on 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: Mr. Antonio Fernández, Esquire, Pacific Gas & Electric Company, Post Office Box 7442, San Francisco, CA 94120.

NRC Branch Chief: Claudia Craig.

Pacific Gas and Electric Co., Docket No. 50–133, Humboldt Bay Power Plant (HBPP), Unit 3 Humboldt County, California

Date of amendment request: December 20, 2006.

Description of amendment request: The licensee has proposed to amend the

Facility Operating License by deleting paragraph 2.B.3(c), and replacing it with a new paragraph 2.B.4 to read as follows: ''Pursuant to the Act and Title 10, CFR, Chapter I, Parts 30, 40, and 70, to receive, possess, and use in amounts as required any byproduct, source, or special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change eliminates a restriction regarding the type and limits of byproduct and special nuclear material to be received, possessed, and used onsite. However, in the proposed change, the type or amount of byproduct, source, or special nuclear material to be received, possessed, or used would not change plant systems or accident analysis, and as such, would not affect initiators of analyzed events or assumed mitigation of accidents. Therefore, the proposed change does not increase the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident evaluated?

Response: No.

The proposed change eliminates a restriction regarding the limits and type of byproduct and special nuclear material to be received, possessed, and used onsite. The proposed change does not involve a physical alteration to the plant or require existing equipment to be operated in a manner different from the present design. Temporary equipment brought onsite for decommissioning activities would still be required to be operated in accordance with plant procedures and licensing bases documents, regardless of the byproduct material content. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

The proposed change eliminates a restriction regarding the limit and type of byproduct and special nuclear material to be received, possessed, and used onsite. The proposed change has no effect on existing plant equipment, operating practices, or safety analysis assumptions. Temporary equipment brought onsite for decommissioning activities would still be required to be operated in accordance with plant procedures and licensing bases documents, regardless of the byproduct material content. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The U.S. Nuclear Regulatory Commission staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Antonio Fernández, Esquire, Pacific Gas & Electric Company, Post Office Box 7442, San Francisco, CA 94120.

NRC Branch Chief: Claudia Craig.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: November 15, 2006.

Description of amendment request: The proposed amendment would delete Technical Specification (TS) Table 3.6.3–1, ''Primary Containment Isolation Valves,'' and relocate the information to the Technical Requirements Manual. The amendment would also revise other TS sections that reference TS Table 3.6.3–1. The proposed changes are based on the guidance in Generic Letter 91–08, ''Removal of Component Lists from Technical Specifications.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed relocation of Technical Specification component lists of primary containment isolation valves does not alter the requirements for component operability or surveillance currently in the Technical Specifications. The proposed change to remove the component lists from TS and relocate the information to an administratively controlled document will have no impact on any safety related structures, systems or components.

The probability of occurrence of a previously evaluated accident is not increased because this change does not introduce any new potential accident initiating conditions. The consequences of accidents previously evaluated in the UFSAR [Updated Final Safety Analysis Report] are not affected because the ability of the components to perform their required function is not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes are administrative in nature, conform to the guidance in Generic Letter 91–08 and do not result in physical alterations or changes in the method by which any safety related system performs its intended function. The proposed changes do not affect any safety analysis assumptions. The proposed changes do not create any new accident initiators or involve an activity that could be an initiator of an accident of a different type.

All components will continue to be tested to the same requirements as defined in the Technical Specification Surveillance Requirements. The proposed revision does not make changes in any method of testing or how any safety related system performs its safety functions.

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 amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change to remove Technical Specification Table 3.6.3–1 from the Technical Specifications and relocate it to the Technical Requirements Manual does not alter the Technical Specification requirements for containment integrity and containment isolation and will not affect the containment isolation capability. Future revisions to the Technical Requirements Manual Table will be subject to evaluation pursuant to 10 CFR 50.59 [Title 10 of the Code of Federal Regulations (10 CFR), Section 50.59].

The proposed change will not affect the current Technical Specification requirements or the components to which they apply.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: April 12, 2006, and supplemented November 21, 2006.

Description of amendment request: The licensee has proposed to amend its

license to incorporate a new license condition addressing the license termination plan (LTP). This amendment will document the approval of the LTP, document the criteria for making changes to the LTP which will and will not require pre-approval by the NRC, and will document any conditions imposed with the approval of the LTP.

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 license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change is administrative. The change allows for the approval of the LTP and provides the criteria for when changes to the LTP require prior U.S. Nuclear Regulatory Commission (NRC) approval. This change does not affect possible initiating events for accidents previously evaluated or alter the configuration or operation of the facility. Safety limits, limiting safety system settings, and limiting control systems are no longer applicable to Rancho Seco in the permanently defueled mode, and are therefore not relevant.

The proposed change does not affect the boundaries used to evaluate compliance with liquid or gaseous effluent limits, and has no impact on plant operations. Therefore, the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. As described above, the proposed change is administrative and provides the criteria for when changes to the LTP require prior NRC approval. The safety analysis for the facility remains complete and accurate. There are no physical changes to the facility as a result of the proposed amendment and the plant conditions for which the design basis accidents have been evaluated are still valid.

The operating procedures and emergency procedures are not affected. The proposed changes do not affect the emergency planning zone, the boundaries used to evaluate compliance with liquid or gaseous effluent limits, and have no impact on plant operations. Consequently, no new failure modes are introduced as the result of the proposed changes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed license amendment involve a significant reduction in a margin of safety?

No. As described above, the proposed changes are administrative. There are no changes to the design or operation of the facility. The proposed changes do not affect the emergency planning zone, the boundaries used to evaluate compliance with liquid or gaseous effluent limits, and have no impact on plant operations. Accordingly, neither the design basis nor the accident assumptions in the Defueled Safety Analysis Report, nor the Technical Specification Bases are affected. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's significant hazards 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: Arlen Orchard, Esq., General Counsel, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, CA 95817–1899.

NRC Branch Chief: Claudia M. Craig.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant (FNP), Units 1 and 2, Houston County, Alabama

Date of amendment request: January 30, 2007.

Description of amendment request: The proposed amendment would revise the Farley Nuclear Plant, Units 1 and 2, Technical Specifications (TSs) to reflect a change to a site vice president organizational structure. The resulting structure places a vice president at the plant site. The proposed amendment describes changes in titles and administrative duties that accompany the reorganization.

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?

The proposed change to [the] FNP TS involves SNC moving to a site vice president organizational structure. Since the proposed change is administrative in nature, it does not involve any physical changes to any structures, systems, or components, nor will their performance requirements be altered. The proposed change also does not affect the operation, maintenance, or testing of the plant. Therefore, the response of the plant to previously analyzed accidents will not be affected. Consequently, 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 previously evaluated?

As a result of the proposed change to the FNP TS, the qualification requirements for the unit staff position[s] will remain unchanged and the plant staff will continue to meet applicable regulatory requirements. Also, since no change is being made to the design, operation, maintenance, or testing of the plant, no new methods of operation or failure modes are introduced by the proposed change. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. Does the proposed change involve a significant decrease in the margin of safety?

The proposed change to the FNP TS will have no adverse impact on the onsite organizational features necessary to assure safe operation of the plant since the qualification requirements for the unit staff remains unchanged. Since the proposed change is administrative in nature, it does not involve any physical changes to any structures, systems, or components, nor will their performance requirements be altered. Therefore, the proposed change does not involve a significant decrease 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: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Branch Chief: Evangelos C. Marinos.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant (HNP), Units 1 and 2, Appling County, Georgia

Date of amendment request: January 30, 2007.

Description of amendment request: The proposed amendments would revise the Hatch Nuclear Plant, Units 1 and 2, Technical Specifications (TSs) to reflect a change to a site vice president organizational structure. The resulting structure places a vice president at the plant site. The proposed amendment describes changes in titles and administrative duties that accompany the reorganization.

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?

The proposed change to [the] HNP TS involves SNC moving to a site vice president organizational structure. Since the proposed change is administrative in nature, it does not involve any physical changes to any structures, systems, or components, nor will their performance requirements be altered. The proposed change also does not affect the operation, maintenance, or testing of the plant. Therefore, the response of the plant to previously analyzed accidents will not be affected. Consequently, 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 previously evaluated?

As a result of the proposed change to the HNP TS, the qualification requirements for the unit staff position[s] will remain unchanged and the plant staff will continue to meet applicable regulatory requirements. Also, since no change is being made to the design, operation, maintenance, or testing of the plant, no new methods of operation or failure modes are introduced by the proposed change. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. Does the proposed change involve a significant decrease in the margin of safety?

The proposed change to the HNP TS will have no adverse impact on the onsite organizational features necessary to assure safe operation of the plant since the qualification requirements for the unit staff remains unchanged. Since the proposed change is administrative in nature, it does not involve any physical changes to any structures, systems, or components, nor will their performance requirements be altered. Therefore, the proposed change does not involve a significant decrease 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: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Evangelos C. Marinos.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant (VEGP), Units 1 and 2, Burke County, Georgia

Date of amendment request: January 30, 2007.

Description of amendment request: The proposed amendment would revise the Vogle Electric Generating Plant, Units 1 and 2, Technical Specifications (TSs) to reflect a change to a site vice president organizational structure. The resulting structure places a vice president at the plant site. The proposed amendment describes changes in titles and administrative duties that accompany the reorganization. *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?

The proposed change to [the] VEGP TS involves SNC moving to a site vice president organizational structure. Since the proposed change is administrative in nature, it does not involve any physical changes to any structures, systems, or components, nor will their performance requirements be altered. The proposed change also does not affect the operation, maintenance, or testing of the plant. Therefore, the response of the plant to previously analyzed accidents will not be affected. Consequently, 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 previously evaluated?

As a result of the proposed change to the VEGP TS, the qualification requirements for the unit staff position[s] will remain unchanged and the plant staff will continue to meet applicable regulatory requirements. Also, since no change is being made to the design, operation, maintenance, or testing of the plant, no new methods of operation or failure modes are introduced by the proposed change. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. Does the proposed change involve a significant decrease in the margin of safety?

The proposed change to the VEGP TS will have no adverse impact on the onsite organizational features necessary to assure safe operation of the plant since the qualification requirements for the unit staff remains unchanged. Since the proposed change is administrative in nature, it does not involve any physical changes to any structures, systems, or components, nor will their performance requirements be altered. Therefore, the proposed change does not involve a significant decrease 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: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Branch Chief: Evangelos C. Marinos.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: December 21, 2006 (TS–456).

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Limiting Condition for Operation (LCO) 3.10.1 and the associated TS Bases to expand its scope to include provisions for temperature excursions greater than 212 °F as a consequence of inservice leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with inservice leak or hydrostatic testing, while considering operational conditions to be in Mode 4.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 21, 2006 (71 FR 48561), on possible amendments to revise the plant-specific TS, to expand the scope of TS LCO 3.10.1, to include provisions for temperature excursions greater than 200 °F as a consequence of inservice leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with an inservice leak or hydrostatic test, while considering operational conditions to be in MODE 4, including a model safety evaluation and model No Significant Hazards Consideration (NSHC) Determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 27, 2006 (71 FR 63050). The licensee affirmed the applicability of the model NSHC determination in its application dated December 21, 2006.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

Criterion 1: The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specifications currently allow for operation at greater than [200] °F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not

adversely impact the probability or consequences of an accident previously evaluated. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Technical Specifications currently allow for operation at greater than [200] °F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. No new operational conditions beyond those currently allowed by LCO 3.10.1 are introduced. The changes do not involve a physical alteration of the plant (*i.e.*, no new or different types of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice. Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3: The proposed change does not involve a significant reduction in a margin of safety.

Technical Specifications currently allow for operation at greater than [200] °F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact any margin of safety. Allowing completion of inspections and testing and supporting completion of scram time testing in conjunction with an inservice leak or hydrostatic test prior to power operation results in enhanced safe operations by eliminating unnecessary maneuvers to control reactor temperature and pressure. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: L. Raghavan.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: July 27, 2006, as supplemented by letters dated October 4 and October 9, 2006.

Brief description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.7.14, ''Spent Fuel Pool Boron Concentration,'' TS 3.7.15, ''Spent Fuel Pool Storage,'' and the associated Figure 3.7.15–1, and TS 4.3, ''Fuel Storage,'' and the associated Figure 4.3.1.2–1. In addition, this amendment would add TS 5.5.17, ''Metamic Coupon Sampling Program,'' and Surveillance Requirement 3.7.15.2 that directs the performance of the coupon sampling program. The proposed TS changes support a modification to the ANO–1 spent fuel pool (SFP) that would utilize Metamic® poison insert assemblies. In addition to the proposed plant modification, the licensee would increase the SFP boron concentration and credit boron to ensure that a 5-percent subcriticality margin is maintained during normal and accident conditions. This proposed amendment also would increase the allowable initial fuel assembly uranium-235 (U-235) enrichment from 4.1 weight percent (wt%) to a maximum U-235 enrichment of 4.95 wt%.

Date of publication of individual notice in ***Federal Register***: December 26, 2006 (71 FR 77414).

Expiration date of individual notice: February 26, 2007.

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.*

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: January 26, 2006, as supplemented by letter dated December 20, 2006.

Brief description of amendment: The amendment revised the Millstone Power Station, Unit No. 2 Technical Specifications (TSs) to update the list of NRC-approved documents specified in the TSs that describe the analytical methods used to determine the core operating limits. The proposed change also corrects a typographical error in TS 5.3.1, ''Reactor Core, Fuel Assembly,'' which was introduced in the retyped pages provided to the NRC for issuance of Amendment No. 280, dated September, 25, 2003.

Date of issuance: January 23, 2007.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 295.

Facility Operating License Nos. DPR–65: The Amendment revised the TSs.

*Date of initial notice in **Federal Register***: May 9, 2006 (71 FR 26997). The supplement dated December 20, 2006, provided clarifying information that did not change the scope of the proposed amendment as described in the original notice of proposed action published in the **Federal Register**, and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 23, 2007.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: March 17, 2006.

Brief description of amendment: The amendment changed the Millstone Power Station, Unit No. 2, Technical Specifications by replacing the existing maximum and minimum pressurizer water volume and water level limits with a maximum water level limit. The associated TS bases were updated to address the proposed changes.

Date of issuance: January 30, 2007.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 296.

Facility Operating License No. DPR–65: The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register***: November 11, 2006 (71 FR 65141).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 30, 2007.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1 (ANO–1), Pope County, Arkansas

Date of amendment request: July 27, 2006, as supplemented by letters dated October 4, October 9, and December 14, 2006.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.7.14, ''Spent Fuel Pool Boron Concentration,'' TS 3.7.15, ''Spent Fuel Pool Storage,'' and the associated Figure 3.7.15–1, and TS 4.3, ''Fuel Storage,'' and the associated Figure 4.3.1.2–1. In addition, this amendment added TS 5.5.17, ''Metamic Coupon Sampling Program,'' and Surveillance Requirement 3.7.15.2 that directs the performance of the coupon sampling program. The TS changes support a modification to the ANO–1 spent fuel pool (SFP) that utilize Metamic® poison insert assemblies. In addition to the proposed plant modification, the licensee increased the SFP boron concentration and credited boron to ensure that a 5-percent subcriticality margin is maintained during normal and accident conditions. This amendment also increased the allowable initial fuel assembly uranium-235 (U–235) enrichment from 4.1 weight percent (wt%) to a maximum U–235 enrichment of 4.95 wt%.

Date of issuance: January 26, 2007.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 228.

Renewed Facility Operating License No. DPR–51: Amendment revised the Technical Specifications/license.

*Date of initial notice in **Federal Register***: December 26, 2006 (71 FR 77414). The supplement dated December 14, 2006, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 26, 2007.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–374, LaSalle County Station, Unit 2, LaSalle County, Illinois

Date of application for amendments: April 21, 2006.

Brief description of amendment: The amendment revised Technical Specification (TS) 5.5.13, ''Primary Containment Leakage Testing Program,'' to reflect a one-time extension of the LaSalle, Unit 2 primary containment Type A integrated leak rate test (ILRT) from the current requirement of no later than December 7, 2008, to prior to startup following the 12th LaSalle, Unit 2 refueling outage.

Date of issuance: January 24, 2007.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 166.

Facility Operating License No. NPF–18: The amendment revised the Technical Specifications and License.

*Date of initial notice in **Federal Register***: June 6, 2006 (71 FR 32605). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 24, 2007.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: April 13, 2005, as supplemented by letters dated December 22, 2005, June 12, 2006, and January 4, 2007.

Brief description of amendments: The proposed amendment would extend, on a one-time basis, the completion time (CT) for required action C.4, ''Restore required Diesel Generators (DGs) OPERABLE status,'' associated with Technical Specification (TS) Section 3.8.1 from 72 hours to 6 days. This proposed change would only be used during the upcoming Unit 2—spring 2007 refueling outage, and later during the Unit 1—spring 2008 refueling outage. The amendment would also extend the CT from 2 hours to 6 hours in TS Section 3.8.1, Required Action F.1, ''Restore one required DG to OPERABLE status.'' This proposed change to be used during the upcoming Unit 2—spring 2007 refueling outage, and later during the subsequent Unit 1—spring 2008 refueling outage.

Date of issuance: January 29, 2007.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 180/167.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications/License.

*Date of initial notice in **Federal Register***: June 7, 2005 (70 FR 33210). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 29, 2007.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: April 24, 2006, as supplemented September 14, 2006.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) consistent with the NRC-approved Revision 4 to TS Task Force (TSTF) Standard TS Change

Traveler, TSTF–449, ''Steam Generator Tube Integrity.''

Date of Issuance: January 30, 2007.

Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 200.

Renewed Facility Operating License No. DPR–67: Amendment revised the TSs.

Date of initial notice in ***Federal Register***: July 18, 2006 (71 FR 40746). The September 14, 2006, supplement did not affect the original proposed no significant hazards determination, or expand the scope of the request as noticed in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated: January 30, 2007.

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: December 16, 2005, as supplemented by letter dated October 25, 2006.

Brief description of amendment: The amendment relocates Technical Specification Surveillance Requirement 4.1.4d for core spray header differential pressure instrumentation to the Updated Final Safety Analysis Report.

Date of issuance: January 31, 2007.

Effective date: January 31, 2007.

Amendment No.: 192.

Facility Operating License No. DPR–63: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register***: March 28, 2006 (71 FR 15484). The supplemental letter dated October 25, 2006, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 31, 2007.

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: January 25, 2006.

Brief description of amendments: The amendments revised Technical Specification (TS) 1.1, ''Definitions,'' and TS 3.4.16, ''RCS [Reactor Coolant System] Specific Activity.'' The amendments replaced the current TS 3.4.16 limit on RCS gross specific activity with a new limit on RCS noble gas specific activity. The noble gas specific activity limit is based on a new dose equivalent Xe–133 definition that would replace the current E-Bar average disintegration energy definition. In addition, the current dose equivalent I–131 definition is revised to allow the use of alternate thyroid dose conversion factors.

Date of issuance: January 19, 2007.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: Unit 1–192; Unit 2–193.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications and Operating Licenses.

Date of initial notice in ***Federal Register***: March 14, 2006 (71 FR 13176). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 19, 2007.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket No. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania

Date of application for amendments: October 13, 2005, as supplemented on May 18, September 15 (PLA–6112 and PLA–6114), September 29, October 20, November 14, December 13, and December 14, 2006.

Brief description of amendments: The amendments revise the SSES 1 and 2 Technical Specifications (TSs) to incorporate a full-scope application of an alternate source term methodology in accordance with Title 10 of the Code of Federal Regulations, section 50.67.

Date of issuance: January 31, 2007.

Effective date: As of the date of issuance and to be implemented by October 30, 2007.

Amendment Nos.: 239 and 216.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the TSs and license.

Date of initial notice in ***Federal Register***: August 29, 2006 (71 FR 51231). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 31, 2007.

The supplements dated September 15 (PLA–6112 and PLA–6114), September 29, October 20, November 14, December 13, and December 14, 2006, 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.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of application for amendments: October 26, 2006 (TS–457).

Brief description of amendments: The amendments revise Technical Specification (TS) Action 3.8.1.B.4 for Browns Ferry Nuclear Plant Units 2 and 3. The revision changes the restoration time of an inoperable Emergency Diesel Generator from 14 to 7 days.

Date of issuance: January 26, 2007.

Effective date: Within 60 days of NRC approval or prior to changing Unit 1 reactor mode to startup, whichever is earlier.

Amendment Nos.: 298 and 256.

Renewed Facility Operating License Nos. DPR–52 and DPR–68: Amendments revised the TSs.

Date of initial notice in ***Federal Register***: November 21, 2006 (71 FR 67398).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 26, 2007.

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: May 25, 2006.

Brief description of amendment: The amendment revised TSs by adding Limiting Condition for Operation (LCO) 3.0.8. This change is consistent with NRC-approved Revision 4 to Technical Specification Task Force (TSTF) Standard Technical Specification Traveler, TSTF–372, ''Addition of LCO 3.0.8, Inoperability of Snubbers.''

Date of issuance: January 31, 2007.

Effective date: As of its date of issuance, and shall be implemented within 90 days of the date of issuance.

Amendment No.: 179.

Facility Operating License No. NPF–30: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: July 18, 2006 (71 FR 40755).

The Commission's related evaluation of the amendment is contained in a

Safety Evaluation dated January 31, 2007.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of application for amendment: May 22, 2006.

Brief description of amendment: These amendments revise the existing steam generator tube surveillance program to be consistent with the Technical Specification Task Force (TSTF) Standard TS Change Traveler, TSTF–449, ''Steam Generator Tube Integrity.''

Date of issuance: October 16, 2006.

Effective date: As of the date of issuance and shall be implemented within 180 days from the date of issuance.

Amendment Nos.: 248, 228.

Renewed Facility Operating License Nos. NPF–4 and NPF–7: Amendments change the licenses and the technical specifications.

Date of initial notice in ***Federal Register***: August 1, 2006 (71 FR 43537)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 16, 2006.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 6th day of February 2007.

For the Nuclear Regulatory Commission.

John W. Lubinski,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–2323 Filed 2–12–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55248; File No. SR–Amex–2006–90]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, To List and Trade Notes Linked to the Performance of the Hang Seng China Enterprises Index

February 6, 2007.

On September 22, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade notes linked to the performance of the Hang Seng China Enterprises Index (''Index''). Amex amended the proposal on November 15, 2006 and subsequently on December 12, 2006.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on December 26, 2006.[4] No comments were received on the proposal. This order approves the proposed rule change, as amended.

Under Section 107A of its Company Guide (''Company Guide''), Amex proposes to list notes issued by Citigroup Funding, Inc. (the ''Issuer'') under the name ''Stock Market Upturn Notes'' that are based on the value of the Index (the ''Notes''). The Index is currently based on 37 common stocks that are listed and traded on the Stock Exchange of Hong Kong and are among the largest companies in the 200-stock Hang Seng Composite Index (''HSCI''). The Index is compiled by HSI Services Limited (the ''Index Calculator''), a wholly owned subsidiary of Hang Seng Bank. The Index is capitalization-weighted and revised twice each year to eliminate any components whose weight might exceed 15% of the Index.

The Notes would offer investors exposure to certain stocks traded on the Stock Exchange of Hong Kong. The Notes would be cash-settled in U.S. dollars, must be held to maturity, and would pay out according to a formula set forth in the notice of Amex's proposal.[5] Unlike traditional debt securities, the Notes would not have a minimum principal amount that would be repaid at maturity and thus the return could be less than the original issue price. The Notes would entitle the holder at maturity to receive an amount based on the percentage change of the Index, subject to a maximum payment determined at the time of issuance.

The Notes would be senior non-convertible debt securities of the Issuer. Like traditional debt securities, therefore, the Notes are dependent upon the creditworthiness of the Issuer. This credit risk is addressed by the listing standards in Amex Rule 107A, which provide that a security may not be listed on the Exchange unless its issuer satisfies certain financial requirements.

Section 107A of the Company Guide also requires a market value of $4 million for initial listing. In addition, the Notes would have to comply with continued listing standards in Sections 1001–1003 of the Amex Company Guide. Under Section 1002(b) of the Company Guide, the Exchange would consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable.[6]

The Notes would trade as equity securities subject to Amex rules governing, among other things, priority, parity, and precedence of orders; specialist responsibilities; margin; and customer suitability requirements. In addition, the Exchange would halt trading in the Notes if the circuit breaker parameters of Exchange Rule 117 are reached. In exercising its discretion to halt or suspend trading in the Notes, the Exchange may consider the factors set forth in Exchange Rule 918C(b), and other factors that may be relevant. In particular, if the Index value is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Index value occurs. If the interruption to the dissemination of the Index value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.

Amex has represented that it would rely on its existing surveillance procedures governing index-linked securities, which Amex represents are adequate to properly monitor trading in the Notes. The Exchange has an information-sharing agreement with the Stock Exchange of Hong Kong for the purpose of providing information in connection with trading in or related to the components comprising the Index.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240. 19b–4.

[3] Amendment No. 2 replaced and superseded the original rule filing and Amendment No. 1 in their entirety.

[4] Securities Exchange Act Release No. 54943 (December 15, 2006), 71 FR 77422 (''Notice'').

[5] *See* Notice, *supra* note 4, 71 FR at 77423–24.

[6] In this case, the Exchange would look for guidance to Section 1003(b)(iv)(A) (relating to bonds) which states that the Exchange would normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of the bonds publicly held is less than $400,000.

[7] In approving the rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

Act,[8] which requires among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that it has previously approved the listing and trading of other index-linked securities that have a structure similar to the Notes.[9]

The Commission further believes that the proposal is consistent with section 11A(a)(1)(C)(iii) of the Exchange Act,[10] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last-sale information regarding the Notes will be disseminated through the Consolidated Quotation System. The index value is calculated and disseminated daily and may be verified by a number of independent sources.[11] Furthermore, financial information regarding the Issuer would be publicly available, thus allowing investors to confirm the creditworthiness of the Issuer. The Commission believes that Amex's proposal is reasonably designed to promote transparency in the pricing of the Notes, and to prevent trading when a reasonable degree of transparency cannot be assured. The proposal also appears reasonably designed to prevent conveyance of inside information from the Index Calculator to market participants who may trade the Notes.

In support of this proposal, the Exchange has made the following representations:

(1) Amex has received a representation from HSCI Services Limited, the Index Calculator, that: (a) Appropriate firewalls exist to ensure independence of operations among different units within the Hang Seng Group; and (b) policies and procedures are in place containing, among other things, insider trading prohibitions, designed to prevent conflicts of interest.

(2) Amex would distribute a circular to its membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. In addition, the Issuer would deliver a prospectus in connection with the initial sale of the Notes.

(3) Amex would rely on its existing surveillance procedures governing index-linked securities, which are adequate to properly monitor trading in the Notes.

(4) Amex prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A–3 under the Act.[12]

This order is conditioned on Amex's adherence to these representations.

In addition, Amex has represented that it would file a proposed rule change pursuant to Rule 19b–4 under the Act if: (1) HSCI substantially changes either the index component selection methodology or the weighting methodology; (2) a new component is added to the Index (or pricing information is used for a new or existing component) that constitutes more than 10% of the weight of the Index with whose principal trading market the Exchange does not have a comprehensive surveillance-sharing agreement; or (3) a successor or substitute index is used in connection with the Notes. The Commission believes that each of these circumstances represents material changes to the characteristics of the Index described herein and on which the Commission is basing its findings. Under these circumstances, the Exchange could not rely on this approval to list and trade the Notes.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–Amex–2006–90), as modified by Amendment No. 2 be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E7–2417 Filed 2–12–07; 8:45 am]

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[8] 15 U.S.C. 78f(b)(5).

[9] *See* Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005) (SR–Amex–2005–01) (approving generic listing standards for index-linked securities); Securities Exchange Act Release No. 51227 (February 18, 2005), 70 FR 9395 (February 25, 2005) (SR–Amex–2005–010) (approving the listing and trading of notes linked to the performance of the Nikkei 225 Index); and Securities Exchange Act Release No. 50016 (July 14, 2004), 69 FR 43639 (July 21, 2004) (SR–Amex–2004–43) (approving the listing and trading of notes linked to the performance of the Nikkei 225 Index).

[10] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[11] *See* e-mail dated January 30, 2007 from Sudhir C. Bhattacharyya, Assistant General Counsel, Amex, to Mitra Mehr, Special Counsel, Division of Market Regulation, Commission.

[12] *See* 17 CFR 240.10A–3(c)(1).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55246; File No. SR–CBOE–2006–62]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Its Index Obvious Error Rule

February 6, 2007.

I. Introduction

On July 7, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend CBOE Rule 24.16, which is the Exchange's rule applicable to the nullification and adjustment of transactions in index options, options on exchange-traded funds (''ETFs''), and options on HOLDing Company Depository ReceiptS (''HOLDRS''). On October 30, 2006, the CBOE submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on December 20, 2006.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

The Exchange is proposing to amend Rule 24.16 in order to: (i) re-define what constitutes an ''obvious price error;'' (ii) provide for a Market-Maker to Market-Maker adjustment of obvious price errors (currently such erroneous transactions are subject to nullification); (iii) eliminate the nullification and adjustments provisions for erroneous quantity errors; and (iv) make various non-substantive changes to the text of Rule 24.16.

Specifically, an ''obvious price error'' would be deemed to have occurred for series trading with normal bid-ask differentials as established in CBOE Rule 8.7(b)(iv) when the execution price of a transaction is above or below the ''fair market value''[4] of the option by at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 54926 (December 13, 2006), 71 FR 76393.

[4] Fair market value is defined in Rule 24.16 as the midpoint of the national best bid and national best

least: $0.125 for options trading under $2; $0.20 for options trading at or above $2 and up to $5; $0.25 for options trading above $5 and up to $10; $0.40 for options trading above $10 and up to $20; and $0.50 for options trading above $20. For series trading with bid-ask differentials that are a multiple of the widths established in Rule 8.7(b)(iv), the prescribed error amount would have the same multiple applied to the amounts prescribed above.

Second, the proposal revises the obvious price error provision as it relates to the handling of transactions involving only CBOE Market-Makers. Under the current rule, such erroneous price transactions are nullified. Under the proposal, CBOE-Market-Maker-to-CBOE-Market-Maker transactions would be subject to adjustment. In applying the proposed CBOE Market-Maker adjustment provision to index options and options on ETFs or HOLDRs, the adjustment price would be equal to the fair market value of the option minus the minimum error amount in the case of an erroneous sell transaction or the fair market value plus the minimum error amount in the case of an erroneous buy transaction. If the adjusted price is not in a multiple of the applicable minimum trading increment, the adjusted price would be rounded down (up) to the next price that is a multiple of the applicable minimum trading increment with respect to an erroneous sell (buy) transaction.

Third, the proposal would eliminate obvious quantity errors as a type of transaction that is subject to obvious error review. The elimination of this provision is consistent with the Exchange's current rule for equity options, which does not have an obvious error review for quantity errors.[5]

Lastly, the proposal would make various non-substantive changes to CBOE Rule 24.16, such as making cross-reference updates to correspond to the above-described revisions, changing the title of the rule to reflect its application to options on ETFs and HOLDRS (currently the title only references index options), clarifying that fair market value is to be determined by Exchange Trading Officials in accordance with the provisions of the definition of fair market value, and making other technical changes.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of Section 6(b) of the Act[7] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[8] in that the proposal promotes just and equitable principles of trade, prevents fraudulent and manipulative acts, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade indicates an ''obvious error'' may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether an ''obvious error'' has occurred should be based on specific and objective criteria and subject to specific and objective procedures. The revised scale for identifying the minimum error amount for an obvious price error and the elimination of obvious quantity errors set out a clear and objective methodology for determining when an obvious error has occurred. The proposed amendments with respect to obvious error transactions involving only CBOE Market Makers also establish specific and objective criteria governing the adjustment of such trades. In addition, the technical conforming and clarifying changes made by the proposed rule change, including the clarification with respect to the role of Trading Officials, should help facilitate understanding and application of CBOE Rule 24.16. Therefore, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CBOE–2006–62), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

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offer for the series (across all exchanges trading the option). In multiply listed issues, if there are no quotes for comparison purposes, fair market value shall be determined by Trading Officials. For singly-listed issues and for transactions occurring as part of the Rapid Opening System (''ROS trades'') or Hybrid Opening System (''HOSS''), the Exchange clarified in the proposed rule change that the fair market value shall be the midpoint of the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s).

[5] *See* CBOE Rule 6.25(a).

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55239; File No. SR–DTC–2006–15]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to the Canadian Link Service

February 5, 2007.

I. Introduction

On October 10, 2006, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2006–15 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on December 8, 2006.[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 DTC's Rule 30, Canadian-Link Service, to allow certain Canadian-Link transactions to settle in U.S. dollars. DTC's Canadian-Link Service currently allows participants of DTC (''DTC Participants'') to clear and settle two categories of securities transactions in Canadian dollars: (1) transactions with participants of The Canadian Depository for Securities Limited CDS (''CDS Participants'') and (2) transactions with other DTC Participants. The Canadian-Link Service also allows DTC Participants to transfer Canadian dollar funds to CDS Participants through the facilities of CDS and to other DTC Participants through Canadian settlement banks acting for DTC and

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 54855, (December 1, 2006), 71 FR 71206.

such DTC Participants. The proposed rule change would add an additional functionality to the Canadian-Link Service to allow DTC Participants to settle certain securities transactions with CDS Participants in U.S. dollars (''cross border U.S. dollar securities transactions''). Set forth below is a description of the current Canadian-Link Service and a description of the proposed change.

Current Functionality of the Canadian-Link Service

The Canadian-Link Service currently allows DTC Participants to clear and settle valued securities transactions in Canadian dollars with CDS Participants through the link between DTC and CDS. The securities that may be the subject of these transactions are securities that are eligible for book-entry transfer through the facilities of CDS and DTC (''Full-Service Canadian-Link Securities'') and securities that are eligible for book-entry transfer through the facilities of CDS but not through DTC (''Limited Service Canadian-Link Securities''). The securities are delivered to and from CDS Participants through the facilities of CDS. Money settlement between DTC and CDS is included in Canadian dollar money settlement at CDS. Money settlement between DTC and DTC Participants takes place between Canadian settlement banks acting for DTC and such DTC Participants.

The Canadian-Link Service allows DTC Participants to clear and settle valued transactions in Canadian dollars with other DTC Participants through the facilities of DTC. The securities that may be the subject of these transactions are Full-Service Canadian-Link Securities. The securities are delivered to and from DTC Participants through the facilities of DTC. Money settlement between DTC and DTC Participants takes place through Canadian settlement banks acting for DTC and such DTC Participants.

The Canadian-Link Service allows DTC Participants to transfer Canadian dollar funds without any corresponding delivery or receipt of securities to CDS Participants or other DTC Participants. Transactions between DTC Participants and CDS Participants are processed through the facilities of CDS. Transactions between DTC Participants and other DTC Participants are processed through Canadian settlement banks acting for such DTC Participants.

The proposed rule change would not change any of the existing components of the Canadian-Link Service and except for cross border U.S. dollar securities transactions, as set forth below, would not change how securities transactions are currently processed through the Canadian-Link Service.

Enhancement to the Canadian-Link Service

The proposed rule change enhances the Canadian-Link Service to allow DTC Participants to clear and settle certain valued securities transactions in U.S. dollars with CDS Participants through the link between DTC and CDS.[3] The securities that will be the subject of U.S. dollar settlement are Limited-Service Canadian-Link Securities (*i.e.*, securities that are eligible for book-entry transfer through the facilities of CDS but not DTC). The securities will be delivered to and from CDS Participants through the facilities of CDS. Money settlement between DTC and CDS will be included in U.S. dollar money settlement at DTC. Money settlement between DTC and DTC Participants will also be included in U.S. dollar money settlement at DTC together with the settlement of DTC Participants' other transactions at DTC. As the foregoing indicates, these cross border U.S. dollar securities transactions will be processed in substantially the same way that transactions are now processed except that these transactions would settle in U.S. dollars rather than in Canadian dollars and the place of money settlement will be at DTC rather than at CDS or through Canadian settlement banks.

The proposed rule change also adds new definitions to DTC Rule 30 to distinguish between transactions between DTC Participants and CDS Participants (''Cross-Border Securities Transactions'') and transactions between only DTC Participants (''Intra-DTC Securities Transactions''). The proposed rule change also adds new definitions to distinguish between transactions that settle in U.S. dollars and transactions that settle in Canadian dollars (for example, ''Cross-Border CAD Securities Transactions'' and ''Intra-DTC USD Securities Transactions'').

Risk Management Controls

Set forth below is a description of DTC's risk management controls with respect to the Canadian-Link Service and how these risk management controls will be affected as a result of the proposed rule change.

1. *Canadian-Link Required Participants Fund Deposit.* A DTC Participant that uses the Canadian-Link Service is currently required to make an additional required deposit to the DTC participants fund that is determined in accordance with a formula that takes into account the volume of cross-border Canadian dollar securities transactions processed by DTC for such DTC Participant. Under the proposed rule change, such formula will also take into account the volume of cross-border U.S. dollar securities transactions processed by DTC for such DTC Participant.

2. *Security for Canadian-Link Transactions.* A DTC Participant that uses the Canadian-Link Service is currently required to pledge to DTC its interest in the securities subject to cross-border Canadian dollar securities transactions that are held by DTC for such DTC Participant at CDS. Under the proposed rule change, such DTC Participant will also be required to pledge to DTC its interest in the securities subject to cross-border U.S. dollar securities transactions that are held by DTC for such DTC Participant at CDS.

3. *Canadian-Link Service Net Debit Caps of Canadian-Link Participants.* A DTC Participant that uses the Canadian-Link Service is currently subject to a net debit cap on the negative Canadian dollar balance that may, from time to time, be incurred by such DTC Participant with respect to its use of the Canadian-Link Service. Under the proposed rule change, a DTC Participant will also be subject to a net debit cap on the negative U.S. dollar balance that may from time to time be incurred by such DTC Participant with respect to its cross-border U.S. dollar securities transactions. The proposed rule change will add new definitions to DTC Rule 30 to take into account that there will be separate Net Debit Caps for U.S. and for Canadian dollar transactions.

4. *Collateral Monitor of Canadian-Link Participants.* A DTC Participant that uses the Canadian-Link Service is currently subject to the DTC collateral monitor with respect to its use of the Canadian-Link Service. Under the proposed rule change, a DTC Participant will also be subject to the DTC collateral monitor with respect to its cross-border U.S. dollar securities transactions.

As the foregoing indicates, cross-border U.S. dollar securities transactions will be subject to essentially the same risk management controls that are already applicable to the other securities transactions currently processed through the Canadian-Link Service.

[3] DTC has represented to the Commission that some transactions executed in Canadian markets, either on a stock exchange or over-the-counter, are settled in U.S. dollars. Transactions that settle in U.S. dollars are reported to DTC in U.S. dollar amounts. DTC does not convert settlement amounts from Canadian to U.S. dollars.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission first approved Rule 30 to permit DTC to provide the Canadian-Link Service in 2005.[4] In its order granting approval of Rule 30, the Commission found that rule satisfies the requirements of Section 17A of the Act because while streamlining the clearance and settlement of Canadian Dollar transactions at DTC, it includes sufficient procedures to assure the safeguarding of securities and funds which are in DTC's custody or control or for which it is responsible.

The proposed rule change, by adding to the transactions that are eligible to be cleared and settled through the Canadian-Link Service, is designed to encourage more CDS-Link Participants to use and to benefit from the operational and cost efficiencies of the Canadian-Link Service. We are satisfied with DTC's description of the rule change as an enhancement that does not otherwise affect the operation of the Canadian-Link Service as it was previously approved by the Commission. In addition, the corresponding changes made to DTC's risk management procedures and the clarifying amendments made to the terminology in Rule 30 should assure that DTC can offer U.S. Dollar settlement for the Canadian-Link Service without affecting DTC's ability to safeguard securities and funds which are in its custody or control or for which it 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.[5]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2006–15) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2419 Filed 2–12–07; 8:45 am]

BILLING CODE 8010–01–P

[4] Securities Exchange Act Release No. 52784 (November 16, 2005), 71 FR 70902 (November 23, 2005) (File No. SR–DTC–2005–08).

[5] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55244; File No. SR–NYSE–2007–11]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 122 (Orders With More Than One Broker) Until the Availability of Full d-Quote Functions in a Particular Security or March 5, 2007, Whichever Comes First

February 5, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 5, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. NYSE filed the proposed rule change pursuant to Section 19(b)(3) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to continue the Floor brokers' ability to maintain discretionary e-Quotes (''d-Quotes'')[5] and CAP–DI orders[6] in a security on the same side of the market for the same order that are capable of trading at the same price until the completion of Phase IV implementation of the HYBRID MARKET℠ (''Hybrid Market'') in the relevant security or until March 5, 2007, whichever comes first. The text of the proposed rule change is available on the Exchange's Web site (*www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

On October 25, 2006, the Exchange filed with the Commission an amendment to Rule 122 to permit Floor brokers to enter d-Quotes and CAP–DI orders in a security on the same side of the market for the same underlying order that are capable of trading at the same price until the implementation of full d-Quoting functionality in the relevant security or until February 5, 2007, whichever came first.[7]

On January 25, 2007, the Exchange commenced the implementation of Phase IV of the Hybrid Market, which includes the remaining d-Quote functions: (i) The ability to trade against non-marketable interest within a Floor broker's discretionary range and (ii) routing control for Floor brokers with respect to d-Quotes.[8]

The Exchange anticipates that the implementation of Phase IV will not be completed as originally anticipated by February 5, 2007. Through this filing the Exchange therefore requests to extend Floor brokers' ability to enter d-Quotes and CAP–DI orders in a security on the same side of the market for the same orders that are capable of trading at the same price until the implementation of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 54577 (October 5, 2006), 71 FR 60208 (October 12, 2006) (SR–NYSE–2006–36).

[6] *See* Exchange Rules 13 and 123A.30(a). Exchange Rule 123A.30(a) describes a CAP–DI order as: ''The elected or converted portion of a 'percentage order that is convertible on a destabilizing tick and designated immediate execution or cancel election' (''CAP–DI order'') may be automatically executed and may participate in a sweep.''

[7] *See* Securities Exchange Act Release No. 54653 (October 26, 2006), 71 FR 64594 (November 2, 2006) (SR–NYSE–2006–94).

[8] Other d-Quote functions were implemented in Phase III.

full d-Quoting functionality in the relevant security or until March 5, 2007 whichever comes first.

The Exchange believes that extending the time period in which Floor brokers have this capability is necessary in order to ensure that Floor brokers remain competitive. Currently, the specialist can send electronically a ''hit bid'' or ''take offer'' message based on an incoming order that would create a new best bid or best offer; thus allowing the specialist to trade electronically with the newly published bid or offer. Without complete d-Quote functionality, a Floor broker only has the ability to interact manually with such new bid or offer. As a result, the speed disparity between a manual action and an electronic one places the Floor broker at a competitive disadvantage.

While a Floor broker can seek to trade at the bid or offer price by manually ''hitting the bid'' or ''taking the offer'' the Floor broker can also send a CAP–DI order to the specialist for conversion or election at that price. Marketable CAP–DI orders are automatically converted and trade along with specialist proprietary executions. Accordingly, by allowing Floor brokers to have CAP–DI orders and d-Quotes, they retain the ability to compete with specialist algorithmic trading for executions involving marketable incoming orders via discretionary pricing instructions, but do not miss participating in executions when specialists algorithmically hit a bid or take an offer.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act [9] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act [10] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, 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 [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change immediately operative upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the proposal would enable floor brokers to continue to compete with specialists in certain trades on behalf of their customers, while the Exchange is in the process of implementing the d-Quote functions. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission until the availability of full d-Quote functions in a particular security or March 5, 2007, whichever comes first.[14]

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2007–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–11. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR–NYSE–2007–11 and should be submitted on or before March 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2406 Filed 2–12–07; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10799 and # 10800]

Colorado Disaster # CO–00014

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of COLORADO dated 02/07/2007.

Incident: Fire.

Incident Period: 01/16/2007.

Effective Date: 02/07/2007.

Physical Loan Application Deadline Date: 04/09/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 11/07/2007.

ADDRESSES: Submit completed loan applications to: Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: El Paso.

Contiguous Counties:

Colorado: Crowley; Douglas; Elbert; Fremont; Lincoln; Pueblo; Teller.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere:	6.000
Homeowners Without Credit Available Elsewhere:	3.000
Businesses With Credit Available Elsewhere:	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere:	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere:	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere:	4.000

The number assigned to this disaster for physical damage is 10799 5 and for economic injury is 10800 0.

The State which received an EIDL Declaration # is Colorado

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Steven C. Preston,

Administrator.

[FR Doc. E7–2460 Filed 2–12–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Tillamook Airport, Tillamook, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at Tillamook Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21), now 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before March 15, 2007.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. J. Wade Bryant, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98057–3356.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jack Crider, Port Manager of the Port of Tillamook Bay, at the following address: Mr. Jack Crider, Port Manager, Port of Tillamook Bay, 4000 Blimp Blvd., Tillamook, OR 97141.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Watson, OR/ID Section Supervisor, Federal Aviation Administration, Northwest Mountain Region, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98057–3356.

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Tillamook Airport under the provisions of the AIR 21 (49 U.S.C. § 47107(h)(2)).

On January 31, 2007, the FAA determined that the request to release property at Tillamook Airport submitted by the airport meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than March 15, 2007.

The following is a brief overview of the request:

Tillamook Airport is proposing the release of approximately 19,144 square feet of airport property to the Oregon Department of Transportation for turn lane improvements to reduce traffic congestion. The revenue made from this sale will be used toward Airport Capital Improvement.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon appointment and request, inspect the application, notice and other documents germane to the application in person at Tillamook Airport.

Issued in Renton, Washington on January 31, 2007.

J. Wade Bryant,

Manager, Seattle Airports District Office.

[FR Doc. 07–626 Filed 2–12–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eleventh Meeting: RTCA Special Committee 207/Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 207 Meeting, Airport Security Access Control Systems.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 207, Airport Security Access Control Systems.

DATES: The meeting will be held March 8, 2007 from 9:30 a.m.–4 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., Conference Rooms, 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW.,

[15] 17 CFR 200.30–3(a)(12).

Suite 805, Washington, DC 20036; 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 (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 207 meeting. The agenda will include:

- March 8:
- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks).
- Review of Meeting Summary.
- Review of workgroup leader meetings.
- Workgroup Reports.
- Overview.
- Workgroup 2: System Performance Requirements.
- Workgroup 3: Subsystem Functional Performance Requirements.
- Workgroup 4: System Verification and validation.
- Workgroup 5: Biometrics.
- Workgroup 6: Credentials.
- Workgroup 7: Perimeter.
- ICAO Update.
- Closing Plenary Session (Other Business, Establish Agenda, Date and Place of Following Meetings).

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 February 6, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07–627 Filed 2–12–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment Joint With EUROCAE Working Group 14

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 135 meeting joint with EUROCAE Working Group 14.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment joint with EUROCAE Working Group 14.

DATES: The meeting will be held March 13–15, 2007 starting at 9 a.m.

ADDRESSES: The meeting will be held at Hotel Paradou, near Eurocopter Saussetles-Pins, France.

FOR FURTHER INFORMATION CONTACT: Due to the particular organization of this meeting please make your booking and provide information on your stay to Marc Poncon as soon as possible at *marc.poncon@eurocopter.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 135 meeting joint with EUROCAE Working Group 14. The agenda will include:

- March 13–15.
- Chairman's Opening Remark, Introductions.
- Welcome from EUROCAE WG–14 Chairman.
- Approval of Summary from the Forty-Eighth SC 135 Meeting and Sixtieth WG 14 Meeting.
- RTCA Paper No. 023/SC135–659.
- EUR 396–06/GT 14–127.
- Review Change Proposals for First Draft of DO–160F/ED (draft section on RTCA Web site).
- Review Schedule to Release DO–16–ED14 F.
- Closing Plenary Session (New/Unfinished Business, Date and Place of Next Meeting).

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 February 5, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07–628 Filed 2–12–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Final Opinion on the Transferability of Interim Operating Authority Under the National Parks Air Tour Management Act

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final opinion.

SUMMARY: This notice sets forth the FAA's final opinion on the transferability of interim operating authority under the National Parks Air Tour Management Act.

FOR FURTHER INFORMATION CONTACT: James W. Whitlow, Deputy Chief Counsel for Policy and Adjudications, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3773.

SUPPLEMENTARY INFORMATION: This notice sets forth the FAA's final opinion on the transferability of interim operating authority.

On April 5, 2000, Congress passed the National Parks Air Tour Management Act (Act). The Act set up a process by which the FAA and the National Park Service (NPS) would work together to establish air tour management plans for all units of the national park system and abutting tribal lands having commercial air tours. On October 25, 2002, the FAA published a final rule in 14 CFR part 136, National Parks Air Tour Management (67 FR 65662), pursuant to a mandate specified in the Act. This final rule completed the definition of ''commercial air tour operation'' by establishing the altitude (5,000 feet above ground level) below which an operator flying over a national park for the purpose of sightseeing is classified as a commercial air tour operator. The rule also codified provisions of the Act in the FAA's regulations at 14 CFR part 136.

Under the Act, the air tour management plan (ATMP) process is initiated when a commercial air tour operator files an application for operating authority with the FAA to conduct commercial air tours over a national park or abutting tribal land (49 U.S.C. 40128(a); 14 CFR 136.7). Once an application is filed, the FAA, in cooperation with the Director of the National Park Service, must develop and implement an ATMP for the park or abutting tribal land. Operators conducting commercial air tours over a unit of the national park system or abutting tribal land during the 12 month period prior to adoption of the Act are

classified under the Act as existing commercial air tour operators (49 U.S.C. 40128(f); 14 CFR 136.3). These existing operators are eligible to receive interim operating authority (IOA), under conditions set forth in the Act. IOA allows these operators to continue conducting commercial air tours over the parks or tribal lands pending completion of the ATMP. With a few limited exceptions, no other operators are permitted to operate pending completion of the ATMP.

Since the Act did not directly address the issue of IOA transferability, the FAA must determine whether allowing transferability of IOA from one operator to another is consistent with the Act's provisions and overall goals. By notice published in the **Federal Register** on June 28, 2006, the FAA solicited comments on a draft opinion that concluded permitting the transferability of IOA is neither consistent with provisions of the Act nor its overall goals. On July 26, 2006, the FAA extended the comment period to September 13, 2006.

The FAA received six comments in response to that notice. The majority of commenters raised two common points. First, because of the amount of time it takes to complete an ATMP, failure to allow free transferability of IOA will inevitably result in an overall reduction of the number of air tour flights available to the public. Secondly, allowing the transfer of IOA among existing and new operators would not increase the overall number of potential IOA at a park and is fully consistent with the intent of Congress.

The FAA acknowledges that, if IOA is not transferable, the number of air tours at a park may be reduced if an air tour operator goes out business without a successor purchaser. It must also be acknowledged, though, that Congress clearly intended IOA to be temporary in nature and severely limited FAA and NPS' ability to grant increases of IOA to existing operators or new entrants. The statutory scheme for IOA as expressed in the Act does not support the concept that Congress intended to allow the free trafficking in IOA. It cannot be presumed that, while Congress authorized FAA and the NPS to reduce, or even eliminate IOA prior to the implementation of an ATMP, it intended to preserve the existing level of air tours by permitting unrestricted transfer of IOA.

Some commenters argued that the transferability mechanism for Grand Canyon should serve as a model for IOA. Others requested that, if it is decided IOA is not transferable, that decision should not apply to operating authority (OA) granted under an ATMP. If IOA were transferable, then the Grand Canyon transfer mechanism in 14 CFR 93.321 could serve as a model; however, Grand Canyon's transfer mechanism was created by regulation under different statutory authority. It does not serve as a precedent for the transferability of IOA. On the other hand, this opinion only addresses the transferability of IOA. Transferability of OA will be covered separately, as part of the ATMP process.

After due consideration of the comments received, the FAA issues the following final opinion on the transferability of IOA.

Opinion: Congress required ATMPs to be established over units of the national park system and abutting tribal lands to ensure that the agencies analyze the environmental impact of commercial air tours upon such land and ''develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences and tribal lands'' (49 U.S.C. 40128(b)(1)(B); 14 CFR 136.9(a)). Under the Act, commercial air tours are not permitted until an ATMP is completed for the park, unless the operator is an existing air tour operator as defined in the Act and receives IOA, has received authority to operate under part 91 with a letter of agreement from the Administrator and the NPS superintendent for that national park unit (49 U.S.C. 40128(a)(3); 14 CFR 136.7(g)), or has received authority to operate as a new entrant prior to the completion of the ATMP (49 U.S.C. 40128(c)(3)(C); 14 CFR 136.11(c)).

Congress set up the IOA process as a way of ensuring that those commercial air tour operators conducting commercial air tours over national parks at the time of Act's enactment would not be put out of business while the FAA, in cooperation with NPS, analyzed the environmental impact of the air tours on the national park unit and developed an ATMP. The IOA then ends 180 days after the ATMP is adopted.

IOA is granted to specific operators over specific parks. Those operators who conducted commercial air tour operations in the 12 months preceding enactment (April 5, 2000) over the particular units of the park system for which they are applying for authority qualify for IOA. Those operators receive an allocation equal to the number of operations they conducted in the 12 month period preceding enactment, or an average, based on the three years preceding enactment. Thus, under the terms of the Act, only existing operators initially qualify for IOA.

Additionally, a particular operator's IOA may not exceed the number of allocations earned by that operator for a calendar year, unless it was increased pursuant to the Act's provisions, which require concurrence between the FAA and NPS. The FAA and NPS may grant such increases under limited circumstances, and the allocations involved in the increase are not subject to sale. The FAA, in cooperation with NPS, may grant IOA to a new entrant air tour operator only if the FAA determines the authority is necessary to ensure competition in the provision of commercial air tour operations over the park or tribal lands.

Given the specificity of the IOA authority and the limitations placed on that authority, FAA has concluded that Congress did not intend for the operators to possess it as a valuable right to be bought and sold. IOA was designed as a temporary solution to allow operators already conducting air tours at the time of the enactment of the Act to continue to operate pending completion of the ATMP, or new entrants to begin operation to ensure competition. If FAA were to conclude that IOA can be transferred, then operators could grow an existing business by adding IOA allocations to their current allotment from other operators and new entrants could obtain IOA allocations and start operations without FAA and/or NPS approval. Such an interpretation would be inconsistent with the overall structure of the Act.

In consideration of the foregoing, it is the opinion of the FAA that IOA is not transferable.

Issued in Washington, DC, on February 7, 2007.

James W. Whitlow,

Deputy Chief Counsel.

[FR Doc. 07–625 Filed 2–12–07: 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2007–26977]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Request for Extension of Currently Approved Information Collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under Supplementary Information. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by April 16, 2007.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA–2007–26977 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 Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Bob Bini, 202–366–6799, or Cynthia Hatley, 202–493–0426, Office of Federal Lands Highway, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Federal Lands Highway Program.

OMB Control #: 2125–0598.

Background: Title 23 U.S.C. 204 requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the Federal Lands Highway Program (FLHP). A management system is a process for collecting, organizing, and analyzing data to provide a strategic approach to transportation planning, program development, and project selection. Its purposes are to improve transportation system performance and safety, and to develop alternative strategies for enhancing mobility of people and goods. This data collection clearance addresses the management systems for the National Park Service (NPS) and the Park Roads and Parkways (PRP) Program; Bureau of Indian Affairs (BIA) and the Indian Reservation Roads (IRR) Program; Fish and Wildlife Service (FWS) and the Refuge Roads (RR) Program; and Forest Service (FS) and the Forest Highway (FH) Program.

Outputs from the management systems are important tools for the development of transportation plans and transportation improvement programs, and in making project selection decisions consistent with 23 U.S.C. 204. Further, management system outputs also provide important information to the FHWA for their stewardship and oversight roles for the Park Roads and Parkways, Indian Reservation Roads, Refuge Roads, and Forest Highway Programs. The data collection required to implement these management systems supports the DOT Strategic Objectives of Safety, Mobility, Environmental Stewardship, and Organizational Excellence. The proposed data collection also directly supports the FHWA's Vital Few Initiative of Safety, Congestion Mitigation, and Environmental Stewardship and Streamlining that represent the three most important strategic planning and performance goals for the agency.

The National Park Service, Bureau of Indian Affairs, Fish and Wildlife Service, and Forest Service are continuing to implement the required management systems and the associated information collections. Completion of this phase-in of the management systems is expected to occur during the time period covered by this information collection, and the average annual burden estimates are based on expected increases in the overall burden over that time period. The management systems vary in complexity among the four agencies and reflect differences in the characteristics of the transportation systems involved such as size, ownership, and eligibility for inclusion in the program. These variations result in differences among the agencies in the expected number of respondents to the information collection, and in the anticipated time necessary to respond to the information collection.

Typical information that might be collected for the management systems includes:

- Traffic information including volumes, speeds, and vehicle classification;
- Pavement features such as number of lanes, length, width, surface type, functional classification, and shoulder information; and pavement condition information such as roughness, distress, rutting, and surface friction;
- Bridge features such as deck width, under/over-clearance, details of structural elements such as girders, joints, railings, bearings, abutments, and piers; and information on the condition of the bridge elements sufficient to describe the nature, extent, and severity of deterioration;
- Safety information such as crash records, crash rates, and an inventory of safety appurtenances such as signs and guardrails; or
- Congestion measures such as roadway level of service or travel delay.

Respondents to the information collection might be collecting and submitting information in one or more of these categories for the portion of their transportation system that is covered under the FLHP. For example, this might include the collection and submission of these types of information for State or county-owned roads that are Forest Highways, or Indian Reservation Roads owned by Indian Tribal Governments. Typically, the respondents would collect information each year on a portion of their system. Burden estimates have been developed using this assumption combined with an estimate of the time needed to collect and provide the information.

Respondents: The estimated average annual number of respondents for the management systems for each of the agencies addressed by this information collection is: NPS management systems—35 States and 40 Metropolitan Planning Organizations (MPOs), regional transportation planning agencies, counties, local or tribal governments. BIA management systems—35 States and 50 MPOs, regional transportation planning agencies, counties, local or tribal governments. FWS management systems—35 States and 40 MPOs, regional transportation planning agencies, counties, local or tribal governments. FS management systems—35 States and 50 MPOs, regional transportation planning agencies, counties, local or tribal governments.

Frequency: Annual.

Estimated Average Annual Burden per Response: NPS management systems—Approximately 40 hours per respondent. BIA management systems—Approximately 60 hours per respondent. FWS management systems—Approximately 20 hours per respondent. FS management systems—Approximately 60 hours per respondent.

Estimated Total Annual Burden Hours: Total estimated average annual burden is 14,700 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: February 7, 2007.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E7–2458 Filed 2–12–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Alamance County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: None of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the relocation of highway NC 119 in Mebane, Alamance County, North Carolina (TIP Project U–3109).

FOR FURTHER INFORMATION CONTACT: Mr. Clarence Coleman, PE, Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601, Telephone: (919) 856–4350, Extension 133.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Caroline Department of Transportation (NCDOT), will prepare an environment impact statement (EIS) on the relocation of NC 119 in Mebane, Alamance County. The proposed action would be the construction of a multi-lane divided facility on new location from the I–85 interchange southwest of Mebane to existing NC 119 near SR 1918 (Mrs. White Lane) north of Mebane. Full control of access is proposed at the I–85 interchange and limited or partial control of access (access only at existing secondary roads [SRs]) is proposed for the remainder of the project. The purpose of this project is to relieve traffic congestion in the downtown area, provide access to the local area, and provide Alamance County with a primary north/south route. The proposed action is consistent with the 2030 Long Range Transportation Plan for Burlington-Graham Metropolitan Planning Organization last updated in May 2005. The proposed action is also consistent with the Burlington-Graham Urbanized Area Transportation Plan (which the Thoroughfare Plan map is a part of) last updated in January 2004. Alternatives under consideration include: (1) The ''no-build'', (2) improving existing facility, and (3) three limited controlled access highways on new location. Letters describing the proposed action and soliciting comments were sent to appropriate Federal, State, and local agencies. A public meeting and meetings with local officials and neighborhood groups were and will continue to be held in the project study area. A public hearing will also be held. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment at the time of the hearing. A formal scoping meeting was held on February 15, 1994.

A result of the scoping meeting, as well as a meeting held with local officials, was an environmental study area comprised of several potential alignment corridors for the relocation of NC 119. The project study area developed from the initial project scoping process was presented to the public at two Citizens Informational Workshops, at which time public input on this study area was received. In addition, NCDOT held several small group meetings with representatives from the various communities in the project study area as a way to gain additional input from residents and identify ways to minimize community impacts. In early 1997, the majority of the supporting documentation for the Environmental Assessment (EA) was completed and at that time, the EA was anticipated to be completed in mid 1997.

In March 1997, NCDOT held a meeting where local residents suggested an eastern route for the relocation of NC 119. Over the course of the next year, NCDOT studied various alternatives that would relocate NC 119 to the east side of Mebane. During this process, NCDOT conducted several meetings with agency representatives, as well as residents from the various communities surrounding the project study area, to discuss concerns regarding the proposed relocation of NC 119. Several project newsletters were mailed to the area residents and project stake holders providing updated information about the project and showing the location of the NC 119 Relocation alternatives being considered. In July 2003, another Citizens Informational Workshop was held by NCDOT, showing the detailed study alternatives to the public and seeking public input. Afterwards, the NCDOT decided that an Environmental Impact Statement would be prepared for this project instead of the EA.

In 2004, the NCDOT hired the Wills Duncan Group to manage a community facilitation program for the NC 119 Relocation project. The intent of this program was to increase citizen involvement and identify the most important issues regarding the proposed project from the perspective of the various communities within the study area. A series of community charettes were conducted by the Wills Duncan Group as part of this program and the result was the formation of the NC 119 Relocation Steering Committee; a diverse group of citizens representing the neighborhoods and the business community of the Greater Mebane area. The primary responsibility of this Steering Committee was to assist in increasing citizen participation in the transportation decision making process and to identify the most important issues regarding the project from the perspective of the local communities. Due to extensive coordination with the resource agencies, local officials, and the public during the EA and EIS process for the NC 119 Relocation project, no additional scoping meetings will be conducted for the DEIS.

To ensure that the full range of issues related to the proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 6, 2007.

Clarence W. Coleman,

Operations Engineer, Raleigh, North Carolina.

[FR Doc. 07–615 Filed 2–12–07: 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Phased Implementation of Informal Hearing Process

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Notice.

SUMMARY: The FMCSA is continuing a phased implementation of a new provision related to informal hearings in the 49 CFR part 386 Rules of Practice. On March 17, 2006, this alternative was implemented in States included in the Midwest Service Center geographic area. Beginning on February 13, 2007 this alternative is being expanded to States included in the Eastern Service Center geographic area.

DATES: The first phase began on March 17, 2006. The second phase will begin on February 13, 2007.

SUPPLEMENTARY INFORMATION: The Federal Motor Carrier Safety Administration's (FMCSA) final rule revising 49 CFR part 386, ''Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings'' (Rules of Practice), published on May 18, 2005, (70 FR 28467) became effective on November 14, 2005. As revised, the Rules of Practice permit a respondent in a civil penalty proceeding to request an informal hearing as an alternative to either a request for a formal hearing or a request to submit written evidence without a hearing. The Rules of Practice, however, do not prescribe specific procedures for conducting informal hearings.

As the informal hearing process is a new alternative for motor carriers, FMCSA is implementing this alternative in phases to allow FMCSA time to evaluate and refine how the informal hearing process is conducted.

The informal hearing process was initially implemented on March 17, 2006, (71 FR 13894) in the States served by the Midwest Service Center. FMCSA only considered requests for an informal hearing from respondents with a principal place of business within States included in the FMCSA Midwest Service Center's geographic area. That area encompasses the States of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio and Wisconsin.

The agency intended to expand implementation of the informal hearing process nationwide within a year of the effective date of the Rules of Practice. However, due to the limited number of requests for informal hearings, the agency has not collected sufficient data to evaluate and refine this new process. Therefore, FMCSA has decided to expand the informal hearing process to States in one additional Service Center to allow for continued evaluation of the process.

At this time, FMCSA is expanding use of the informal hearing process to States included in the FMCSA Eastern Service Center geographic area. This area encompasses the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, the District of Columbia and Puerto Rico. This second phase of implementation begins on February 13, 2007. FMCSA will publish any subsequent notices of implementation in the **Federal Register**.

When an informal hearing request is granted, the hearing officer will provide written information to each respondent about the procedures that will govern the hearing.

Issued on: February 6, 2007.

John H. Hill,

Administrator.

[FR Doc. E7–2457 Filed 2–12–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2007–27059, Notice No. 1]

Establishment of an Emergency Relief Docket for Calendar Year 2007

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of establishment of public docket.

SUMMARY: On August 30, 2006, FRA published an Interim Final Rule (IFR) addressing the establishment of emergency relief dockets (ERD) and the procedures for handling petitions for emergency waivers of safety regulations. 71 FR 51517. The IFR provided that each year, FRA will establish an ERD for that year and publish a notice in the **Federal Register** identifying the docket number of the ERD for that year. This Notice announces the establishment of FRA's ERD for the current year (calendar year 2007). The designated ERD for calendar year 2007 is docket number FRA–2007–27059.

ADDRESSES: See Supplementary Information section for further information regarding submitting petitions and/or comments to Docket No. FRA–2007–27059.

SUPPLEMENTARY INFORMATION: On August 30, 2006, FRA published an IFR addressing the establishment of ERD and the procedures for handling petitions for emergency waivers of safety rules, regulations, or standards during an emergency situation or event. 71 FR 51517. As noted in the IFR, FRA's purpose for establishing the ERD and emergency waiver procedures is to provide an expedited process for FRA to address the needs of the public and the railroad industry during emergency situations or events. The IFR added § 211.45 to Subpart C of 49 CFR part 211 (49 CFR 211.45). Section 211.45(b) provides that each calendar year FRA will establish an ERD in the publicly accessible DOT Document Management System (DMS) and that FRA will publish a notice in the **Federal Register** identifying by docket number the ERD for that year. This Notice No. 1 announces that the designated ERD for calendar year 2007 is docket number FRA–2007–27059.

As detailed in the IFR, if the FRA Administrator determines that an emergency event as defined in 49 CFR 211.45(a) has occurred, or that an imminent threat of such an emergency occurring exists, and public safety would benefit from providing the railroad industry with operational relief, the emergency waiver procedures of 49 CFR 211.45 will go into effect. 70 FR 51518. In such an event, the FRA Administrator will issue a statement in the ERD indicating that the emergency waiver procedures are in effect and FRA will make every effort to post the statement on its Web site *http://www.fra.dot.gov/*. In addition, FRA will publish a notice in the **Federal Register** alerting interested parties that the emergency waiver procedures will be utilized. Any party desiring relief from FRA regulatory requirements as a result of the emergency situation should submit a petition for emergency waiver in accordance with 49 CFR 211.45(e) and (f). Specific instructions for filing petitions for emergency waivers in accordance with 49 CFR 211.45 are found at 49 CFR 211.45(f). Specific instructions for filing comments in response to petitions for emergency waivers are found at 49 CFR 211.45(h).

Privacy

Anyone is able to search 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 665, Number 7, Pages 19477–78). The statement may also be found at *http://dms.dot.gov*.

Issued in Washington, DC on February 7, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–2401 Filed 2–12–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235, and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

[Docket Number FRA–2006–26718]

Applicant: CSX Transportation, Incorporated, Mr. C. M. King, Chief Engineer, Communications and Signals, 500 Water Street, SC J–350, Jacksonville, Florida 32202.

CSX Transportation, Incorporated, seeks approval of the proposed modification of the traffic control system on the single main track and siding near Woodbury, Georgia, Milepost ANB–798, on the Atlanta Division, Manchester Subdivision. The proposed changes consist of the conversion of each power-operated switch at each end of the 4,638-foot Woodbury siding to electrically locked hand operation and the discontinuance and removal of all the associated controlled signals.

The reason given for the proposed changes is that a new 10,000-foot signaled siding is being constructed approximately 4 miles south of the present Woodbury siding.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by docket number FRA–2006–26718 and may be submitted by one of the following methods:

Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic site;

Fax: 202–493–2251;

Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW, Nassif Building, Room PL–401, Washington, DC 20590; or 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.

Communications received within 45 days of the date of this notice will be considered by FRA prior to final action being taken. Comments received after that date will be considered to the extent 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*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on February 7, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–2392 Filed 2–12–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Debt Service Reserve Reimbursement Pilot Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Amendment of notice establishing Debt Service Reserve Pilot Program to include a class of participant; correction.

SUMMARY: The Federal Transit Administration published in the **Federal Register** of December 28, 2006, a notice establishing the Debt Service Reserve Pilot Program as authorized under the Safe, Accountable, Flexible, Efficient Transportation Equity Act—a Legacy for Users. Inadvertently, an eligible class of participant in the pilot program was omitted. This document corrects that oversight.

DATES: Effective on February 13, 2007.

FOR FURTHER INFORMATION CONTACT: Paul L. Marx, 202–366–1675; E-MAIL: *paul.marx@dot.gov.*

SUPPLEMENTARY INFORMATION: FTA published a notice in the **Federal Register** of December 28, 2006, at 71 FR 78267–78268, to establish a Debt Service Reserve Pilot Program that allows certain public transportation providers to seek reimbursement of their deposits of bond proceeds in a debt service account. This correction extends eligibility to apply under the pilot program to ''an entity engaged by such [i.e., eligible Formula Grant Program (Section 5307) recipient] provider to design, build, operate and maintain a project eligible under Section 5307.'' This eligibility is important because it provides additional opportunities for supporting public-private partnerships in public transportation. Further, typographical errors in the original notice are corrected.

1. In FR 71 published on December 28, 2006, (71 FR 78267) on page 78267, column 3, **SUMMARY**, remove ''pubic'' and insert in its place ''public''.

2. On page 78267, column 3, A. Authority, remove ''5323(d)(4)'' and insert in its place ''5323(e)(3)''.

3. On page 78268, column 1, section 1 (C), insert after ''(Section 5307)'': ''(or an eligible entity engaged by such provider to design, build, operate and maintain a project eligible under Section 5307) * * *''

4. On page 78268, column 1, section 1 (D), remove ''blood'' and insert in its place ''bond''.

A complete version of the **Federal Register** notice, revised to incorporate the changes described above, appears on

the FTA Web site at *http://www.fta.dot.gov.*

Issued on February 7, 2007.

James S. Simpson,

Administrator.

[FR Doc. E7–2410 Filed 2–12–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

[Docket Number: RITA–2007–27185]

Notice of Request for Approval To Collect Survey Data To Evaluate Close Call Reporting System for Railroad Operations

AGENCY: Volpe National Transportation Systems Center (Volpe Center), Research and Innovative Technology Administration, DOT.

ACTION: Notice and request for comments.

OMB Control Number: New.

SUMMARY: This notice announces that the Volpe Center intends to request the Office of Management and Budget (OMB) to approve a data collection effort to help in the evaluation of a five-year demonstration project focused on improving rail safety by analyzing information on close calls and other unsafe occurrences in the rail industry. The study is conducted by the Office of Human Factors in the Federal Railroad Administration (FRA) and is designed to identify safety issues and propose corrective actions based on voluntary reports of close calls submitted to the Bureau of Transportation Statistics (BTS). Because of the innovative nature of this program, the FRA is implementing an evaluation to determine whether the program is succeeding, how it can be improved, and what is needed to expand the program throughout the railroad industry. This collection is necessary to obtain the data needed to carry out the evaluation. This notice is required by the Paperwork Reduction Act.

Data Confidentiality Provisions: The Volpe Center will not release to FRA or any other public or private entity any information that might reveal the identity of individuals or organizations mentioned in the evaluation survey questionnaires. The respondents will not be asked to identify themselves.

DATES: Comments must be received by April 16, 2007.

ADDRESSES: You can mail or hand-deliver comments to the U.S. Department of Transportation (DOT), Dockets Management System (DMS). You may submit your comments by mail or in person to the Docket Clerk, Docket No. RITA–2007–27185, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590–0001. Comments should identify the docket number; paper comments should be submitted in duplicate. The DMS is open for examination and copying, at the above address, from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on Docket RITA–2007–27185.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (the Internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT. You may fax your comments to the DMS at (202) 493–2251.

If you wish to file comments using the Internet, you may use the DOT DMS Web site at *http://dms.dot.gov.* Please follow the online instructions for submitting an electronic comment. You can also review comments on-line at the DMS Web site at *http://dms.dot.gov.*

Please note that anyone is able to electronically search all comments received into our docket management system 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 review the Privacy Act Statement at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joyce Ranney, DTS 4G, Room 1–655A, Volpe Center; Kendall Square, 55 Broadway; Cambridge, MA 617–494–2095; FAX NO. (617) 494–3622; e-mail: *ranney@volpe.dot.gov.*

SUPPLEMENTARY INFORMATION:

I. The Data Collection

The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; as amended) and 5 CFR part 1320 require each Federal agency to obtain OMB approval to initiate an information collection activity. The Volpe Center is seeking OMB approval for the following Volpe Center information collection activity:

Title: Collect Close Call System Evaluation Survey Questionnaires.

OMB Control Number: New.

Type of Review: Approval of data collection.

Respondents: Employees of selected (pilot) railroad sites.

Number of Respondents: 1200 (per annum).

Estimated Time per Response: 0.33 hours.

Frequency: Once at baseline. (Baseline includes three pilot sites with a total of 1200 respondents.)

Total Annual Burden: 400 hours.

Background

In the U.S. railroad industry, injury rates have been declining over the last 25 years. Indeed, the industry incident rate fell from a high of 12.1 incidents per 100 workers per year in 1978 to 3.66 in 1996. As the number of incidents has decreased, the mix of causes has also changed toward a higher proportion of incidents that can be attributed to human and organizational factors. This combination of trends—decrease in overall rates but increasing proportion of human factors-related incidents—has forced safety managers to shift tactics in order to achieve further reductions in the overall injury rate.

In recognition of the need for new approaches to improving safety, the FRA has instituted the Confidential Close Call Reporting System (C^3RS). The operating assumption behind C^3RS is that by assuring confidentiality, employees will report events, which, if dealt with, will decrease the likelihood of accidents. C^3RS therefore has both a confidential reporting component, and a problem analysis/solution component. C^3RS is expected to affect safety in two ways. First, it will lead to problem solving concerning specific safety conditions. Second, it will engender an organizational culture and climate that supports greater awareness of safety and a greater cooperative willingness to improve safety.

If C^3RS works as intended, it could have an important impact on improving safety and safety culture in the railroad industry. While C^3RS has been developed and implemented with the participation of the FRA, railroad labor, and railroad management, there are legitimate questions about whether it is being implemented in the most powerful way, and whether it will have its intended effect. Further, even if C^3RS is successful, it will be necessary to know if it is successful enough to implement on a wide scale. To address these important questions, the FRA is implementing a formative evaluation to guide program development, a summative evaluation to assess impact, and a sustainability evaluation to

determine how C³RS can continue after the test period is over. The evaluation is needed to provide the FRA with guidance as to how it can improve the program, and how it might be scaled up throughout the railroad industry.

Program evaluation is an inherently data driven activity. Its basic tenet is that as change is implemented, data can be collected to track the course and consequences of the change. Because of the setting in which C³RS is being implemented, that data must come from the railroad employees (labor and management) who may be affected. Critical data include beliefs about safety and issues related to safety, and opinions/observations about the operation of C³RS.

In order to collect the necessary data in a manner that protects confidentiality, the data collection process will be managed by the Volpe Center. The Volpe Center will not release to FRA or any other public or private entity any information that might reveal the identity of individuals or organizations mentioned in the evaluation survey questionnaires. Also the respondents will not be asked to identify themselves.

II. Request for Comments

The Volpe Center requests comments on any aspects of these information collections, including: (1) The accuracy of the estimated burden; (2) ways to enhance the quality, usefulness, and clarity of the collected information; and (3) ways to minimize the collection burden without reducing the quality of the information collected, including additional use of automated collection techniques or other forms of information technology.

Issued in Cambridge, Massachusetts, on February 6, 2007.

Nelson H. Keeler,

Director, Office of Aviation Programs.

[FR Doc. E7–2448 Filed 2–12–07; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34988]

Williams Rail Service, LLC—Acquisition and Operation Exemption—Lines Owned by Duchess Investments V, LLC and G&G/Cherokee Wood Products, Inc.

Williams Rail Service, LLC (WRS), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire (by purchase and lease) and to operate two separate track segments, totaling approximately 1,900 feet of track, in Cherokee County, SC, and Union County, NC. After consummation of the transaction, WRS expects to become and remain a Class III rail carrier.

Pursuant to an agreement that will be executed before consummation, WRS will acquire: (1) By lease from Duchess Investments V, LLC, approximately 600 feet of track near the intersection of Orr Road and Wesley Chapel Stouts Road, in Monroe, Union County, NC, which was formerly used to serve an entity called HoltraChem, and connects with a CSX Transportation, Inc. line; and (2) by purchase from G&G/Cherokee Wood Products, Inc., approximately 1,300 feet of track near the intersection of Tribal Road and I–85 in Blacksburg, Cherokee County, SC, which was formerly used to serve a log home builder, and connects with a Norfolk Southern Railway Company line. WRS anticipates shipping primarily agricultural products off both track segments, and may enter into agreements with contract agents to perform some services solely for the benefit of WRS.

WRS certifies that its projected annual revenues as a result of the transaction will not exceed $5 million and will not result in the creation of a Class II or Class I carrier. WRS intends to consummate the transaction and commence operations no sooner than March 1, 2007 (the effective date of the exemption).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than February 22, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34988, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 5, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–2195 Filed 2–12–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

Genomic Medicine Program Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Genomic Medicine Program Advisory Committee will meet on March 16, 2007 in room 230, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC. The meeting will convene at 8 a.m. and adjourn at 5:30 p.m. The meeting is open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on using genetic information to optimize medical care of veterans and to enhance development of tests and treatments for diseases particularly relevant to veterans.

The Committee will receive an overview of the VA health care system and electronic medical record, and will be asked to provide insight into optimal ways for VA to incorporate genomic information into its health care program while applying appropriate ethical oversight and protecting the privacy of veterans.

Members of the public may provide up to 5-minute statements during the period reserved for public comments. They may also submit, at the time of the meeting, a 1–2 page summary of their comments for inclusion in the official meeting record. Any member of the public seeking additional information should contact Dr. Timothy O'Leary at *timothy.oleary@va.gov.*

Dated: February 5, 2007.

By direction of the Secretary:

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–616 Filed 2–12–07: 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Services National Advisory Committee; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that

the annual meeting of the Department of Veterans Affairs Voluntary Service (VAVS) National Advisory Committee (NAC) will be held May 2–5, 2007, at the Omni William Penn Hotel, 530 Penn Place, Pittsburgh, Pennsylvania. The meeting is open to the public, and the sessions are scheduled as follows:

May 2: 6 p.m. until 8 p.m.
May 3 and 4: 8:30 a.m. until 3 p.m.
May 5: 8:30 a.m. until 2 p.m., with a closing program at 6 p.m.

The Committee, comprised of sixty-three national voluntary organizations, with five membership categories (Service Member, Associate Service Member, Donor Member, Associate Donor Member and Adjunct Member), advises the Secretary, through the Under Secretary for Health, on the coordination and promotion of volunteer activities within VA health care facilities. The primary purposes of this meeting are: to provide for committee review of volunteer policies and procedures; to accommodate full and open communications between organization representatives and the Voluntary Service Office and field staff; to provide educational opportunities geared towards improving volunteer programs with special emphasis on methods to recruit, retain, motivate and recognize volunteers; and to approve committee recommendations.

The May 2 session will involve opening ceremonies and remarks by several VA and local officials. The May 3 session will feature a Voluntary Service Report, and recognition of the recipients of the VAVS Award for Excellence and NAC Volunteers of the Year. In addition, the James H. Parke Memorial Scholarship Luncheon will be held to honor an outstanding youth volunteer. The following educational workshops are scheduled: Volunteer Assignments in the 21st century, Pet Therapy, and Advanced Clinical Access.

On May 4, the business session will include subcommittee reports. This session will be followed by a repeat of the educational workshops. The May 5 session will include closing remarks from the Chairman, followed that evening by the Volunteer Recognition Dinner.

No time will be allocated at this meeting for receiving oral presentations from the public. However, interested persons may either attend or file statements with the Committee. Written statements may be filed either before the meeting or within 10 days after the meeting and addressed to: Ms. Laura B. Balun, Director, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Individuals interested in attending are encouraged to contact Ms. Balun at (202) 273–8952.

Dated: February 5, 2007.

By Direction of the Secretary

E. Phillip Riggin,

Committee Management Officer.

[FR Doc. 07–617 Filed 2–12–07; 8:45 am]

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Federal Register

Tuesday,
February 13, 2007

Part II

Agency for International Development

48 CFR Chapter 7
USAID Direct Contracts for Personal Services; Proposed Rule

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Chapter 7

RIN 0412-AA49

USAID Direct Contracts for Personal Services

AGENCY: United States Agency for International Development.

ACTION: Proposed rule.

SUMMARY: The U.S. Agency for International Development (USAID) is proposing to consolidate its regulations on USAID Direct Contracts for all types of Personal Services into one Appendix. This will clarify and consolidate all regulations for personal services contracts and will eliminate the need for having to refer to multiple sources. This new Appendix A will replace Appendix D—Direct USAID Contracts with a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad, and Appendix J—Direct USAID Contracts with a Cooperative Country National and with a Third Country National for Personal Services Abroad. Appendix A will also incorporate all the regulations and policies currently contained in Contract Information Bulletins (CIBs) and Acquisition and Assistance Directives (AAPDs). This will eliminate the need to refer to two different appendices and other sources for regulations and policies on personal services contracting.

This Appendix will be divided into four parts—one part containing provisions for all types of Personal Services Contracts (PSCs), the second part for U.S. PSCs only, the third part for Third-Country National (TCN) PSCs only, and the fourth part for Cooperating Country National (CCN) PSCs, also known as Foreign Service National (FSN) PSCs only. The USPSC part will identify the provisions for U.S. nationals working in AID/W and those posted overseas. In addition, all non-regulatory information such as procedures and guidance currently contained in Appendices D and J will be removed and incorporated into USAID's internal policy manual—the automated directives system (ADS). We believe this separation of regulations and policies from the procedures and guidance on personal services contracting will clarify and consolidate the regulatory requirements.

DATES: Submit comments on or before April 16, 2007.

ADDRESSES: Submit comments, identified by Title: ''USAID Direct Contracts for Personal Services'' and Regulatory Information Number ''RIN 0412–AA49'' for this rulemaking. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments can be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: federalregistercomments@usaid.gov.* Include title of the proposed action ''USAID Direct Contracts for Personal Services'' and ''RIN 0412–AA49'' in the subject line of the message.
- *Fax:* (202) 216–3395.
- *Mail:* USAID, Office of Acquisition & Assistance, Policy Division, RRB Room No. 7.9–18, 1300 Pennsylvania Avenue NW., Washington, DC 20523–0001.

FOR FURTHER INFORMATION CONTACT: Tom Henson, Telephone 202–712–5448, E-mail: *thenson@usaid.gov.*

SUPPLEMENTARY INFORMATION: *Public Participation:* Because security screening precautions have slowed the delivery and dependability of surface mail to USAID/Washington, USAID recommends sending all comments to the Federal e-Rulemaking Portal, e-mail address, or fax number listed above (all comments must be in writing to be reviewed). You may submit comments by electronic mail as a Microsoft Word file, avoiding the use of any special characters and any form of encryption.

All comments will be made available for public review without change, including any personal information provided, from three days after receipt to finalization of rule at *http://www.regulations.gov.*

A. Background

Since the late 1990s, the Agency's regulations regarding personal services contracts—Appendices D and J—have not been updated to include changes in the processes and interpretations of the Appendices. Further, given the changing roles and responsibilities of the Agency, it is necessary to clarify and update USAID's policy and regulation for personal services contracts. The Proposed Rule consolidates Appendices D and J of the USAID Acquisition Regulations (the ''AIDAR'') into Appendix A, which was previously reserved. Appendix A standardizes the Agency's policies, rules, and regulations regarding personal services contracts, eliminates repetition between the two Appendices, updates the Agency's general provisions, and clarifies the Agency's processes and authorities for all Personal Services Contracts awarded by the Agency.

Under this proposed rule, the Agency establishes a mechanism intended to be applicable to all types of Personal Services Contracts. This proposed rule identifies provisions applicable to all personal services contracts, distinguishes the differences, and organizes and identifies the Agency's applicable rules and regulations to more clearly understand what is considered regulatory in nature and what is considered policy.

B. Regulatory Planning and Review

This is not a significant regulatory action and, therefore, is 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.

C. Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USAID has considered the economic impact of the rule and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the AIDAR 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 Chapter 7

Government procurement.

For the reasons set forth in the preamble, under the authority of Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435, the U.S. Agency for International Development proposes to amend 48 CFR Chapter 7 as follows:

1. Add Appendix A to Chapter 7 to read as follows:

Appendix A to Chapter 7—USAID Direct Contracts for Personal Services

1. General

(a) *Purpose.* This appendix sets forth the process for competition of personal services contracts, and provides the General Provisions to be included in each type of contract. There are three main types of personal services contracts:

(1) Contracts with U.S. citizens or U.S. resident aliens, referred to as U.S. Personal Services Contractor (USPSC);

(2) Contracts with citizens of the cooperating country or non-citizens who

reside legally within the cooperating country, referred to as Foreign Service National Personal Services Contractor (FSNPSC) [1]; and

(3) Contracts with individuals who are neither U.S. citizens/U.S. resident aliens nor citizens of the cooperating country and who have repatriation rights at the end of the contract, referred to as Third Country National Personal Services Contractor (TCNPSC).

(b) *Federal Acquisition Regulations (FAR) and U.S. Agency for International Development Acquisition Regulations (AIDAR).* Contracts for personal services are subject to the FAR and the AIDAR. Other than the limited exceptions described below, Contracting Officers must provide for full and open competition in soliciting offers and awarding Government contracts.

(c) *Definitions (See Part I, General Provision I of this Appendix).*

2. Publicizing Solicitations

(a) Contracting Officers must publicize solicitations for U.S. citizen/U.S. Resident Alien PSCs (USPSCs) who will be based in Washington and in USAID Missions, in FedBizOpps (FBO) at *http://www.fbo.gov* for a minimum of ten (10) working days. Specific exceptions for advertising locally recruited USPSCs (also known as resident hires), Foreign Service National PSCs (FSNs), and Third Country National PSCs (TCNs) are outlined in paragraph 3 below. In addition, other exceptions to advertising federal opportunities are contained in FAR Part 5 and AIDAR Part 705. If the publicizing procedures set out above are not followed, the Contracting Officer must prepare a deviation and a separate justification as required under AIDAR 706.302–70(c)(2).

(b) In addition to advertising in FedBizOpps, the M/OAA Director, acting as head of the Agency under the authority of AIDAR 701.601(a)(1), has authorized USAID Contracting Officers to place paid advertisements and notices in newspapers and periodicals. This specific authorization is found in AIDAR 705.502. Contracting Officers must document the contract file to reflect consideration of the requirements of (48 CFR) FAR 5.101(b)(4). Any advertising in addition to FedBizOpps must be approved by the cognizant CO. When using two sources of advertising, publishing dates and deadlines must be taken into consideration as the FBO posting must occur first. Other means of advertising a solicitation prior to publication in FedBizOpps is a violation of Federal procurement regulations and statutes (FAR 5.101 and FAR 5.102).

3. Exceptions to Publicizing in FedBizOpps

(a) *Locally Recruited PSCs.* For locally recruited PSCs, advertising requirements have been met by soliciting offers from as many potential offerors as is practicable under the circumstances and by meeting the following conditions for use of the Class Justification (See Attachment 1):

(1) *Personal services contracts with United States Citizens Recruited Locally.* If recruited locally, the position is publicized in the same way that the Mission announces direct-hire U.S. citizen positions. Renewals or extensions with the same individual for the same services do not need to be publicized.

(2) *Personal services contracts with FSNs and TCNs subject to the Local Compensation Plan.* New solicitations are publicized consistent with Mission practice on announcement of FSN positions. Renewals or extensions with the same individual for the same services do not need to be publicized.

(b) *Extensions and Renewals.* Publicizing is not required for extensions or renewals with the same individual for the same services.

(c) *Personal services contracts for six months or less.* The Head of USAID's Contracting Activity has determined that publicizing in FedBizOpps is not required for personal services contracts for six months or less. However, as required in FAR 37.104 and FAR 37.105, the CO is responsible for soliciting offers from the maximum number of offerors as is practicable under the circumstances. The CO always reserves the right to use the procedures in paragraph 2—Publicizing Solicitations. These personal services contracts must not be extended or renewed.

4. Competition

(a) *Full and Open Competition.* Contracts for personal services are subject to the Competition in Contracting Act (CICA).

(b) *Exceptions to Full and Open Competition.* USAID has special authority under the Foreign Assistance Act to waive the requirement for full and open competition when foreign aid programs would be impaired (AIDAR 706.302–70).

(1) USAID's Procurement Executive has used this special authority and approved a class justification for exception to full and open competition for USPSCs recruited locally, and for FSNs, and TCNs subject to the local compensation plan, awarded pursuant to AIDAR 706.302–70(b)(1)—''An award under Section 636(a)(3) of the Foreign Assistance Act of 1961, as amended, involving a personal services contractor serving abroad.'' The term ''Locally Recruited'' does not apply to those individuals recruited for work in the United States. It also does not apply to those individuals who are recruited from the U.S. to work in a mission outside the U.S.

The conditions for use of this class justification are listed in 3.A above—''Locally Recruited PSCs'', and the limitations, certification and file documentation below must be satisfied. This class justification does not apply to hiring offshore-PSCs and must not be used for hiring a PSC under a sole source procurement.

(i) Limitations

When using the Class Justification, offers must be requested from as many potential offerors as is practicable under the circumstances and the advertising requirements in 3.A above—''Locally Recruited PSCs'' must be followed.

(ii) Certification and File Documentation

A copy of the class justification must be included in the contract file, together with a written statement, signed by the Contracting Officer, that: The contract is being awarded pursuant to AIDAR 706.302–70(b)(1)—''An award under Section 636(a)(3) of the Foreign Assistance Act of 1961, as amended, involving a personal services contractor serving abroad''; the conditions for use of the class justification have been met; and the cost of the contract is fair and reasonable.

(2) *Extensions and Renewals.* This exception applies to extensions or renewals with the same individual for the same or similar services. This applies to all personal services contracts except those contracts described in 3C above—''Personal services contracts for six months or less.'' For extensions and renewals, the contracting officer must make the determination that the incumbent is the only practicable, potential offeror.

Regardless of the intent to continue obtaining the same services from the same individual, a new contract (as opposed to a contract modification) must be issued to that individual after a 5-year period of performance. This allows the requiring office and the CO to ensure the terms and conditions and the statement of duties are current. In all cases, the CO has the final determination as to the need for any revisions. If the changes to the statement of duties expand it beyond the scope of ''same or similar services,'' the CO must ensure that the appropriate competitive procedures are followed for a new procurement.

(3) *Other non-competitive procedures.* The class justification only covers circumstances outlined above in paragraph 1 of 4.B.—''Exceptions to full and open competition.'' To use any other exception in FAR 6.302 or AIDAR 706.302.70, the Contracting Officer must adhere to the limitations in AIDAR 706.302.70(c) and must prepare a separate justification as required under FAR 6.303. The class justification is not valid in these instances.

5. Issuance of the Solicitation and Receipt of Applications

Once the solicitation is issued, USPSCs must submit an OF–612 or SF–171 form, completed and signed, to the individual designated for the receipt of applications in the solicitation. FSN and TCN PSCs must submit an AID Form 1420–17—Contractor Employee Biographical Data Sheet along with any other required documentation requested in the solicitation to the individual designated for the receipt of application in the solicitation. Individuals responding to the solicitation may use any transmission method authorized by the solicitation (i.e. regular mail, electronic commerce, or facsimile). See FAR Part 15.207 for handling proposals and information.

6. General Provisions

This section contains the General Provisions, which are to be used as specified in contracts with a U.S. Citizen or a Resident Alien (USPSC), Foreign Service National (FSNPSC) or a Third Country National (TCNPSC)

The General Provisions are divided into four parts as follows:

PART I: For inclusion in all types of Personal Service Contracts (USPSCs, TCNs and FSNs)

[1] Also referred to/known as Cooperating Country National Personal Services Contractor (CCNPSC).

PART II: For inclusion in U.S. Personal Service Contracts (USPSCs) only
PART III: For inclusion in Third Country National Personal Service Contracts (TCNPSCs) only
PART IV: For inclusion in Foreign Service National Personal Service Contracts (FSNPSCs) only

PART I: For Inclusion in All Types of Personal Service Contracts (USPSCs, TCNPSCs and FSNPSCs)

1. Definitions

(a) *USAID* means the United States Agency for International Development offices, bureaus, and divisions, in both Washington and field missions, and its predecessor agencies, including the International Cooperation Administration (ICA).

(b) *Administrator* means the Administrator of USAID or representative delegated administrator's authority.

(c) *Class Justification* means a document signed by the Procurement Executive that describes specific circumstances in which full and open competition is not required.

(d) *Cognizant Technical Officer (CTO)* means the individual who performs functions that are designated by the Contracting Officer, or is specifically designated by policy or regulation as part of contract administration. The CTO has no warrant and has no authority other than those noted above. In other parts of the U.S. Government, the synonymous term is usually Contracting Officer's Technical Representative (COTR).

(e) *Contracting Officer (CO)* means a person representing the U.S. Government through the exercise of his/her delegated authority to enter into, administer, and/or terminate contracts and make related determinations and findings. This authority is delegated by one of two methods: to the individual by means of a ''Certificate of Appointment'', SF 1402, as prescribed in FAR 1.603–3, including any limitations on the scope of authority to be exercised, or to the head of each contracting activity (as defined in AIDAR 702.170), as specified in AIDAR 701.601. (ADS 302).

(f) *Contractor* means a non-direct hire individual acting as an agent of USAID and carrying out a scope of work specified by USAID (ADS 102).

(g) *Cooperating Country or Host Country* means the country receiving the USAID assistance. Cooperating Country means the same as ''host country.''

(h) *Cooperating Country Government* means the government of the Cooperating Country.

(i) *Dependent(s)* means:

(1) A spouse;

(2) Children who are under 21 years of age and unmarried or, regardless of age, are incapable of self-support (children include step—and adopted—children and those who are under legal custody of the employee or spouse and are dependent upon and normally reside with the employee and are expected to be under guardianship of the employee until 21 years of age);

(3) Parents (including step—and legally adoptive—parents) who are at least 51 percent dependent on the employee for support; and

(4) Brothers and/or sisters (including step—and adoptive—brothers and/or sisters) who are 51 percent or more dependent on the employee, unmarried and under 21 years of age. However, there is no age limit if they are physically or mentally incapable of self-support.

(j) *Economy Class* means a class of air travel that is less than business or first class.

(k) *Employer-employee relationship* means an employment relationship under a service contract with an individual, which occurs when, as a result of the contract's terms or the manner of its administration during performance, the PSC is subject to the relatively continuous supervision and control of a Government officer or employee.

(l) *Foreign Service National (FSN)* means the individual who is a Cooperating Country citizen or a non-Cooperating Country citizen lawfully admitted for permanent residence in the Cooperating Country. For the purpose of this Appendix, FSN employees are the same as CCN employees and are used interchangeably. Note that FSN is the most widely used terminology to describe non-U.S. citizen employees.

(m) *Government* means the United States Government.

(n) *Local currency* means the currency of the Cooperating Country.

(o) *Locally Recruited* means recruitment of individuals residing in the cooperating country. Locally recruited does not apply to those individuals recruited for work in the United States. It also does not apply to those individuals who are recruited from the U.S. to work in a mission outside the U.S.

(p) *Mission* means the USAID Mission or the principal USAID office or representative (including an embassy designated to so act) in a Cooperating Country in which there is a program or activity administered by USAID.

(q) *Mission Director* means the principal officer in the Mission in the Cooperating Country, or the designated representative of the Mission Director.

(r) *Offshore PSCs*[2] means an individual who is brought into the host country at Government expense and has repatriation rights.

(s) *Period of Performance* means the PSC's period of service as defined under the contract. Time spent initially traveling to post and final travel when departing from post is not included in the period of performance and is not subject to salary even though travel expenses may be allowable.

(t) *Personal services contract* means a contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, Government employees (see FAR 37.104) (FAR 2.101) The acronym ''PSC'' is used to describe a personal services contractor.

(u) *Resident Hire* (also referred to as Locally Recruited USPSCs) means individuals who are U.S. citizens who at the time of hiring as a PSC, reside in the cooperating country:

(1) As a spouse or dependent of a U.S. citizen employed by a U.S. Government Agency or under any U.S. Government-financed contract or agreement, or under any other contract or agreement that provides for repatriation to the United States; or

(2) For reasons other than for employment with a U.S. Government Agency or under any U.S. Government-financed contract or agreement, or under any other contract or agreement that provides for repatriation to the United States.

(3) A U.S. citizen for purposes of this definition also includes a person who at the time of contracting, is a lawfully admitted permanent resident of the United States.

(v) *Short-term personal services contract* means a contract for less than one year.

(w) *Third Country National (TCN)* means an individual who is neither a citizen of the United States nor a citizen of the country to which assigned for duty, AND who is eligible for return travel to their home country or country from which recruited at U.S. Government expenses, AND who is on a limited assignment for a specific period of time.

(x) *Traveler* means:

(1) The PSC when in authorized travel status, and/or

(2) Dependent(s) of the PSC who are in authorized travel status.

(y) *U.S. Resident Alien* means a non-U.S. citizen lawfully admitted for permanent residence in the United States.

2. Compliance With Laws and Regulations

(a) *Standards of Conduct.*

(1) The PSC will be required to comply with the same ethics laws, rules, and regulations as required of USAID direct hire employees. However, if the PSC's period of performance is less than 130 days during any period of 360 days, the PSC will be subject to the same laws, rules, and regulations as a ''special Government employee'' and subject to the provisions of Title 18—Crimes and Criminal Procedure, Part I—Crimes, Chapter 11—Bribery, Graft, and Conflict of Interest, as set forth in 18 U.S.C. 202(a).

(2) By signing this contract, the PSC agrees to comply with all ethics laws, rules, and regulations that are applicable to other USAID direct hire employees, including 18 U.S.C. 202, 203, 205, 207, 208, 209, and 219, the USAID General Notice entitled ''Employee Review of the New Standards of Conduct,'' and 5 CFR part 2635.

(3) If, however, the PSC's period of performance is less than 130 days during any period of 360 days, by signing this contract, the PSC agrees to comply with the same laws, rules, and regulations as a ''special Government employee'' and subject to the provisions as set forth in 18 U.S.C. 202(a), the USAID General Notice entitled ''Employee Review of the New Standards of Conduct,'' and the portions of 5 C.F.R. Part 2635 that are applicable to ''Special Government Employees.''

(b) *Conformity to Laws and Regulations of the Cooperating Country.* PSC agrees that, while in the cooperating country, the PSC as well as dependents, must abide by all applicable laws and regulations of the cooperating country and its political subdivisions.

[2] Also referred to/known as ''Internationally Recruited PSCs''

3. Contractor—USAID Relationships

(a) The PSC acknowledges that this contract is an important part of the U.S. Foreign Assistance Program and agrees that the duties will be carried out in such a manner as to be fully commensurate with the responsibilities which this entails.

(b) The PSC is expected to show respect for the conventions, customs, and institutions of the Cooperating Country and not interfere in its political affairs.

(c) If the PSC's conduct is not in accordance with paragraph (b) of this provision, the contract may be terminated under the General Provision of this contract, entitled ''Termination''. In addition, the U.S. Ambassador may direct the immediate removal of a USPSC or a TCNPSC from any country when, in the discretion of the Ambassador, the interests of the United States so require.

(d) The Mission Director is the chief representative of USAID in the Cooperating Country. In this capacity, s/he is responsible for the total USAID Program in the Cooperating Country including certain administrative responsibilities set forth in this contract and for advising USAID regarding the performance of the work under the contract and its effect on the U.S. Foreign Assistance Program. The PSC will be responsible for performing duties in accordance with the statement of duties called for by the contract, and as required and necessary, report on the progress of the work under the contract.

4. Workweek

The PSC's workweek must not be less than 40 hours, unless otherwise provided in the Contract Schedule, and must coincide with the workweek as defined by the Mission. If the contract is for less than full time (40 hours weekly), the annual and sick leave earned must be prorated (see the General Provision of this contract entitled Leave and Holidays).

5. Insurance

Worker's Compensation Benefits. USAID will provide the PSC with worker's compensation benefits in accordance with the Federal Employees' Compensation Act.

6. Termination

(This is an approved deviation to be used in place of the clause specified in FAR 52.249–12.)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part:

(1)(i) For cause, which may be effected immediately after establishing the facts warranting the termination, by giving written notice and a statement of reasons to the PSC in the event of:

(A) A breach or violation of any obligations contained in this contract; or

(B) Fraud being committed in obtaining the contract; or

(C) Misconduct by the PSC (as determined by the USAID Mission Director or Contracting Officer) in or affecting the Cooperating Country.

(ii) Upon such a termination, the PSC's right to compensation stops when the period specified in the written notice expires or the last day on which the PSC performs services in support of this contract, whichever is earlier. No costs of any kind incurred by the PSC after the effective date in this notice may be reimbursed except the cost of return transportation (not including travel allowances), if approved by the Contracting Officer. If any costs relating to the period subsequent to such date have been paid by USAID, the PSC must promptly refund to USAID any such prepayment as directed by the Contracting Officer.

(2) For the convenience of USAID, by giving not less than 15 calendar days advance written notice to the PSC. Upon such a termination, PSC's right to compensation stops when the period specified in the written notice expires except that the PSC is entitled to any unused vacation leave, return transportation costs and travel allowances and transportation of unaccompanied baggage costs at the rate specified in the contract and subject to the limitations that apply to authorized travel status.

(3) For the convenience of USAID, when the PSC is unable to complete performance of the services under the contract by reason of sickness or physical or emotional incapacity based upon a certification of such circumstances by a duly qualified doctor of medicine approved by the Mission. The contract will be deemed terminated upon delivery to the PSC of a written termination notice. Upon such a termination, the PSC will not be entitled to compensation except to the extent of any unused vacation or sick leave, but will be entitled to return transportation, travel allowances, and unaccompanied baggage costs at rates specified in the contract and subject to the limitations that apply to authorized travel status.

(4) For convenience, when a final security clearance is denied. The contract will be deemed terminated upon issuance to the PSC of a written termination notice. Upon such a termination, the PSC's right to compensation stops when the period specified in the written notice expires or the last day on which the PSC performs services in support of this contract, whichever is earlier. The PSC will be entitled to any unused vacation leave, and will be entitled to return transportation, travel allowances, and unaccompanied baggage costs at rates specified in the contract and subject to the limitations that apply to authorized travel status.

(b) The PSC, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer.

7. Termination of PSCs Hired Under the Local Compensation Plan

For those PSCs hired under the local compensation plan, termination will be in accordance with the local compensation plan.

8. Release of Information

All rights in data and reports required by or developed under this contract become the property of the U.S. Government. All information gathered under this contract by the PSC and all reports and recommendations hereunder must be treated as confidential by the PSC and must not, without the prior written approval of the Contracting Officer, be made available to any person, party, or government, other than USAID, except as otherwise expressly provided in this contract. All data and reports, including copies, will remain the property of USAID.

9. Training

The PSC may be provided job related training to expand capabilities and increase knowledge and skills.

10. Reports

(a) The PSC must prepare and submit two copies of each technical report required by the schedule of this contract to the Development Experience Clearinghouse, Via E-mail: *docsubmit@dec.cdie.org;* Via U.S. Postal Service: Development Experience Clearinghouse, 8403 Colesville Road, Suite 210 Silver Spring, MD 20910, USA; 3c) Via Fax: (301) 588–7787; or Online: *http://www.dec.org/index.cfm?fuseaction=docSubmit.home*.

(b) The title page of all reports forwarded to the Development Experience Clearinghouse under this paragraph must include a descriptive title, the author's Name(s), contract number, project number and title, PSC's name, name of the USAID project office, and the publication or issuance date of the report.

(c) When preparing reports, the PSC must refrain from using elaborate art work, multicolor printing, and expensive paper/binding, unless it is specifically authorized in the Contract Schedule. Wherever possible, pages must be printed on both sides using single spaced type.

11. Prohibition on the Use of Federal Funds To Promote, Support, or Advocate for the Legalization or Practice of Prostitution—Acquisition

(a) The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this contract may be used to promote, support, or advocate the legalization or practice of prostitution. Nothing in the preceding sentence will be construed to preclude assistance designed to ameliorate the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted from such victims being trafficked.

(b) The contractor shall insert this provision in all sub-awards under this award.

(c) This provision includes express terms and conditions of the contract and any violation of it shall be grounds for unilateral termination, in whole or in part, of the contract by USAID prior to the end of its term.

12. Homeland Security Presidential Directive–12 (HSPD–12)

(a) In response to the general threat of unauthorized access to federal facilities and information systems, the President issued Homeland Security Presidential Directive–

12. HSPD–12 requires all Federal agencies to use a common Personal Identity Verification (PIV) standard when identifying and issuing access rights to users of Federally-controlled facilities and/or Federal Information Systems. USAID will begin issuing HSPD–12 ''smart card'' IDs to applicable contracts, using a phased approach. Effective October 27, 2006, USAID will begin issuing new ''smart card'' IDs to new contractors (and new contractor employees) requiring routine access to USAID controlled facilities and/or access to USAID's information systems. USAID will begin issuance of the new smart card IDs to existing contractors (and existing contractor employees) on October 27, 2007. (Exceptions would include those situations where an existing contractor (or contractor employee) loses or damages his/her existing ID and would need a replacement ID prior to Oct 27, 2007. In those situations, the existing contractor (or contractor employee) would need to follow the PIV processes described below, and be issued one of the new smart cards.)

(b) Accordingly, before a contractor (including a PSC* or a contractor employee) may obtain a USAID ID (new or replacement) authorizing him/her routine access to USAID facilities, or logical access to USAID's information systems, the individual must provide two forms of identity source documents in original form and a passport size photo. One identity source document must be a valid Federal or state government-issued picture ID. (Overseas foreign nationals must comply with the requirements of the Regional Security Office.) USAID/W contractors must contact the USAID Security Office to obtain the list of acceptable forms of documentation, and contractors working in overseas Missions must obtain the acceptable documentation list from the Regional Security Officer. Submission of these documents, and related background checks, are mandatory in order for the contractor to receive a building access ID, and before access will be granted to any of USAID's information systems. All contractors must physically present these two source documents for identity proofing at their USAID/W or Mission Security Briefing. The contractor or his/her Facilities Security Officer must return any issued building access ID and remote authentication token to USAID custody upon termination of the individual's employment with the contractor or completion of the contract, whichever occurs first.

(c) The contractor must comply with all applicable HSPD–12 and PIV procedures, as described above, and any subsequent USAID or government-wide HSPD–12 and PIV procedures/policies, including any subsequent related USAID General Notices, Office of Security Directives and/or Automated Directives System (ADS) policy directives and required procedures. This includes HSPD–12 procedures established in USAID/Washington and those procedures established by the overseas Regional Security Office.

(d) In the event of inconsistencies between this clause and later issued Agency or government-wide HSPD–12 guidance, the most recent issued guidance should take precedence, unless otherwise instructed by the Contracting Officer.

(e) The contractor is required to include this clause in any subcontracts that require the subcontractor or subcontractor employee to have routine physical access to USAID space or logical access to USAID's information systems.

13. Federal Acquisition Regulation (FAR) Clauses To Be Incorporated in Full Text in All Personal Services Contracts

The following FAR Clauses are always to be used along with the General Provisions. They are required in full text.

(a) Covenant Against Contingent Fees 52.203–5

(b) Payment by Electronic Funds Transfer—Other than Central Contractor Registration 52.232–34

(c) Disputes 52.233–1 (Alternate 1)

(d) Preference for U.S. Flag Air Carriers 52.247–63

14. FAR Clauses To Be Incorporated by Reference in All Personal Services Contracts

The following FAR Clauses are to be used along with the General Provisions, and when appropriate, be incorporated in each personal services contract by reference:

(a) Anti-Kickback Procedures 52.203–7

(b) Limitation on Payments to Influence Certain Federal Transactions 52.203–12

(c) Audit and Records—Negotiation 52.215–2

(d) Privacy Act Notification 52.224–1

(e) Privacy Act 52.224–2

(f) Taxes—Foreign Cost Reimbursement Contracts 52.229–8

(g) Interest 52.232–17

(h) Limitation of Cost 52.232–20

(i) Limitation of Funds 52.232–22

(j) Assignment of Claims 52.232–23

(k) Protection of Government Buildings, Equipment, and Vegetation 52.237–2

(l) Notice of Intent to Disallow Costs 52.242–1

(m) Inspection of Services—Cost-Reimbursement 52.246–5

(n) Limitation of Liability—Services 52.246–25

PART II: For Inclusion in U.S. Personal Service Contracts (USPSCs) Only

1. Purchase or Sale of Personal Property or Automobiles (August 2006). (Only for inclusion in offshore USPSCs)

(a) To the extent permitted by the cooperating country, the purchase, sale, import, or export of personal property or automobiles in the cooperating country by the PSC is subject to the same limitations and prohibitions that apply to Mission U.S.-citizen direct-hire employees.

(b) *Insurance on Private Automobiles.* If the PSC or the dependents transport, or have transported, privately owned automobile(s) to the Cooperating Country or purchase an automobile within the Cooperating Country, the PSC agrees to cover such automobile(s) (during such ownership within the Cooperating Country) by a current, i.e., not in arrears, insurance policy. The insurance policy must be issued by a reliable company providing the following minimum coverage, or such other minimum coverage as may be set by the Mission Director, payable in U.S. dollars or their equivalent in the currency of the Cooperating Country: injury to persons, $10,000/$20,000; and property damage, $5,000. The PSC further agrees to deliver, or have delivered, to the Mission Director, the insurance policies required by this provision or satisfactory proof of their existence, before the automobile(s) is operated within the Cooperating Country. The premium costs for such insurance are not reimbursable under this contract.

2. Physical Exams (for Inclusion in Washington-Based USPSCs)

(a) *Physical Fitness.* Washington-based USPSCs are not required to obtain a physical exam unless their work schedule calls for overseas TDY assignments of 60 days or more in the aggregate during a 12-month period.

(b) For Washington based USPSCs whose contracts require TDYs, which in the aggregate amount to 60 days or more in a calendar year, the PSC must obtain a medical clearance from State M/MED prior to any travel overseas. The Contracting Officer will provide the USPSC with a medical clearance packet for this purpose.

3. Physical Exams and Health Room Privileges (for Inclusion in Offshore USPSCs)

(a) *Physical Fitness.*

(1) For contracts performed outside the United States for less than 60 days in a calendar year, the PSC is required to be examined by a licensed doctor of medicine and obtain from the doctor a statement of medical opinion that, in the doctor's opinion, the contractor is physically able to engage in the type of activity for which the PSC is being employed under the contract. A copy of the statement(s) shall be provided to the Contracting Officer prior to the contractor's departure overseas, or for a U.S. resident hire, before the PSC starts work under the contract. As an example, the doctor may choose to use the language of the doctor's statement of medical opinion at the end of the form AID 1420–62 which identifies the contractor by name, to meet this requirement. However, form AID 1420–62 is not required to be completed for contracts less than 60 days.

(2) For all contracts performed outside of the United States in excess of 60 days, the PSC and any authorized dependents must be examined by a licensed doctor of medicine and must obtain a medical clearance from the U.S. Department of State, Office of Medical Services, Medical Clearance Unit (M/MED). A copy of the M/MED Medical Clearance abstract must be provided to the Contracting Officer before the contract is signed.

(3) The PSC and the dependents are authorized physical examinations within 60 days after completion of the PSC's period of performance. The PSC is subject to the same re-imbursement restrictions as the initial exam.

(b) *Reimbursement.*

(1) As a contribution to the cost of medical examinations required by paragraph (a)(1) of this provision, USAID shall reimburse the contractor not to exceed $250 for each physical examination, plus reimbursement of charges for immunizations.

(2) (i) As a contribution to the cost of medical examinations required by paragraph (a)(2) and (3) of this provision, USAID will reimburse the PSC in an amount not to exceed half of the cost of the examination up to a maximum of $700 per examination plus reimbursement of charges for immunizations for the PSC and for each authorized dependent 12 years of age or over. The USAID contribution for dependents under 12 years of age will not exceed half of the cost of the examination up to a maximum of $350 per individual plus reimbursement of charges for immunizations. The PSC must obtain the prior written approval of the Contracting Officer to receive any USAID obligations higher than these limits.

(ii) If M/MED requires the proposed PSC and/or dependents to have additional tests done before providing medical clearance, the proposed PSC shall notify the Contracting Officer and the responsible individual in the requiring office. These additional tests shall be reimbursed to the proposed PSC at 100% of incurred costs, minus any payments by the proposed PSC's insurance company.

(c) *Health Unit Privileges.* After the PSC and dependents receive M/MED clearance, routine medical services shall be available in their overseas location. Procedures at the Health Room shall be in accordance with post policy at the post of duty. These services do not include hospitalization or predeparture examinations. The services normally include such medications as may be available, immunizations and preventive health measures, diagnostic examinations and advice, and home visits as medically indicated. Emergency medical treatment is provided to U.S. citizen PSCs and dependents, whether or not they may have been granted access to routine health room services, on the same basis as would be to any U.S. citizen in an emergency medical situation in the country, including post support for medevac (although medevac service will be paid for by the PSC's medevac insurer) and post support for hospitalizations per the terms of the personal services contract.

4. Medical Expense Payment Responsibility

Include the following provision in all USPSCs (excluding resident hire USPSCs):

(a) Definitions. Terms used in this General Provision are defined in 16 FAM 116 (available at *http://www.foia.state.gov/REGS/fams.asp?level=2&id=59&fam=0).* Note: personal services contractors are not eligible to participate in the Federal Employees Health Programs.

(b) The regulations in the Foreign Affairs Manual, Volume 16, Chapter 520 (16 FAM 520), Responsibility for Payment of Medical Expenses, apply to this contract, except as stated below. The contractor and each dependent are strongly encouraged to obtain health insurance that covers this assignment. Nothing in this provision supersedes or contradicts any other term or provision in this contract that pertains to insurance or medical costs, except that section (e) supplements General Provision entitled ''MEDICAL EVACUATION (MEDEVAC) SERVICES.''

(c)(1) When the contractor or dependent is covered by health insurance, that insurance is the primary payer for medical services provided to that contractor or dependent(s) both in the United States and abroad. The primary insurer's liability is determined by the terms, conditions, limitations, and exclusions of the insurance policy.

(2) When the contractor or dependent is not covered by health insurance, the contractor is the primary payer for the total amount of medical costs incurred and the U.S. Government has no payment obligation (see paragraph (f) of this provision).

(d) USAID serves as a secondary payer for medical expenses of the contractor and dependents who are covered by health insurance, where the following conditions are met:

(1) The illness, injury, or medical condition giving rise to the expense is incurred, caused, or materially aggravated while the eligible individual is stationed or assigned abroad;

(2) The illness, injury, or medical condition giving rise to the expense required or requires hospitalization and the expense is directly related to the treatment of such illness, injury, or medical condition, including obstetrical care; and

(3) The Office of Medical Services (M/MED) or a Foreign Service medical provider (FSMP) determines that the treatment is appropriate for, and directly related to, the illness, injury, or medical condition.

(e) The Mission Director may, on the advice of M/MED or an FSMP at post, authorize medical travel for the contractor or a dependent in accordance with the Travel and Transportation Expenses General Provision section entitled ''Emergency and Irregular Travel and Transportation.'' In the event of a medical emergency, when time does not permit consultation, the Mission Director may issue a Travel Authorization Form or Medical Services Authorization Form DS–3067, provided that the FSMP or Post Medical Advisor (PMA) is notified as soon as possible following such an issuance. The contractor must promptly file a claim with his or her MEDEVAC insurance provider and repay to USAID any amount the MEDEVAC insurer pays for medical travel, up to the amount USAID paid under this section. The contractor must repay USAID for medical costs paid by the MEDEVAC insurer in accordance with sections (f) and (g) below. In order for medical travel to be an allowable cost under General Provision entitled Travel and Transportation Expenses, the contractor must provide USAID written evidence that MEDEVAC insurance does not cover these medical travel costs.

(f) If the contractor or dependent is not covered by primary health insurance, the contractor is the primary payer for the total amount of medical costs incurred. In the event of a medical emergency, the Medical and Health Program may authorize issuance of Form DS–3067, Authorization for Medical Services for Employees and/or Dependents, to secure admission to a hospital located abroad for the uninsured contractor or dependent. In that case, the contractor will be required to reimburse USAID in full for funds advanced by USAID pursuant to the issuance of the authorization. The contractor may reimburse USAID directly or USAID may offset the cost from the contractor's invoice payments under this contract, any other contract the individual has with the U.S. Government, or through any other available debt collection mechanism.

(g) When USAID pays medical expenses (*e.g.*, pursuant to Form DS–3067, Authorization for Medical Services for Employees and/or Dependents), repayment must be made to USAID either by insurance payment or directly by the contractor, except for the amount of such expenses USAID is obligated to pay under this provision. The Contracting Officer will determine the repayment amount in accordance with the terms of this provision and the policies and procedures for employees contained in 16 FAM 521. When USAID pays the medical expenses, including medical travel costs (see section (e) above), of an individual (either the contractor or a dependent) who is covered by insurance, that individual promptly must claim his or her benefits under any applicable insurance policy or policies. As soon as the individual receives the insurance payment, the contractor must reimburse USAID for the full amount that USAID paid on the individual's behalf or the repayment amount determined by the Contracting Officer in accordance with this paragraph, whichever is less. If an individual is not covered by insurance, the contractor must reimburse USAID for the entire amount of all medical expenses and any travel costs the contractor receives from his/her MEDEVAC provider.

(h) In the event that the contractor or dependent fails to recover insurance payments or transfer the amount of such payments to USAID within 90 days, USAID will take appropriate action to collect the payments due, unless such failure is for reasons beyond the control of the USPSC/dependent.

(i) Before departing post or terminating the contract, the contractor must settle all medical expense and medical travel costs. If the contractor is insured, he or she must provide proof to the Contracting Officer that those insurance claims have been submitted to the insurance carrier(s) and sign a repayment agreement to repay to USAID any amounts paid by the insurance carrier(s).

5. Compensation Adjustments

(a) Annual Salary Increase.

(1) All U.S. PSC positions are classified based on the General Service (GS) schedule at the grade USAID considers to be the market value and salary range of the position. When the salary is negotiated and agreed upon, the salary must be fixed at a specific step within the salary range, as classified at the GS-equivalent grade, for the specified position (*e.g.*, GS–13, step 5).

(2) Future salary increases based on written evaluation of satisfactory performance or better must be consistent with U. S. direct-hire employee salary increases in accordance with OMB policy in 5 CFR Section 531.405—''Waiting periods for within-grade increases.''

(3) For extensions and renewals, when a PSC's current salary is between steps (for example between a step 5 and a step 6), the base for extension or renewal will be established at the higher step (for example,

step 6), and the ''step increase'' will be to step 7.

(4) When an individual reaches the upper limit of a position's market value, i.e., the top of the GS-equivalent grade, the individual's salary must be ''capped'' in the same way as that of a USDH salary. This does not affect the annual pay comparability adjustment.

(b) Annual Pay Comparability Adjustment. The PSC's compensation shall be adjusted to reflect the pay comparability adjustments that are granted from time to time to U.S. direct-hire employees by Executive Order for the statutory pay systems (usually in January). Any adjustments authorized are subject to the availability of funds and must not exceed that percentage stated in the Executive Order granting the adjustment. Further, the adjusted compensation may not exceed the annual ''USAID Contractor Salary Threshold (USAID CST)'' which is equivalent to the maximum rate for agencies without a certified SES performance appraisal system (or the equivalent hourly rate).

6. Leave and Holidays

(a) Vacation Leave.

(1) The PSC shall earn vacation leave at the rate of 13 workdays per annum or 4 hours every 2 weeks. However, no vacation shall be earned if the tour of duty is less than 90 days.

(2) Notwithstanding paragraph (a)(1) above, if the PSC has had previous: USAID PSC service (i.e., has served under other personal services contracts (PSCs) covered by Sec. 636(a)(3) of the FAA or other statutory provision applicable to USAID); and/or former U.S. Government (USG) direct hire service—civilian and/or military), the PSC will earn vacation leave based on time in service as follows:

Time in service	Calculated vacation time
Up to 3 years of service	Four hours of vacation leave for each two week period.
over 3 years and up to 15 years of service	Six hours of vacation leave for each two week period (including 10 hours vacation leave for the final pay period of a calendar year).
15+ years of service	Eight hours of vacation leave for each two week period.

(3) (i) Vacation leave is provided under this contract for the purposes of affording necessary rest and recreation during the period of performance. The PSC in consultation with the USAID Mission or USAID/Washington, as appropriate, shall develop a vacation leave schedule early in the PSC's period of performance taking into consideration project requirements, PSC preference and other factors. All vacation leave earned by the PSC must be used during the PSC's period of performance. All vacation leave earned by the PSC, but not taken by the end of the PSC's contract, will be forfeited. However, to prevent forfeiture of vacation leave, the Contracting Officer may approve the PSC taking vacation leave during the concluding weeks of the PSC's contract.

(ii) As an exception to 3(i) above, the PSC may receive lump-sum payment for leave not taken. To approve this exception, the PSC's supervisor must provide the Contracting Officer with a signed, written Determination and Findings. The Determination and Findings must set out the facts and circumstances that prevented the PSC from taking vacation leave and the Contracting Officer must find that these facts and circumstances were not caused by and were beyond the control of the contractor. This leave payment must not exceed the number of days which could be earned by the PSC during a twelve month period.

(4) With the approval of the Mission Director or the cognizant AA, as appropriate, and if the circumstances warrant, a Contracting Officer may grant the PSC advance vacation leave in excess of that earned, but in no case may the Contracting Officer grant advance vacation leave in excess of that earned in one year or over the life of the contract, whichever is less. The PSC agrees to reimburse USAID for any outstanding balance of advance vacation leave provided during the PSC's assignment under the contract.

(5) Applicants for PSC positions will provide evidence of their PSC and/or USG direct hire service—civilian and/or military experience, as applicable, on their signed and dated SF–171 or OF–612. By signing the appropriate form, the applicant attests to the accuracy of the information provided. Any applicant providing incorrect information is subject to the penalty provisions in the form. If required to satisfy due diligence requirements on behalf of the Contracting Officer, PSCs may be required to furnish evidence that verifies length of service, e.g., SF 50, DD Form 214, and/or signed contracts.

(b) Sick Leave. Sick leave is earned at a rate not to exceed 13 work-days per annum or 4 hours every 2 weeks. Unused sick leave may be carried over under an extension/renewal of this contract. Otherwise, sick leave will not be carried over from one post to another or from one contract to another. The PSC will not be compensated for unused sick leave upon completion of this contract.

(c) Military Leave. Military leave of not more than 15 calendar days in any calendar year may be granted to a PSC who is a reservist of the Armed Forces. The PSC must provide advance notice of the pending military leave to the Contracting Officer or the Mission Director as soon as known. A copy of any such notice must be part of the contract file.

(d) Leave Without Pay. Leave without pay may be granted only with the written approval of the Contracting Officer or Mission Director.

(e) Compensatory Time. Compensatory leave may be granted only with the written approval of the Contracting Officer or Mission Director in rare instances when it has been determined absolutely essential and used under those guidelines which apply to direct-hire employees.

(f) Sunday Pay (if applicable). Each Mission has the option whether or not to authorize Sunday pay for U.S. PSCs, with two stipulations: the decision whether or not to pay must be administered consistently throughout the Mission; and if Sunday pay is authorized, it must be paid under the same terms and conditions that Foreign Service direct-hire employees would receive in accordance with 3 FAM 3136.

(g) Leave Records. The PSC shall maintain current leave records and make them available, as requested by the Mission Director or the Contracting Officer.

FOR INCLUSION IN USPSCS Posted Overseas

(h) Home Leave.

(1) Home leave is leave earned for service abroad for use only in the United States, its commonwealths and territories.

(2) A USPSC who is a U.S. citizen or U.S. resident alien and has served at least two years overseas at the same USAID Mission, under the same contract, as defined in paragraph (c)(4) below, and has not taken more than 30 work days leave (vacation, sick or leave without pay) in the United States may be granted home leave in accordance with the following:

(i) If the PSC returns to the same overseas post upon completion of home leave for an additional 2 years under the same contract, or for such shorter period of not less than one year, as approved in writing by the Mission Director prior to the USPSC's departure on home leave, the PSC will receive home leave, to be taken at one time, for a period of not more than 30 work days, provided advance approval is obtained from the Mission Director;

(ii) If the contractor is returning to a different USAID Mission under a USAID personal services contract immediately following completion of the USPSC's home leave, for an additional 2 years under contract, or for such shorter period of not less than one year, as approved by the Mission Directors of the ''losing'' and ''gaining'' Missions, the PSC will receive home leave, to be taken at one time, for a period of not more than 20 work days. When the PSC is returning to a different USAID Mission, the former Mission will pay for the home leave regardless of what country the PSC will be working in following the home leave;

(iii) If home leave eligibility is based on paragraph (c)(2)(ii) of this provision, the PSC must submit written verification to the losing Mission at the time home leave is requested that the PSC has accepted a USAID personal services contract at another USAID Mission following completion of the home leave;

(iv) Travel time by the most direct route is authorized in addition to the number of work days authorized for home leave;

(v) Home leave must be taken in the United States, the Commonwealth of Puerto Rico or

the possessions of the United States, and any days spent elsewhere will be charged to vacation leave. If the PSC does not have accrued vacation leave, the PSC will be placed on leave without pay.

(vi) If the PSC does not complete the additional service required under (c)(2)(i) or (ii) (that the Contracting Officer finds are other than for reasons beyond the PSC's control), the cost of home leave, travel and transportation and any other related costs must be repaid by the PSC to the Government.

(3) Notwithstanding the requirement in paragraph (c)(2) above that the contractor must have served 2 years overseas under personal services contract with the same Mission to be eligible for home leave, the PSC may be granted advance home leave subject to all of the following conditions:

(i) Granting of advanced home leave would in each case serve to advance the attainment of the objectives of this contract; and

(ii) The PSC has served a minimum of 18 months in the Cooperating Country under this contract; and

(iii) The contractor agrees to return to the Cooperating Country to serve out the remainder of the current contract, plus an additional 2 years under the current contract or under a new contract for the same or similar services at the same Mission. If approved in advance by the Mission Director, the contractor may return to serve out the remainder of the current contract, and an additional period of not less than 1 year under the current contract or under a new contract for the same or similar services at the same Mission.

(4) The period of service overseas required under paragraph (c)(2), or paragraph (c)(3) above, will include the actual days in orientation in the United States (less language training). The actual days overseas begin on the date of arrival in the Cooperating Country inclusive of authorized delays enroute. Allowable vacation and sick leave taken while overseas, but not leave without pay, shall be included in the required period of service overseas. An amount equal to the number of days of vacation and sick leave taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States will be added to the required period of service overseas.

(5) Salary during the travel to and from the United States for home leave will be limited to the time required for travel by the most expeditious air route. Except for reasons beyond the PSC's control as determined by the Contracting Officer, the PSC must return to duty after home leave and complete the additional required service or be responsible for reimbursing USAID for payments made during home leave. Unused home leave is not reimbursable under this contract, nor can it be taken incrementally in separate time periods.

(6) Home leave must be taken at one time, and to the extent deemed necessary by the Contracting Officer, a contractor in the United States on home leave may be authorized to spend not more than 5 days in work status for consultation at USAID/Washington before returning to post. Consultation at locations other than USAID/Washington as well as any time in excess of 5 days spent for consultation must be approved by the Mission Director or the Contracting Officer.

(i) Home Leave Policy for Qualifying Posts.

(1) On June 15, 2006, the Congress passed and the President signed an amendment to the Foreign Service Act of 1980, as amended, that allows home leave for direct-hire employees following completion of 12-month overseas assignments at qualifying posts.

(2) USAID is extending this new home leave policy to its USPSCs who ordinarily qualify for home leave, and is effective as of July 20, 2006. This new home leave policy is in addition to the home leave a USPSC would earn under the contract. USAID USPSCs who complete their 12-month assignment at one of the qualifying posts on or after July 20, 2006, may be eligible for home leave under this new provision. For USAID, a list of qualifying posts can be obtained from the Human Resources Office in USAID/W.

(3) If an eligible USPSC elects to take this new home leave, the USPSC must take a minimum of ten workdays of home leave. There is no requirement that an eligible USPSC take home leave after serving 12 months at a designated post; it is only an option. If a USPSC is returning to the United States, and not returning overseas to the same or different USAID Mission, this new home leave policy will not apply.

(j) Holidays. The contractor, while serving abroad, shall be entitled to all holidays granted by the Mission to U.S.-citizen direct-hire employees.

7. Differential and Allowances (for Inclusion IN USPSCs, Excluding Resident Hires)

(a) By definition, a PSC is different from a direct-hire employee. Differentials and allowances are not entitlements. Not all differentials and allowances available to direct-hire employees are available to a PSC. As a result, differences in entitlements may result between USDH and USPSCs. While USAID strives for equity between USDH and USPSCs, it is recognized that the differences in the systems do not entirely allow for such equity.

(b) USPSCs (excluding resident hire) are granted applicable differentials and allowances to the same extent and on the same basis as they are granted to U.S. citizen direct-hire employees at the Mission by the Department of State Standardized Regulations (Government Civilians, Foreign Areas)(DSSR), as from time to time amended. The rate or percentage of the allowance/differential is not negotiable. U.S. resident-hire PSCs are not eligible for any fringe benefits (except contributions for FICA, health insurance, and life insurance), including differentials and allowances. Neither the Contracting Officer nor the Mission Director has the discretion to provide any additional benefits and allowances without M/OAA/P's clearance of a request for deviation.

(c) An explanation for each of the differentials and allowances can be found on the U.S. Department of State website at www.state.gov. If an allowance or differential is not addressed in the DSSR, USAID reserves the right to apply any other guidance that is also used for USDH.

(d) The following differential and allowances may be granted to the PSC in accordance with governing regulations:

Applicable Reference to Standardized Regulations

(1) Post Differential Chapter 500 and Tables in Chapter 900.

(2) Living Quarters Allowance Section 130.

(3) Temporary Lodging Allowance Section 120.

(4) Post Allowance Section 220.

(5) Supplemental Post Allowance Section 230.

(6) Payments During Evacuation Section 600.

(7) Education Allowance Section 270.

(8) Separate Maintenance Allowance Section 260.

(9) Danger Pay Allowance Section 650.

(10) Education Travel Section 280.

(1) Post Differential. Post differential is an additional compensation for service at places in foreign areas where conditions of environment differ substantially from conditions of environment in the continental United States and warrant additional compensation as a recruitment and retention incentive. In areas where post differential is paid to USAID direct-hire employees, post differential not to exceed the percentage of salary as is provided such USAID direct-hire employees in accordance with the Standardized Regulations (Government Civilians, Foreign Areas) Chapter 500 (except the limitation contained in Section 552, ''Ceiling on Payment'') Tables—Chapter 900, as from time to time amended, will be reimbursable hereunder for PSCs in respect to amounts earned during the time such PSCs actually spend overseas on work under this contract. When such post differential is provided to the PSC, it must be payable beginning on the date of arrival at the post of assignment and continue, including periods away from post on official business, until the close of business on the day of departure from post of assignment enroute to the United States. Sick or vacation leave taken at or away from the post of assignment will not interrupt the continuity of the assignment or require a discontinuance of such post differential payments, provided such leave is not taken within the United States or the territories of the United States. Post differential will not be payable while the employee is away from the post of assignment for purposes of home leave. Short-term employees will be entitled to post differential beginning with the forty-third (43rd) day at post.

(2) Living Quarters Allowance. Living quarters allowance is an allowance granted to reimburse an employee for substantially all of the cost for either temporary or residence quarters whenever Government-owned or Government-rented quarters are not provided to the PSC at the post without charge. Such costs are those incurred for temporary lodging (temporary lodging allowance) or one unit of residence quarters (living quarters allowance) and include rent, plus any costs not included therein for heat, light, fuel, gas, electricity and water. The temporary lodging

allowance and the living quarters allowance are never both payable to an employee for the same period of time. The PSC will receive living quarters allowance for payment of rent and utilities if such facilities are not supplied. Such allowance must not exceed the amount paid USAID employees of equivalent rank in the Cooperating Country, in accordance with either, the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 130, as from time to time amended; or other rates approved by the Mission Director. Subject to the written approval of the Mission Director, short-term employees may be paid per diem (in lieu of living quarters allowance) at rates prescribed by the Federal Travel Regulations, as from time to time amended, during the time such short-term employees spend at posts of duty in the Cooperating Country under this contract. In authorizing such per diem rates, the Mission Director must consider the particular circumstances involved with respect to each such short-term employee including the extent to which meals and/or lodging may be made available without charge or at nominal cost by an agency of the United States Government or of the Cooperating Government and similar factors.

(3) Temporary Lodging Allowance. Temporary lodging allowance is a quarters allowance granted to an employee for the reasonable cost of temporary quarters incurred by the employee and the family for a period not in excess of three months after first arrival at a new post in a foreign area or a period ending with the occupation of residence (permanent) quarters, if earlier, and one month immediately preceding final departure from the post subsequent to the necessary vacating of residence quarters. The PSC and authorized dependents will receive temporary lodging allowance in lieu of living quarters allowance, not to exceed the amount set forth in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 120, as from time to time amended.

(4) Post Allowance. Post allowance is a cost-of-living allowance granted to an employee officially stationed at a post where the cost of living, exclusive of quarters cost, is substantially higher than in Washington, D.C. The PSC will receive post allowance payments not to exceed those paid USAID employees in the Cooperating Country, in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 220, as from time to time amended.

(5) Supplemental Post Allowance. Supplemental post allowance is a form of post allowance granted to an employee at the post when it is determined that assistance is necessary to defray extraordinary subsistence costs. The PSC will receive supplemental post allowance payments not to exceed the amount set forth in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 230, as from time to time amended.

(6) Payments during Evacuation. The Standardized Regulations (Government Civilians, Foreign Areas) provide the authority for efficient, orderly, and equitable procedure for the payment of compensation, post differential and allowances in the event of an emergency evacuation of employees or their dependents, or both, from duty stations for military or other reasons or because of imminent danger to their lives. If evacuation has been authorized by the Mission Director, the PSC and authorized dependents will receive payments during evacuation from their post of assignment in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 600, and the Federal Travel Regulations, as from time to time amended.

(7) Educational Allowance. Educational allowance is an allowance to assist the PSC in meeting the extraordinary and necessary expenses, not otherwise compensated for, incurred by reason of the service in a foreign area in providing adequate elementary and secondary education for the children. The PSC will receive educational allowance payments for the dependent children in amounts not to exceed those set forth in Standardized Regulations (Government Civilians, Foreign Areas), Chapter 270, as from time to time amended.

(8) Separate Maintenance Allowance. Separate maintenance allowance is an allowance to assist an employee who is compelled by reason of dangerous, notably unhealthful, or excessively adverse living conditions at the post of assignment in a foreign area, or for the convenience of the Government, to meet the additional expense of maintaining the dependents elsewhere than at such post. The PSC will receive separate maintenance allowance payments not to exceed that made to USAID employees in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 260, as from time to time amended.

(9) Danger Pay Allowance. Danger pay allowance is an allowance to provide additional compensation above basic compensation to employees in foreign areas where civil insurrection, civil war, terrorism or wartime conditions threaten physical harm or imminent danger to the health or well-being of the employee. The danger pay allowance is in lieu of that part of the post differential, which is attributable to political violence. Consequently, the post differential may be reduced while danger pay is in effect to avoid dual crediting for political violence. The PSC will be allowed danger pay allowance not to exceed that paid USAID employees in the Cooperating Country, in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 650, as from time to time amended.

(10) Educational Travel. Educational travel is travel to and from a school in the United States for secondary education (in lieu of an educational allowance) and for college education. The PSC will receive educational travel payments for the dependent children provided such payment does not exceed that which would be payable in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 280, as from time to time amended. Educational travel must not be authorized for PSCs whose assignment is less than two years.

(e) The allowances provided in paragraphs (a)(1) through (10) of this provision must be paid to the PSC in accordance with practice prevailing at the Mission, or the Mission Director may direct that the PSC be paid a per diem in lieu thereof as prescribed by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended.

8. Social Security and Income Tax

(a) F.I.C.A. and Medicare contributions at the prevailing rate, and U.S. Federal Income Tax withholding are deducted in accordance with regulations and rulings of the Social Security Administration and the U.S. Internal Revenue Service, respectively.

(b) The PSC is not eligible for the ''foreign earned income'' exclusion under the IRS Regulations (see 26 CFR 1.911–3(c)(3)).

9. Advance of Dollar Funds

If requested by the PSC and authorized in writing by the Contracting Officer, USAID will arrange for an advance of funds to defray the initial cost of travel, travel allowances, authorized pre-contract expenses, and shipment of personal property. The advance is granted on the same basis as to a USAID U.S.-citizen direct-hire employee in accordance with ADS 633.

10. Health and Life Insurance

(a) USAID will provide the PSC a maximum contribution of up to 50% against the actual costs of the PSC's annual health insurance costs, provided that such costs do not exceed the maximum U.S. Government contribution for direct-hire personnel as announced annually by the Office of Personnel Management.

(b) USAID will provide the PSC with a contribution of up to 50% against the actual costs of annual life insurance not to exceed $500.00 per year.

(c) Retired U.S. Government employees must not be paid additional contributions for health or life insurance under their contracts. The Government will normally have already paid its contribution for the retiree unless the former employee can prove to the satisfaction of the Contracting Officer that the health and life insurance does not provide or specifically excludes coverage overseas. In such case, the PSC would be eligible for contributions under paragraphs (a) and (b) of this provision, as appropriate.

(d) The PSC must submit proof of health and life insurance coverage to the Contracting Officer before any contribution is paid. On assignments of less than one year, costs for health and life insurance are prorated and paid accordingly.

(e) A PSC who is a spouse of a current or retired Civil Service, Foreign Service, or Military Service member and who is covered by their spouse's Government health or life insurance policy is ineligible for the contribution under paragraphs (a) and (b) of this provision.

(f) If the PSC is covered under a spouse's health insurance plan, where the spouse's employer pays some or all of the health insurance costs for the spouse and the PSC, the PSC is ineligible for the contribution under paragraphs (a) and (b) of this provision.

(g) If the PSC is covered under a spouse's health insurance plan, where the spouse's

employer pays only for the spouse's share of the insurance cost and the employer does not pay for any portion of the premium for the PSC, the PSC is eligible for the contributions in (a) and (b) of this provision. The PSC must provide to the Contracting Officer proof of this coverage and premiums paid.

11. Travel and Transportation Expenses

(a) General.

(1) Generally a travel authorization (TA) will be provided to the PSC for transportation authorized by this contract originating in the United States. The executive officer at the Mission will provide a TA for authorized transportation which is payable in local currency or is to originate overseas. When transportation is not provided by the Government-issued TA, the PSC must procure transportation, the costs of which will be reimbursed in accordance with the terms of this contract.

(2) The PSC will be reimbursed for reasonable, allocable and allowable travel and transportation expenses incurred under and for the performance of this contract. Determination of reasonableness, allocability and allowability will be made by the Contracting Officer in accordance with USAID's established policies and procedures and the particular needs of the activity being implemented by this contract. Salary will not be paid during initial travel to the Mission and return at the end of the contract, unless specifically authorized in the contract. The following paragraphs provide specific guidance and limitations on particular items of cost.

(b) U.S. Travel and Transportation. The PSC will be reimbursed for actual transportation costs and travel allowances in the United States as authorized in the Contract Schedule or approved in advance by the Contracting Officer or the Mission Director. Transportation costs and travel allowances must not be reimbursed in any amount greater than the cost of, and time required for, Economy-class commercially scheduled air travel by the most expeditious route except as otherwise provided in paragraph (g) of this provision. Any travel other than by economy class must be approved in advance by the CO and the PSC must certify to the unavailability of economy class in the voucher or other documents submitted for reimbursement.

(c) International Travel. For travel to and from post of assignment, the PSC will be reimbursed for travel costs and travel allowances from place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of the travel from the PSC's residence in the United States) to the post of duty in the Cooperating Country and return to place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of travel from the post of duty in the Cooperating Country to the PSC's residence) upon completion of services by the individual. Reimbursement for travel must be in accordance with USAID's established policies and procedures for its direct-hire employees and the provisions of this contract, and must be limited to the cost of travel by the most direct and expeditious route. If the contract is for longer than one year and the PSC does not complete one full year at post of duty (except for reasons beyond the PSC's control as determined by the CO), the costs of going to and from the post of duty for the PSC and dependents are not reimbursable hereunder. If the PSC serves more than one year but less than the required service in the Cooperating Country (except for reasons beyond the PSC's control as determined by the CO) the costs of going to the post of duty are reimbursable hereunder but the costs of going from post of duty to the PSC's permanent, legal place of residence at the time he or she was employed for work under this contract, or other location as approved by the Contracting Officer, are not reimbursable under this contract for the PSC and dependents. When travel is by economy class accommodations, the PSC will be reimbursed for the cost of transporting up to 10 kilograms/22 pounds of accompanied personal baggage per traveler in addition to that regularly allowed with the economy ticket provided that the total number of pounds of baggage does not exceed that regularly allowed for first class travelers. Travel allowances for travelers must not be in excess of the rates authorized in the Standardized Regulations (Government Civilians, Foreign areas)—hereinafter referred to as the Standardized Regulations—as from time to time amended, for not more than the travel time required by scheduled commercial air carrier using the most expeditious route. One stopover enroute for a period of not to exceed 24 hours is allowable when the traveler uses economy class accommodations for a trip of 14 hours or more of scheduled duration. Such stopover must not be authorized when travel is by indirect route or is delayed for the convenience of the traveler. Per-diem during such stopover must be paid in accordance with the Federal Travel Regulations as from time to time amended.

(d) Local Travel. Reimbursement for local travel in connection with duties directly referable to the contract must not be in excess of the rates established by the Mission Director for the travel costs of travelers in the Cooperating Country. In the absence of such established rates the PSC will be reimbursed for actual travel costs in the Cooperating Country or the Mission, including travel allowances at rates not in excess of those prescribed by the Standardized Regulations.

(e) Indirect Travel for Personal Convenience. When travel is performed by an indirect route for the personal convenience of the traveler, the allowable costs of such travel will be computed on the basis of the cost of allowable air fare via the direct usually traveled route. If such costs include fares for air or ocean travel by foreign flag carriers, approval for indirect travel by such foreign flag carriers must be obtained from the Contracting Officer or the Mission Director before such travel is undertaken, otherwise only that portion of travel accomplished by the United States-flag carriers will be reimbursable within the above limitation of allowable costs.

(f) Limitation on Travel by Dependents. Travel costs and allowances will be allowed for authorized dependents of the PSC and such costs will be reimbursed for travel from place of abode to assigned station in the Cooperating Country and returned, only if the dependent remains in the Cooperating Country for at least 9 months or one-half of the required tour of duty of the PSC, whichever is greater, except as otherwise authorized hereunder for education, medical or emergency visitation travel. If the dependent is eligible for educational travel pursuant to the ''Differential and Allowances'' provision of this contract, time spent away from post resulting from educational travel will be counted as time at post.

(g) Delays Enroute. The PSC may be granted reasonable delays enroute while in travel status when such delays are caused by events beyond the control of the PSC and are not due to circuitous routing. It is understood that if delay is caused by physical incapacitation, the PSC will be eligible for such sick leave as provided under the ''Leave and Holidays'' provision of this contract.

(h) Travel by Privately Owned Automobile (POV). If travel by POV is authorized in the contract schedule or approved by the Contracting Officer, the PSC will be reimbursed for the cost of travel performed in the POV at a rate not to exceed that authorized in the Federal Travel Regulations plus authorized per diem for the employee and for each of the authorized dependents traveling in the POV, if the POV is being driven to or from the Cooperating Country as authorized under the contract, provided that the total cost of the mileage and the per diem paid to all authorized travelers must not exceed the total constructive cost of fare and normal per diem by all authorized travelers by surface common carrier or authorized air fare, whichever is less.

(i) Emergency and Irregular Travel and Transportation. Emergency transportation costs and travel allowances while enroute, as provided in this section, will be reimbursed not to exceed amounts authorized by the Foreign Service Travel Regulations for USAID direct hire employees in like circumstances under the following conditions:

(1) The costs of going from post of duty in the Cooperating Country to the employee's permanent, legal place of residence at the time the PSC was employed for work under this contract or other location for contractor employees and dependents and returning to the post of duty, subject to the prior written approval of the Mission Director that such travel is necessary for one of the following reasons.

(i) Need for medical care beyond that available within the area to which the employee is assigned, or serious effect on physical or mental health if residence is continued at assigned post of duty. The Mission Director may authorize a medical attendant to accompany the employee at contract expense if, based on medical opinion, such an attendant is necessary.

(ii) Death, or serious illness or injury of a member of the immediate family of the employee or the immediate family of the employee's spouse.

(2) When, for any reason, the Mission Director determines it is necessary to

evacuate the PSC or PSC's dependents, the PSC will be reimbursed for travel and transportation expenses and travel allowance while enroute, for the cost of the individuals going from post of duty in the Cooperating Country to the employee's permanent, legal place of residence at the time the PSC was employed for work under this contract or other approved location. The Mission Director will determine when such employees and dependents can return to the Mission.

(3) The Mission Director may also authorize emergency or irregular travel and transportation in other situations, when in the Mission Director's opinion, the circumstances warrant such action. The authorization must include the kind of leave to be used and appropriate restrictions as to time away from post, transportation of personal and household effects, etc.

(j) Home Leave Travel. To the extent that home leave has been authorized as provided in the ''Leave and Holidays'' provision of this contract, the cost of travel for home leave is reimbursable for travel costs and travel allowances of travelers from the post of duty in the Cooperating Country to place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of travel to the PSC's residence in the United States) and return to the post of duty in the Cooperating Country. Reimbursement for travel must be in accordance with the Department of State Standardized Regulations, as from time to time amended, and must be limited to the cost of travel by the most direct and expeditious route. Travel allowances for travelers must be in accordance with the rates authorized in the Standardized Regulations as from time to time amended, for not more than the travel time required by scheduled commercial air carrier using the most expeditious route using economy class. One stopover enroute for a period of not to exceed 24 hours is allowable when the traveler uses economy class accommodations for a trip of 14 hours or more of scheduled duration. Such stopover must not be authorized when travel is by indirect route or is delayed for the convenience of the traveler or the traveler uses other than economy class. Per-diem during such stopover must be paid in accordance with the Standardized Regulations.

(k) Rest and Recuperation Travel. If approved in writing by the Mission Director, the PSC and dependents will be allowed rest and recuperation travel on the same basis as authorized USAID direct-hire Mission employees and their dependents.

(l) Transportation of Motor Vehicles, Personal Effects and Household Goods.

(1) Transportation costs must be paid on the same basis as for USAID direct-hire employees serving the same length tour of duty, as authorized in the schedule. Transportation, including packing and crating costs, will be paid for shipping from the point of origin in the United States (or other location as approved by the Contracting Officer) to post of duty in the Cooperating Country and return to point of origin in the United States (or other location as approved by the Contracting Officer) of one privately-owned vehicle for the PSC, personal effects of the PSC and authorized dependents, and household goods of the PSC not to exceed the limitations in effect for such shipments for USAID direct-hire employees in accordance with the Foreign Service Travel Regulations in effect at the time shipment is made. These limitations may be obtained from the Contracting Officer.

(2) The cost of transporting motor vehicles and household goods must not exceed the cost of packing, crating, and transportation by surface common carrier. In the event that the carrier does not require boxing or crating of motor vehicles for shipment to the Cooperating Country, the cost of boxing or crating is not reimbursable. The transportation of a privately owned motor vehicle for a PSC may be authorized as a replacement of the last such motor vehicle shipped under this contract for such PSC when the Mission Director determines, in advance, and so notifies the PSC in writing, that the replacement is necessary for reasons not due to the negligence or malfeasance of the PSC. The determination must be made under the same rules and regulations that apply to authorized Mission U.S. citizen direct-hire employees.

(m) Unaccompanied Baggage. Unaccompanied baggage is considered to be those personal belongings needed by the traveler immediately upon arrival of the PSC and dependents, and consideration should be given to advance shipments of unaccompanied baggage. The PSC will be reimbursed for costs of shipment of unaccompanied baggage (in addition to the weight allowance for household effects) not to exceed the limitations in effect for USAID direct-hire employees in accordance with the Foreign Service Travel Regulations as in effect when shipment is made. These limitations are available from the Contracting Officer. This unaccompanied baggage may be shipped as air freight by the most direct route between authorized points of origin and destination regardless of the modes of travel used. This provision is applicable to home leave travel when authorized by the terms of this contract.

(n) International Ocean Transportation.

(1) (i) Transportation of goods. Where U.S. flag vessels are not available, or their use would result in a significant delay, the PSC may obtain a release from the requirement to use U.S.-flag vessels from the Transportation Division, Office of Acquisition and Assistance, U.S. Agency for International Development, Washington, DC 20523–1419, or the Mission Director, as appropriate, giving the basis for the request.

(ii) Transportation of persons. Where U.S. flag vessels are not available, or their use would result in a significant delay, the PSC may obtain a release from the requirement to use U.S.-flag vessels from the Contracting Officer or the Mission Director, as appropriate.

(2) Transportation of foreign-made vehicles. Reimbursement of the costs of transporting a foreign-made motor vehicle will be made in accordance with the provisions of the Foreign Service Travel Regulations.

(3) Reduced rates on U.S.-flag carriers are in effect for shipments of household goods and personal effects of USAID contractors between certain locations. These reduced rates are available provided the shipper furnishes to the carrier at the time of the issuance of the Bill of Lading documentary evidence that the shipment is for the account of USAID. The Contracting Officer will, on request, furnish to the PSC current information concerning the availability of a reduced rate with respect to any proposed shipment. The PSC must not be reimbursed for shipments of household goods or personal effects in amounts in excess of the reduced rates, which are available in accordance with the foregoing.

(o) Storage of household effects. The cost of storage charges (including packing, crating, and drayage costs) in the U.S. of household goods of the PSC will be permitted in lieu of transportation of all or any part of such goods to the Cooperating Country under paragraph (l) above provided that the total amount of effects shipped to the Cooperating Country or stored in the U.S. must not exceed the amount authorized for USAID direct-hire employees under the Department of State Standardized Regulations. These amounts are available from the Contracting Officer.

(p) Repatriation Travel. A PSC must return to the U.S. within 30 days after termination or completion of employment or forfeit all right to reimbursement for repatriation travel.

12. Payment

(a) As approved and directed by the paying office, time and attendance will be submitted for PSCs in the same manner as is approved for direct-hire personnel.

(b) Once each month, or at more frequent intervals, if approved by the paying office indicated on the Cover Page, the PSC may be required to submit to such office form SF 1034 ''Public Voucher for Purchases and Services Other Than Personal'' (original) and SF 1034–A (three copies), or whatever other form is locally required or accepted. Each voucher must be identified by the USAID contract number and properly executed in the amount of dollars claimed during the period covered. The voucher forms must be supported by:

(1) The PSC's detailed invoice, in original and two copies, indicating for each amount claimed the paragraph of the contract under which payment is to be made, supported when applicable as follows:

(i) For compensation—a statement showing period covered, days worked, and days when PSC was in authorized travel, leave, or stopover status for which compensation is claimed. All claims for compensation must be accompanied by, or must incorporate, a certification signed by the PSC's supervisor covering days or hours worked, or authorized travel or leave time for which compensation is claimed.

(ii) For travel and transportation—a statement of itinerary with attached carrier's receipt and/or passenger's coupons, as appropriate.

(iii) For reimbursable expenses—an itemized statement supported by original receipts.

(2) The first voucher submitted must account for and liquidate the unexpended balance of any funds advanced to the PSC.

(c) A final voucher and release of claims certification must be submitted by the PSC promptly following completion of the duties under this contract but in no event later than 120 days (or such longer period as the Contracting Officer may approve in writing) from the date of contract completion. The PSC's claim, which includes the final settlement of compensation, must not be paid until after the performance of the duties required under the terms of this contract has been approved by USAID. Following this approval by USAID, the PSC will submit the Release of Claims Certification and the voucher designated by the PSC as the ''final voucher''. This final voucher must be submitted on Form SF 1034 (original) and SF 1034–A (three copies). This final voucher must include a refund check for the balance remaining on hand of any funds which may have been advanced to the PSC, or the Government must pay any amounts due and owing to the PSC.

(d) *Release of Claims Certification. The following Release of Claims Certification must be included on the final voucher, signed and dated by the PSC.*

''WHERE AS, by the terms of the contract between the PSC, (*insert name*) and the United States, it is provided that after completion of all the work, and prior to final payment, the PSC shall furnish the United States with a release of all claims.

''NOW, THEREFORE, in consideration of the above premises and the payment (by the United States to the PSC, or by the PSC to the United States, as applicable) of the amount now due under the contract, to wit, the sum of _____ dollars ($_____), the PSC hereby remises, releases, and forever discharges the United States, its officers, agents, and employees, of and from all manner of liabilities, obligations, accounts, claims, and demands whatsoever, in law and in equity, under or arising from the contract, except: (if there are no exceptions, state ''None'' on the line below).

_____

I, _____ certify that I am the PSC in the foregoing release, and who signed this release.

Signed: _____

Date:_____''

13. Conversion of U.S. Dollars to Local Currency

The PSC will be provided the policy to be followed in the conversion of U.S. dollars to local currency. This may include, but not be limited to the conversion of said currency through the cognizant U.S. Disbursing Officer, or Mission Controller, as appropriate.

14. Post of Assignment Privileges

Privileges such as the use of APO, PX's, commissaries, and officers clubs are established at posts abroad under agreements between the U.S. and host governments. These facilities are intended for and usually limited to members of the official U.S. establishment including the Embassy, USAID Mission, U.S. Information Service and the Military. Off-shore USPSCs are entitled to use the pouch and/or APO on the same basis as U.S. Direct-hire employees. Off-shore USPSCs are also entitled to the privileges and immunities enjoyed by U.S. direct-hire employees. Normally, the agreements do not permit these facilities to be made available to non-official Americans.

15. Security

(a) Security Requirements

(1) This entire provision applies to the extent that this contract involves access to information classified as ''Confidential'', ''Secret'', or ''Top Secret'' or access to administratively controlled information ''Sensitive But Unclassified'' (SBU). PSCs that are not U.S. citizens must not have access to classified or administratively controlled information.

(2) Security provisions apply to this contract where no individual is to be awarded a contract until a personnel security investigation is completed at the level appropriate for the position and a temporary clearance or Facility Access Authorization is issued by SEC. If the PSC does not receive a final security clearance, the contract will be terminated in accordance with the termination provision of this contract.

(3) The PSC

(i) Will be responsible for safeguarding all classified or administratively controlled information in accordance with all applicable security rules, regulations, policies and procedures and must not supply, disclose, or otherwise permit access to classified information or administratively controlled information to any unauthorized person;

(ii) Must not make or permit to be made any reproductions of classified information or administratively controlled information except with the prior written authorization of the Contracting Officer or Mission Director;

(iii) Must submit to the Contracting Officer, at such times as the Contracting Officer may direct, an accounting of all reproductions of classified or administratively controlled information; and

(iv) Must not incorporate in any other project any matter which will disclose classified and/or administratively controlled information except with the prior written authorization of the Contracting Officer.

(4) The PSC must follow the procedures for classifying, marking, handling, transmitting, disseminating, storing, and destroying official material in accordance with all applicable security rules, regulations, policies and procedures.

(5) The PSC agrees to submit immediately to the Mission Director or Contracting Officer a complete detailed report, appropriately classified, of any information which the PSC may have concerning existing or threatened espionage, sabotage, or subversive activity.

(6) The Government agrees that, when necessary, it will indicate by security classification or administratively controlled designation, the degree of importance to the national defense of information to be furnished by the PSC to the Government or by the Government to the PSC, and the Government will give written notice of such security classification or administratively controlled designation to the PSC and of any subsequent changes. The PSC is authorized to rely on any letter or other written instrument signed by the Contracting Officer changing a security classification or administratively controlled designation of information.

(7) The PSC agrees to certify after completion of the assignment under this contract that s/he has surrendered or disposed of all classified and/or administratively controlled information in the custody in accordance with applicable security instructions.

(b) Conditions for Contracting Before Receipt of Security Clearance

(1) U.S. Resident Hire PSC. The PSC may begin work before receiving final security clearance. However, until such time as the final clearance is received, the PSC will have no access to classified or administratively controlled materials. Further, failure to obtain clearance will constitute cause for contract termination in accordance with the termination provision of this contract.

(2) Off-shore/Washington based U.S. PSC. If the Contracting Officer so authorizes, the PSC may begin travel to post to start work, or if Washington based may begin work, before receipt of the final security clearance. However, until such time as the final security clearance is received, the PSC will:

(i) Have no access to classified or administratively controlled materials;

(ii) Be authorized to travel to post but without any dependents; and

(iii) Be authorized no entitlements other than those normally authorized for short term (less than a year) USDH employees at post.

(iv) Even if the contract is for one year or more, dependents may not accompany the PSC, and transportation/storage of household/personal effects and motor vehicle will not be authorized by USAID before the receipt of the final security clearance. If appropriate, after receipt of the final clearance and given the length of time remaining, the Contracting Officer may authorize dependent travel and shipment/storage of motor vehicle and effects. Allowances and benefits which are subsequently authorized by the Contracting Officer will be paid to or on behalf of the PSC. The Contracting Officer will determine the effective date of such allowances and benefits, subject to the availability of funds. Failure to obtain the final security clearance will constitute cause for contract termination in accordance with the termination provision of this contract.

16. Notices

(a) Any notice, given by any of the parties involved in this contract, will be sufficient only if in writing and delivered in person or sent by telegraph, telegram, registered, or regular mail as follows:

(1) To: Director of U.S. Foreign Assistance and USAID Administrator, U.S. Agency for International Development, Washington, DC 20523–0001, Attention: Contracting Officer (name of the cognizant Contracting Officer with a copy to the appropriate Mission Director).

(2) To PSC: [Name], [Address].

(b) At the post of duty while in the Cooperating Country and at the PSC's address shown on the Cover Page of this contract or to another address as either party designates by notice given as required here. Notices must be effective in accordance with

this provision or on the effective date of the notice that changes this provision, whichever is later.

17. Use of Pouch

(a) Use of diplomatic pouch is controlled by the Department of State. The Department of State has authorized the use of pouch facilities for USAID off-shore USPSCs on the same basis as USDH employees. In consideration of the use of pouch facilities, the PSC agrees to indemnify and hold harmless the Department of State and USAID for loss or damage occurring in pouch transmission.

(1) Official and personal mail, sent by pouch, must be addressed in accordance with Mission instructions.

(2) Mail sent via the diplomatic pouch must not be in violation of U.S. Postal laws and must not contain material ineligible for pouch transmission.

(3) Use of military postal facilities (APO/FPO) is authorized for off-shore USPSCs on the same basis as approved for direct-hire employees at the USAID Mission. Posts having access to APO/FPO facilities and using them for diplomatic pouch dispatch, may, however, accept official and personal mail for the pouch provided, of course, adequate postage is affixed when onward transmission (mail to other than USAID/W) through U.S. postal channels is required.

(b) The PSC is responsible for compliance with the guidelines and limitations on use of pouch facilities and military postal facilities.

(c) Specific additional guidance on use of mail facilities in accordance with this provision is available from the Post Communication Center at the Embassy or USAID Mission.

18. Biographical Data

(a) The PSC agrees to furnish biographical information to the Contracting Officer on the required application forms.

(b) The PSC agrees to provide the following information to the Mission Administrative Officer on arrival in the host country regarding the PSC and dependents:

(1) PSC's full name, home address, and telephone number including any after-hours emergency number(s).

(2) The name and number of the contract, and whether the individual is the PSC or the PSC's dependent.

(3) The name, address, and home and office telephone number(s) of each individual's next of kin.

(4) Any special instructions pertaining to emergency situations such as power of attorney designees or alternate contact persons.

19. U.S. Resident Hire Personal Services Contractor (for Inclusion in U.S. Resident Hire Personal Services Contracts)

A PSC meeting the definition of a U.S. Resident Hire PSC, is subject to U.S. Federal Income Tax, but is not eligible for any allowances, differentials or fringe benefits (except contributions for FICA, health insurance, life insurance and MEDEVAC).

20. Orientation and Language Training

Orientation and language training will not be provided unless specifically required for the position and included in the contract.

21. Medical Evacuation (MEDEVAC) Insurance (Pursuant to class deviation OAA–DEV–2006–1c)

(a) The PSC must obtain MEDEVAC service coverage including coverage for authorized dependents while performing personal services abroad. USAID will reimburse the total cost of MEDEVAC insurance to the PSC. The PSC must provide proof of coverage to the CO in order to receive reimbursement.

(b) Exceptions.

(1) A PSC and authorized dependents with a health insurance program that includes sufficient MEDEVAC coverage as approved by the Contracting Officer are not required to obtain MEDEVAC service coverage.

(2) The Mission Director at the post of assignment may make a written determination to waive the requirement for such coverage. The determination must be based on findings that the quality of local medical services or other circumstances obviate the need for such coverage for PSCs and their dependents located at post.

22. Governing Law

This contract is established under the procurement authorities of the United States Government and is governed by the laws of the United States including the procurement laws of the United States. This contract contains the entire agreement of the parties with respect to the subject matter hereof, and no representations, inducements, promises or agreements, oral or written between the parties not embodied herein shall have any force or effect. This contract is a complete statement of the duties, compensation, benefits, leave, and all terms and conditions; therefore, the laws of the country of performance with respect to labor and contract matters will not apply to carrying out of the obligations of the parties under this contract, to the interpretation of this contract or to disputes arising under or relating to this contract. Any such disputes shall be resolved by the courts or administrative tribunals of the United States.

23. Incentive Awards

USPSCs may receive certain monetary and non-monetary awards. The monetary awards are limited solely to:

(a) *On-the-Spot Cash Awards.* This cash award is given to encourage and reward superior accomplishments, beyond the minimum satisfactory performance required under the contract, that contribute to the quality, efficiency, and/or economy of Government operations, or for special and specific nonrecurring commendable acts or contributions during the contract performance period. The Parameters/Limitations are as follows:

(1) (A USPSC may receive one or more On-The-Spot Award not to exceed a total of $500 in any one year period from the individual's employing Bureau/Mission/Independent Office. A USPSC may receive additional On-The-Spot Cash Awards up to $500 combined total from USAID organizations outside of the individual's Bureau/Independent Office/Mission, in the same one year period.

(2) The minimum dollar value for an individual On-The-Spot Cash Award is $25. The maximum dollar value of an individual On-The-Spot Award is $500. An award may be provided in any amount between $25 and $500, ensuring compliance with the limitation noted in paragraph (a)(1) of this provision.

These awards are considered income for U.S. citizens/resident aliens by the Internal Revenue Service, and are subject to withholding and other taxes.

(b) *Special Act Awards.* This cash award recognizes a *specific nonrecurring* superior act or contribution to the public interest that is beyond or outside normal job responsibilities as covered by the individual's job description. The specific act or contribution must be beyond the standard for minimum satisfactory performance required by the contract. Unlike other cash awards, this award may *not* be given for general superior performance of the work required by the contract. The Parameters/Limitations are as follows:

(1) No more than one Special Act Award may be granted to a USPSC in any one year period.

(2) Special Act Awards are considered income by the Internal Revenue Service, and are subject to withholding and other taxes for U.S. citizens and U.S. resident aliens.

(c) *Time-Off Awards.* This award is given in the form of excused absence from official duty time, without loss of pay or charge to the individual's leave balance. This award is given to encourage and reward superior accomplishments, beyond minimum satisfactory performance required under the contract, that contribute to the quality, efficiency, and/or economy of Government operations, or for special and specific nonrecurring commendable acts or contributions during the contract performance period.

A Time Off award is granted based on the same criteria as an On-the-Spot Cash award, and there is no general preference for one or the other, as a matter of agency policy. Conditions within the operating unit and circumstances of the individual being nominated will dictate the most appropriate choice. A Time-Off Award is categorized as a ''cash'' award because it represents paid time away from official duty. The Parameters/Limitations are as follows:

(1) A full-time USPSC (i.e., 2087 work hours/year) may be granted up to a total of 27 hours in awards during any one-year period of the contract.

(2) The minimum amount of time for which a full-time USPSC may be granted time off is one (1) hour. The maximum amount of time for which an individual Time-Off Award may be granted is 27 hours. An award may be granted in any one-hour time increment between 1–27 hours for a full-time USPSC.

(3) The maximum amount of time for which any part-time USPSC may be granted a Time-Off Award is to be calculated by prorating the maximum available to a full-time USPSC (27 hours/year) commensurate with the number of work hours in the part-

time USPSC's work year. As an example, if the individual works approximately 1044 hours/year the maximum amount of time in a year for which he/she may be granted a time-off award is 14 hours.

(4) The following scale is provided as a general guide in determining the appropriate amount of time to grant for a Time-Off Award. The scale is based on an individual working under a full-time (2087 hours/year) contract. The figures are to be prorated as noted above for individuals working under a part-time contract:

Contribution above and beyond satisfactory performance	Recommended time off award
A contribution that is of sufficient value to merit recognition. Beneficial change or modification to policies/procedures. Contribution benefits immediate unit or staff.	Up to One Work Day, (not to exceed 9 hours).
An important contribution to the value of an activity program, or service. Significant change to policies/procedures. Contribution benefits several units or an entire Mission/Bureau/Office.	Up to Two Work Days, (not to exceed 18 hours).
A highly significant contribution to the value of an activity, program, or service. A complete revision of policies/procedures with considerable impact. Contribution benefits an entire Mission/Bureau/Office or is of a cross-cutting nature impacting several organizations within the Agency.	Up to Three Work Days, (not to exceed 27 hours).

(5) The scheduling of Time-Off Awards must be approved by the individual's supervisor because this award type represents time away from official duty, which has the potential to impact the operating unit's operations.

(6) A PSC who becomes physically incapacitated while using a Time-Off Award may be granted sick leave for the period of incapacitation. The employee is responsible for notifying the supervisor immediately to report the illness during the period of excused absence.

(7) A Time-Off Award is granted to recognize a superior achievement and may not be used as a substitute for compensatory time off.

(8) In deciding whether a Time-Off Award is the appropriate award type, the supervisor must consider the individual's leave balance. If the individual has an excessive leave balance, a cash award may be more appropriate, so as not to adversely affect the PSC who may have annual leave subject to forfeiture at the end of the contract.

(9) Time-Off Awards must be used within 6 months of approval and may not be transferred to a new or follow-on contract with either the same or new work unit under any circumstances. In cases where the time off is not used within six months after the date of approval, the time-off must be forfeited.

(10) Under no circumstances may a Time-Off Award be converted to a lump-sum payment or transferred to any other contract. A Time-Off Award not used by the end of the contract period must be forfeited, even if less than 6 months from the date of approval.

USPSCs are not eligible for nomination for any other types of cash awards other than the specific awards outlined above.

(d) *Multiple Award Nominations:*

(1) A USPSC may be nominated for more than one award within the period of contract performance, or other benchmark period stated in the contract. Each award nomination will be reviewed on its own merit, and decisions to approve it will be based on whether the employee's performance meets the criteria for that particular award. However, a USPSC may not receive multiple cash or time-off awards for the same act or service.

(2) Cash Awards are separate and distinct from the pay comparability increase, and the annual increase for satisfactory performance available within the personal services contract.

PART III: For Inclusion in Third Country National Personal Service Contracts (TCNPSCs) Only

1. Purchase or Sale of Personal Property or Automobiles

(a) To the extent permitted by the cooperating country, the purchase, sale, import, or export of personal property or automobiles in the cooperating country by the PSC is subject to the same limitations and prohibitions that apply to Mission U.S.-citizen direct-hire employees.

(b) *Insurance on Private Automobiles.* If the PSC or the dependents transport, or have transported, privately owned automobile(s) to the Cooperating Country or purchase an automobile within the Cooperating Country, the PSC agrees to cover such automobile(s) (during such ownership within the Cooperating Country) by a current, *i.e.*, not in arrears, insurance policy. The insurance policy must be issued by a reliable company providing the following minimum coverage, or such other minimum coverage as may be set by the Mission Director, payable in U.S. dollars or their equivalent in the currency of the Cooperating Country: injury to persons, $10,000/$20,000; and property damage, $5,000. The PSC further agrees to deliver, or have delivered, to the Mission Director, the insurance policies required by this provision or satisfactory proof of their existence, before the automobile(s) is operated within the Cooperating Country. The premium costs for such insurance are not reimbursable under this contract.

2. Physical Exams and Health Room Privileges

(a) *Physical Fitness.*

(1) The PSC must obtain a physical examination including for any accompanying dependents by a licensed doctor of medicine. The PSC must obtain a statement of medical opinion from the doctor that, in the doctor's opinion, the PSC is physically qualified to engage in the type of activity under the contract, and the PSC's dependents are physically qualified to reside in the cooperating country. A copy of that medical opinion must be provided to the Contracting Officer before the PSC and the dependent's departure for the cooperating country. Neither the TCN nor the dependents will have access to the Embassy Health Unit.

(2) The PSC is reimbursed for the cost of the physical examinations mentioned in paragraph (a)(1) of this provision not to exceed $700 per examination for the PSC and the PSC's dependents of 12 years of age and over; and not to exceed $350 per examination for PSC's dependents under 12 years of age. The PSC will also be reimbursed by USAID for the cost of all immunizations normally authorized for USPSCs.

3. Leave and Holidays

(a) *Vacation Leave.* The PSC may accrue, accumulate, use, and be paid for vacation in accordance with the Local Compensation Plan (LCP). No vacation leave is earned if the contract is for less than 90 days. Unused vacation leave may be carried over under an extension or renewal of the contract as long as it conforms to Mission policy, practice and the LCP. With the approval of the PSC's supervisor and concurrence by the CO and if the circumstances warrant, a PSC may be granted advance vacation leave in excess of that earned, but in no case will a PSC be granted advance vacation leave in excess of that which the PSC will earn in one year of the contract. The PSC agrees to reimburse USAID for leave used in excess of the amount earned during the PSC's assignment under the contract.

(b) *Sick Leave.* The PSC may accrue, accumulate, and use sick leave in accordance with the LCP. Unused sick leave may be carried over under an extension or renewal of the contract. Leave earned but unused at the completion of this contract will be disposed of in accordance with the LCP.

(c) *Leave Without Pay.* Leave without pay may be granted only with the written approval of the PSC's supervisor and concurrence by the Contracting Officer.

(d) *Holidays.* The PSC is entitled to all holidays granted by the Mission in accordance with the LCP.

(e) *Compensatory Time.* Comp time or overtime for TCNPSCs is governed by the local compensation plans. If the LCP does not

include procedures for comp time or overtime, the prevailing practice of each respective Mission must be followed. Comp time is not transferable from one contract to another and is not reimbursable.

3A. Leave and Holidays for TcNPSCs Paid Under the General Schedule

(a) Vacation Leave.

(1) The PSC shall earn vacation leave at the rate of 13 workdays per annum or 4 hours every 2 weeks. However, no vacation shall be earned if the tour of duty is less than 90 days.

(2) Notwithstanding paragraph (a)(1) of this provision, if the PSC has had previous: USAID PSC service (i.e., has served under other personal services contracts (PSCs) covered by Sec. 636(a)(3) of the FAA or other statutory provision applicable to USAID); and/or former U.S. Government (USG) direct hire service—civilian and/or military), the PSC will earn vacation leave based on time in service as follows:

Time in service	Calculated vacation time
Up to 3 years of service	Four hours of vacation leave for each two week period.
over 3 years and up to 15 years of service	Six hours of vacation leave for each two week period (including 10 hours vacation leave for the final pay period of a calendar year).
15+ years of service	Eight hours of vacation leave for each two week period.

(3)(i) Vacation leave is provided under this contract for the purposes of affording necessary rest and recreation during the period of performance. The PSC in consultation with the USAID Mission or USAID/Washington, as appropriate, shall develop a vacation leave schedule early in the PSC's period of performance taking into consideration project requirements, employee preference and other factors. All vacation leave earned by the PSC must be used during the PSC's period of performance. All vacation leave earned by the PSC, but not taken by the end of the PSC's contract, will be forfeited. However, to prevent forfeiture of vacation leave, the Contracting Officer may approve the PSC taking vacation leave during the concluding weeks of the PSC's contract.

(ii) As an exception to paragraph 3(i) of this provision, the PSC may receive lump-sum payment for leave not taken. To approve this exception, the PSC's supervisor must provide the Contracting Officer with a signed, written Determination and Findings. The Determination and Findings must set out the facts and circumstances that prevented the contractor from taking vacation leave and the Contracting Officer must find that these facts and circumstances were not caused by and were beyond the control of the PSC. This leave payment must not exceed the number of days which could be earned by the PSC during a twelve month period.

(4) With the approval of the Mission Director or the cognizant AA, as appropriate, and if the circumstances warrant, a Contracting Officer may grant the PSC advance vacation leave in excess of that earned, but in no case may the Contracting Officer grant advance vacation leave in excess of that earned in one year or over the life of the contract, whichever is less. The PSC agrees to reimburse USAID for any outstanding balance of advance vacation leave provided during the PSC's assignment under the contract.

(5) Applicants for PSC positions will provide evidence of their PSC and/or USG direct hire service—civilian and/or military experience, as applicable, on their signed and dated SF–171 or OF–612. By signing the appropriate form, the applicant attests to the accuracy of the information provided. Any applicant providing incorrect information is subject to the penalty provisions in the form. If required to satisfy due diligence requirements on behalf of the Contracting Officer, PSCs may be required to furnish evidence that verifies length of service, e.g., SF 50, DD Form 214, and/or signed contracts.

(b) Sick Leave. Sick leave is earned at a rate not to exceed 13 work-days per annum or 4 hours every 2 weeks. Unused sick leave may be carried over under an extension/renewal of this contract. Otherwise, sick leave will not be carried over from one post to another or from one contract to another. The PSC will not be compensated for unused sick leave upon completion of this contract.

(c) Leave Without Pay. Leave without pay may be granted only with the written approval of the Contracting Officer or Mission Director.

(d) Compensatory Time. Compensatory leave may be granted only with the written approval of the Contracting Officer or Mission Director in rare instances when it has been determined absolutely essential and used under those guidelines which apply to direct-hire employees.

(e) Sunday Pay (if applicable). Each Mission has the option whether or not to authorize Sunday pay for PSCs, with two stipulations: the decision whether or not to pay must be administered consistently throughout the Mission; and if Sunday pay is authorized, it must be paid under the same terms and conditions that Foreign Service direct-hire employees would receive in accordance with 3 FAM 3136.

(f) Leave Records. The PSC shall maintain current leave records and make them available, as requested by the Mission Director or the Contracting Officer.

[FOR INCLUSION IN TCNPSCs, if granted country leave]

(g) Country Leave.

(1) Country leave is leave earned for service abroad for use only in the TCN's home country or country of recruitment.

(2) A TCNPSC who has been authorized country leave must have served at least two years at the same USAID Mission, under the same contract, and must not have taken more than 30 work days leave (vacation, sick or leave without pay) in the home country or country of recruitment, to be granted country leave of not more than 30 work days. This applies only if the PSC agrees to return to post upon completion of country leave under an additional two year contract, or for such shorter period of not less than one year of service under the contract as the Mission Director may approve in advance in writing. Country leave must be taken in the TCN's home country or country of recruitment, and any days spent elsewhere are charged to vacation leave or leave without pay.

(3) Notwithstanding the requirement in paragraph (g)(2) of this provision that the PSC must have served 2 years overseas under personal services contract with the same Mission to be eligible for country leave, the PSC may be granted advance country leave subject to all of the following conditions:

(i) Granting of advanced country leave would in each case serve to advance the attainment of the objectives of this contract; and

(ii) The PSC has served a minimum of 18 months in the Cooperating Country under this contract; and

(iii) The PSC agrees to return to the Cooperating Country to serve out the remainder of the current contract, plus an additional 2 years under the current contract or under a new contract for the same or similar services at the same Mission. If approved in advance by the Mission Director, the PSC may return to serve out the remainder of the current contract, and an additional period of not less than 1 year under the current contract or under a new contract for the same or similar services at the same Mission.

(4) Salary during the travel to and from the home country or country of recruitment for country leave will be limited to the time required for travel by the most expeditious air route. Except for reasons beyond the PSC's control as determined by the Contracting Officer, the PSC must return to duty after country leave and complete the additional required service or be responsible for reimbursing USAID for payments made during home leave. Unused country leave is not reimbursable under this contract, nor can it be taken incrementally in separate time periods, or transferred to another contract, regardless of the location.

(i) Country Leave Policy for Qualifying Posts.

(1) On June 15, 2006, the Congress passed and the President signed an amendment to the Foreign Service Act of 1980, as amended, that allows home leave for direct-hire employees following completion of 12-month overseas assignments at qualifying posts.

(2) USAID is extending this new home leave policy to its TCNPSCs who ordinarily qualify for country leave, and is effective as of July 20, 2006. This new country leave policy is in addition to the country leave a TCNPSC would earn under the contract.

USAID TCNPSCs who complete their 12-month assignment at one of the qualifying posts on or after July 20, 2006, may be eligible for country leave under this new provision. For USAID, a list of qualifying posts can be obtained from the Human Resources Office in USAID/W.

(3) If an eligible TCNPSC elects to take this new country leave, the TCNPSC must take a minimum of ten workdays of country leave. There is no requirement that an eligible TCNPSC take country leave after serving 12 months at a designated post; it is only an option. If a TCNPSC is returning to the home country or country of recruitment, and not returning overseas to the same or different USAID Mission, this new country leave policy will not apply.

(j) Holidays. The contractor, while serving abroad, shall be entitled to all holidays granted by the Mission to U.S.-citizen direct-hire employees.

4. Allowances

[FOR INCLUSION IN TCNPSCs, paid under the local compensation plan]

Allowances are granted to the PSC and dependents on the same basis as FSNs under the local compensation plan. The allowances provided are paid to the PSC in the currency of the cooperating country or in accordance with the practice prevailing at the mission.

[FOR INCLUSIONS IN TCNPSCs, paid under the General Schedule (GS)]

The following allowances may be granted to the PSC and dependents on the same basis and to the same extent as off-shore USPSCs at the same Mission:

(a) By definition, a PSC is different from a direct-hire employee. Differentials and allowances are not entitlements. Not all differentials and allowances available to direct-hire employees are available to a PSC. As a result, differences in entitlements may result between USDH and USPSCs. While USAID strives for equity between USDH and USPSCs, it is recognized that the differences in the systems do not entirely allow for such equity.

(b) USPSCs (excluding resident hire) are granted applicable differentials and allowances to the same extent and on the same basis as they are granted to U.S. citizen direct-hire employees at the Mission by the Department of State Standardized Regulations (Government Civilians, Foreign Areas)(DSSR), as from time to time amended. The rate or percentage of the allowance/differential is not negotiable. U.S. resident-hire PSCs are not eligible for any fringe benefits (except contributions for FICA, health insurance, and life insurance), including differentials and allowances. Neither the Contracting Officer nor the Mission Director has the discretion to provide any additional benefits and allowances without M/OAA/P's clearance of a request for deviation.

(c) An explanation for each of the differentials and allowances can be found on the U.S. Department of State Web site at *www.state.gov*. If an allowance or differential is not addressed in the DSSR, USAID reserves the right to apply any other guidance that is also used for USDH.

(d) The following differential and allowances may be granted to the PSC in accordance with governing regulations:

Applicable Reference to Standardized Regulations

(1) Post Differential Chapter 500 and Tables in Chapter 900.

(2) Living Quarters Allowance Section 130.

(3) Temporary Lodging Allowance Section 120.

(4) Post Allowance Section 220.

(5) Supplemental Post Allowance Section 230.

(6) Payments During Evacuation Section 600.

(7) Education Allowance Section 270.

(8) Separate Maintenance Allowance Section 260.

(9) Danger Pay Allowance Section 650.

(10) Education Travel Section 280.

(1) Post Differential. Post differential is an additional compensation for service at places in foreign areas where conditions of environment differ substantially from conditions of environment in the continental United States and warrant additional compensation as a recruitment and retention incentive. In areas where post differential is paid to USAID direct-hire employees, post differential not to exceed the percentage of salary as is provided such USAID direct-hire employees in accordance with the Standardized Regulations (Government Civilians, Foreign Areas) Chapter 500 (except the limitation contained in Section 552, ''Ceiling on Payment'') Tables—Chapter 900, as from time to time amended, will be reimbursable hereunder for employees in respect to amounts earned during the time such employees actually spend overseas on work under this contract. When such post differential is provided to the PSC, it must be payable beginning on the date of arrival at the post of assignment and continue, including periods away from post on official business, until the close of business on the day of departure from post of assignment enroute to the United States. Sick or vacation leave taken at or away from the post of assignment will not interrupt the continuity of the assignment or require a discontinuance of such post differential payments, provided such leave is not taken within the United States or the territories of the United States. Post differential will not be payable while the employee is away from the post of assignment for purposes of home leave. Short-term employees will be entitled to post differential beginning with the forty-third (43rd) day at post.

(2) Living Quarters Allowance. Living quarters allowance is an allowance granted to reimburse an employee for substantially all of the cost for either temporary or residence quarters whenever Government-owned or Government-rented quarters are not provided to the PSC at the post without charge. Such costs are those incurred for temporary lodging (temporary lodging allowance) or one unit of residence quarters (living quarters allowance) and include rent, plus any costs not included therein for heat, light, fuel, gas, electricity and water. The temporary lodging allowance and the living quarters allowance are never both payable to an employee for the same period of time. The PSC will receive living quarters allowance for payment of rent and utilities if such facilities are not supplied. Such allowance must not exceed the amount paid USAID employees of equivalent rank in the Cooperating Country, in accordance with either, the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 130, as from time to time amended; or other rates approved by the Mission Director. Subject to the written approval of the Mission Director, short-term employees may be paid per diem (in lieu of living quarters allowance) at rates prescribed by the Federal Travel Regulations, as from time to time amended, during the time such short-term employees spend at posts of duty in the Cooperating Country under this contract. In authorizing such per diem rates, the Mission Director must consider the particular circumstances involved with respect to each such short-term employee including the extent to which meals and/or lodging may be made available without charge or at nominal cost by an agency of the United States Government or of the Cooperating Government and similar factors.

(3) Temporary Lodging Allowance. Temporary lodging allowance is a quarters allowance granted to an employee for the reasonable cost of temporary quarters incurred by the employee and the family for a period not in excess of three months after first arrival at a new post in a foreign area or a period ending with the occupation of residence (permanent) quarters, if earlier, and one month immediately preceding final departure from the post subsequent to the necessary vacating of residence quarters. The PSC and authorized dependents will receive temporary lodging allowance in lieu of living quarters allowance, not to exceed the amount set forth in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 120, as from time to time amended.

(4) Post Allowance. Post allowance is a cost-of-living allowance granted to an employee officially stationed at a post where the cost of living, exclusive of quarters cost, is substantially higher than in Washington, DC. The PSC will receive post allowance payments not to exceed those paid USAID employees in the Cooperating Country, in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 220, as from time to time amended.

(5) Supplemental Post Allowance. Supplemental post allowance is a form of post allowance granted to an employee at the post when it is determined that assistance is necessary to defray extraordinary subsistence costs. The PSC will receive supplemental post allowance payments not to exceed the amount set forth in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 230, as from time to time amended.

(6) Payments during Evacuation. The Standardized Regulations (Government Civilians, Foreign Areas) provide the authority for efficient, orderly, and equitable procedure for the payment of compensation, post differential and allowances in the event of an emergency evacuation of employees or their dependents, or both, from duty stations for military or other reasons or because of

imminent danger to their lives. If evacuation has been authorized by the Mission Director, the PSC and authorized dependents will receive payments during evacuation from their post of assignment in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 600, and the Federal Travel Regulations, as from time to time amended.

(7) Educational Allowance. Educational allowance is an allowance to assist the PSC in meeting the extraordinary and necessary expenses, not otherwise compensated for, incurred by reason of the service in a foreign area in providing adequate elementary and secondary education for the children. The PSC will receive educational allowance payments for the dependent children in amounts not to exceed those set forth in Standardized Regulations (Government Civilians, Foreign Areas), Chapter 270, as from time to time amended.

(8) Separate Maintenance Allowance. Separate maintenance allowance is an allowance to assist an employee who is compelled by reason of dangerous, notably unhealthful, or excessively adverse living conditions at the post of assignment in a foreign area, or for the convenience of the Government, to meet the additional expense of maintaining the dependents elsewhere than at such post. The PSC will receive separate maintenance allowance payments not to exceed that made to USAID employees in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 260, as from time to time amended.

(9) Danger Pay Allowance. Danger pay allowance is an allowance to provide additional compensation above basic compensation to employees in foreign areas where civil insurrection, civil war, terrorism or wartime conditions threaten physical harm or imminent danger to the health or well-being of the employee. The danger pay allowance is in lieu of that part of the post differential, which is attributable to political violence. Consequently, the post differential may be reduced while danger pay is in effect to avoid dual crediting for political violence. The PSC will be allowed danger pay allowance not to exceed that paid USAID employees in the Cooperating Country, in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 650, as from time to time amended.

(10) Educational Travel. Educational travel is travel to and from a school in the United States for secondary education (in lieu of an educational allowance) and for college education. The PSC will receive educational travel payments for the dependent children provided such payment does not exceed that which would be payable in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 280, as from time to time amended. Educational travel must not be authorized for PSCs whose assignment is less than two years.

(e) The allowances provided in paragraphs (a) (1) through (10) of this provision must be paid to the PSC in accordance with practice prevailing at the Mission, or the Mission Director may direct that the PSC be paid a per diem in lieu thereof as prescribed by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended.

5. Cooperating Country Taxes and Social Security

Funds for the Cooperating Country's Social Security, retirement, pension, vacation or other cooperating country programs as required by local law are deducted and withheld in accordance with laws and regulations and rulings of the cooperating country or any agreement concerning such withholding entered into between the cooperating government and the United States Government.

6. Advance of Funds

If requested by the PSC and authorized in writing by the Contracting Officer, USAID will arrange for an advance of funds to defray the initial cost of travel, authorized pre-contract expenses, and shipment of personal property. The advance is granted on the same basis as to a USAID U.S.-citizen direct-hire employee.

7. Health and Life Insurance

Health and Life Insurance. The PSC is provided personal health and life insurance benefits in accordance with the LCP.

8. Travel and Transportation

(a) General.

The PSC will be reimbursed in currency consistent with the prevailing practice at post and at the rates established by the Mission Director for authorized travel in the cooperating country in connection with duties directly referable to work under this contract. In the absence of such established rates, the PSC will be reimbursed for actual costs of authorized travel in the cooperating country if not provided by the cooperating government or the Mission in connection with duties directly referable to work hereunder, including travel allowances at rates prescribed by the Department of State Standardized Regulations (DSSR) as from time to time amended. The Executive Officer at the Mission may furnish Travel Authorizations (TAs) for transportation authorized by this contract which is payable in local currency or is to originate outside the United States. When transportation is not provided by the Government-issued TA, the PSC must procure transportation, the costs of which will be reimbursed in accordance with the terms of this contract.

(b) International Travel. For travel to and from post of assignment the TCN PSC will be reimbursed for travel costs and travel allowances from place of residence in the country of recruitment (or other location provided that the cost of such travel does not exceed the cost of the travel from the place of residence) to the post of duty in the cooperating country and return to place of residence in the country of recruitment (or other location provided that the cost of such travel does not exceed the cost of travel from the post of duty in the cooperating country to the PSC's residence) upon completion of services by the individual. Reimbursement for travel must be in accordance with USAID's established policies and procedures and the provisions of this contract, and must be limited to the cost of travel by the most direct and expeditious route. If the contract is for longer than one year and the PSC does not complete one full year at post of duty (except for reasons beyond the PSC's control), the cost of going to and from the post of duty for the PSC and dependents are not reimbursable hereunder. If the PSC serves more than one year but less than the required service in the cooperating country (except for reasons beyond the PSC's control) costs of going to the post of duty are reimbursable hereunder but the cost of going from post of duty to the PSC's permanent, legal place of residence at the time the PSC was employed for work under this contract are not reimbursable under this contract for the PSC and dependents. When travel is by economy class accommodations, the PSC will be reimbursed for the cost of transporting up to 10 kilograms/22 pounds of accompanied personal baggage per traveler in addition to that regularly allowed with the economy ticket provided that the total number of pounds of baggage does not exceed that regularly allowed for first class travelers. Travel allowances for travelers must not be in excess of the rates authorized in the Standardized Regulations (Government Civilians, Foreign Areas) hereinafter referred to as the Standardized Regulations—as from time to time amended, for not more than the travel time required by scheduled commercial air carrier using the most expeditious route. One stopover enroute for a period of not to exceed 24 hours is allowable when the traveler uses economy class accommodations for a trip of 14 hours or more of scheduled duration. Such stopover must not be authorized when travel is by indirect route or is delayed for the convenience of the traveler. Per-diem during such stopover must be paid in accordance with the Federal Travel Regulations as from time to time amended.

(c) Local Travel. Reimbursement for local travel in connection with duties directly referable to the contract must not be in excess of the rates established by the Mission Director for the travel costs of travelers in the Cooperating Country. In the absence of such established rates the PSC will be reimbursed for actual travel costs in the Cooperating Country by the Mission, including travel allowances at rates not in excess of those prescribed by the Standardized Regulations.

(d) Indirect Travel for Personal Convenience of a TCN. When travel is performed by an indirect route for the personal convenience of the traveler, the allowable costs of such travel will be computed on the basis of the cost of allowable air fare via the direct usually traveled route. If such costs include fares for air or ocean travel by foreign flag carriers, approval for indirect travel by such foreign flag carriers must be obtained from the Contracting Officer or the Mission Director before such travel is undertaken, otherwise only that portion of travel accomplished by the United States-flag carriers will be reimbursable within the above limitation of allowable costs.

(e) Limitation on Travel by TCN Dependents. Travel costs and allowances will

be allowed for authorized dependents of the PSC and such costs will be reimbursed for travel from place of abode in the country of recruitment to the assigned station in the Cooperating Country and return, only if the dependent remains in the Cooperating Country for at least 9 months or one-half of the required tour of duty of the contract, whichever is greater, except as otherwise authorized hereunder for education, medical, or emergency visitation travel. Dependents of the TCN PSC must return to the country of recruitment or home country within thirty days of the termination or completion of the PSC's employment, otherwise such travel will not be reimbursed under this contract.

(f) Delays Enroute. The PSC may be granted reasonable delays enroute while in travel status when such delays are caused by events beyond the control of the PSC and are not due to circuitous routing. It is understood that if delay is caused by physical incapacitation, the PSC will be eligible for such sick leave as provided under the ''Leave and Holidays'' provision of this contract.

(g) Travel by Privately Owned Automobile (POV). If travel by POV is authorized in the contract schedule or approved by the Contracting Officer, the PSC will be reimbursed for the cost of travel performed in the POV at a rate not to exceed that authorized in the Federal Travel Regulations plus authorized per diem for the employee and, if the POV is being driven to or from the cooperating country as authorized under the contract, for each of the authorized dependents traveling in the POV, provided that the total cost of the mileage and per diem paid to all authorized travelers must not exceed the total constructive cost of fare and normal per diem by all authorized travelers by surface common carrier or authorized air fare, whichever is less.

(h) Emergency and Irregular Travel and Transportation. Emergency transportation costs and travel allowances while enroute, as provided in this section, will be reimbursed not to exceed amounts authorized by the DSSR in like circumstances under the following conditions:

(1) The costs of going from post of duty in the cooperating country to another approved location for the PSC and authorized dependents and returning to post of duty, subject to the prior written approval of the Mission Director, when such travel is necessary for one of the following reasons:

(i) Need for medical care beyond that available within the area to which PSC is assigned.

(ii) Serious effect on physical or mental health if residence is continued at assigned post of duty.

(iii) Serious illness, injury, or death of a member of the PSC's immediate family or a dependent, including preparation and return of the remains of a deceased PSC or dependents.

(2) Emergency evacuation when ordered by the principal U.S. Diplomatic Officer in the cooperating country. Transportation and travel allowances at safe haven and the transportation of household effects and automobile or storage thereof when authorized by the Mission Director, must be payable in accordance with established Government regulations.

(3) The Mission Director may also authorize emergency or irregular travel and transportation in other situations when in the Mission Director's opinion the circumstances warrant such action. The authorization must include the kind of leave to be used and appropriate restrictions as to time away from post, transportation of personal and household effects, etc.

(i) Country of Recruitment Travel and Transportation. The PSC will be reimbursed for actual transportation costs and travel allowances in the country of recruitment as authorized in the Schedule or approved in advance by the Contracting Officer or the Mission Director. Transportation costs and travel allowances must not be reimbursed in any amount greater than the cost of, and time required for, economy-class commercial-scheduled air travel by the most expeditious route except as otherwise provided in paragraph (h) of this provision, unless economy air travel is not available and the PSC adequately documents this to the satisfaction of the Contracting Officer in documents submitted with the voucher.

(j) Rest and Recuperation Travel. If a TCN is being compensated under the LCP, the TCN is not entitled to R&R unless specified in the LCP, and only then as specified and applied to Foreign Service Nationals (FSNs). If however, a TCN is compensated outside of the LCP, the TCN is entitled to the R&R in the same way as applied to offshore USPSCs and USDH, provided that the post is classified an ''R&R Post'' by the Department of State and the Mission Director approves in writing the R&R travel for the TCN and the TCN's dependents at Post.

(k) Transportation of Personal Effects (Excluding Automobiles and Household Goods).

(1) General. Transportation costs must be paid on the same basis as for direct-hire employees at post serving the same length tour of duty, as authorized in the schedule. Transportation, including packing and crating costs, will be paid for shipping from PSC's residence in the country of recruitment or other location, as approved by the Contracting Officer (provided that the cost of transportation does not exceed the cost from the PSC's residence) to post of duty in the cooperating country and return to the country of recruitment or other location provided the cost of transportation of the personal effects of the PSC not to exceed the limitations in effect for such shipments for USAID direct-hire employees in accordance with the DSSR in effect at the time shipment is made. These limitations may be obtained from the Contracting Officer. The cost of transporting household goods must not exceed the cost of packing, crating, and transportation by surface common carrier.

(2) Unaccompanied Baggage. Unaccompanied baggage is considered to be those personal belongings needed by the traveler immediately upon arrival of the PSC and dependents. To permit the arrival of effects to coincide with the arrival of the PSC and dependents, consideration should be given to advance shipments of unaccompanied baggage. The PSC will be reimbursed for costs of shipment of unaccompanied baggage (in addition to the weight allowance for household effects) not to exceed the limitations in effect for USAID direct-hire employees in accordance with the DSSR in effect when shipment is made. These limitations are available from the Contracting Officer. This unaccompanied baggage may be shipped as air freight by the most direct route between authorized points of origin and destination regardless of the modes of travel used.

(l) Reduced Rates on U.S.-Flag Carriers. Reduced rates on U.S.-flag carriers are in effect for shipments of household goods and personal effects of USAID contractors between certain locations. These reduced rates are available provided the shipper furnishes to the carrier at the time of the issuance of the Bill of Lading documentary evidence that the shipment is for the account of USAID. The Contracting Officer will, on request, furnish to the PSC current information concerning the availability of a reduced rate with respect to any proposed shipment. The PSC must not be reimbursed for shipments of household goods or personal effects in amounts in excess of the reduced rates which are available in accordance with the foregoing.

(m) Transportation of Goods. Where U.S. flag vessels are not available, or their use would result in a significant delay, the PSC may obtain a release from the requirement to use U.S. flag vessels from the Transportation Division, Office of Acquisition and Assistance, U.S. Agency for International Development, Washington, DC 20523–1419, or the Mission Director, as appropriate, giving the basis for the request.

(n) Repatriation Travel. Notwithstanding other provisions of this provision, a TCN must return to the country of recruitment or to the TCN's home country within 30 days after termination or completion of employment or forfeit all right to reimbursement for repatriation travel. The return travel obligation [repatriation travel] assumed by the U.S. Government may have been the obligation of another employer in the area of assignment if the employee has been in substantially continuous employment which provided for the TCN's return to home country or country from which recruited.

(o) Storage of household effects. Storage charges for household goods (including packing, crating, and drayage costs), in the home country or the country of recruitment, will be permitted in lieu of transportation of all or any part of such goods to the Cooperating Country under paragraph (k) above provided that the total amount of effects shipped to the Cooperating Country or stored in the home country or country of recruitment must not exceed the amount authorized for USAID direct-hire employees under the DSSR. These amounts are available from the Contracting Officer.

9. Payment

(a) Payment of compensation is based on written documentation supporting time and attendance. Such written documentation must be in accordance with Mission policy and practice.

(b) Any other payments due under this contract are as prescribed by Mission policy.

(c) A final voucher and release of claims certification must be submitted by the PSC promptly following completion of the duties under this contract but in no event later than 120 days (or such longer period as the Contracting Officer may approve in writing) from the date of contract completion. The PSC's claim, which includes the final settlement of compensation, must not be paid until after the performance of the duties required under the terms of this contract has been approved by USAID. Following this approval by USAID, the PSC will submit the Release of Claims Certification and the voucher designated by the PSC as the ''final voucher''. This final voucher must be submitted on Form SF 1034 (original) and SF 1034–A (three copies). This final voucher must include a refund check for the balance remaining on hand of any funds which may have been advanced to the PSC, or the Government must pay any amounts due and owing to the PSC.

(d) *Release of Claims Certification. The following Release of Claims Certification must be included on the final voucher, signed and dated by the PSC:*

''WHERE AS, by the terms of the contract between the PSC, (*insert name*) and the United States, it is provided that after completion of all the work, and prior to final payment, the PSC shall furnish the United States with a release of all claims.

''NOW, THEREFORE, in consideration of the above premises and the payment (by the United States to the PSC, or by the PSC to the United States, as applicable) of the amount now due under the contract, to wit, the sum of_____ dollars ($_____), the PSC hereby remises, releases, and forever discharges the United States, its officers, agents, and employees, of and from all manner of liabilities, obligations, accounts, claims, and demands whatsoever, in law and in equity, under or arising from the contract, except: (if there are no exceptions, state ''None'' on the line below).

_____

I, _____, certify that I am the PSC in the foregoing release, and who signed this release.

Signed:_____

Date:_____''

10. Conversion of Currency

Conversion of one currency to another currency at the Mission must be in accordance with Mission policy. This may include the conversion of currency through the cognizant U.S. Disbursing Officer, or Mission Controller, as appropriate.

11. Post of Assignment Privileges

Privileges such as the use of APO, PX's, commissaries, and officers clubs are established at posts abroad under agreements between the U.S. and host governments. These facilities are intended for and usually limited to U.S. citizens who are officials of the U.S. Government. Normally, these facilities are not available to non U.S. citizens. However, in those cases where facilities are open to non U.S. citizens, they may be used by the PSC.

12. Security

(a) The PSC is obligated to immediately notify the Contracting Officer if the PSC is arrested or charged with any offense during the term of this contract.

(b) The PSC will not normally have access to classified or administratively controlled information and must take conscious steps to avoid receiving or learning of such information. However, based on PSC's need to know, the Mission may authorize access to administratively controlled information for performance of assigned scope of work on a case-by-case basis in accordance with security policies and procedures.

(c) The PSC agrees to immediately submit to the Mission Director or Contracting Officer a complete detailed report, marked ''Privileged Information'' of any information which the PSC may have concerning existing or threatened espionage, sabotage, or subversive activity against the United States of America or the USAID Mission or the cooperating country government.

13. Notices

(a) Any notice, given by any of the parties involved in this contract, will be sufficient only if in writing and delivered in person or sent by telegraph, telegram, registered, or regular mail as follows:

(1) TO USAID: To the Mission Director of the Mission in the Cooperating Country with a copy to the cognizant Contracting Officer.

(2) TO THE PSC: At the post of duty while in the Cooperating Country and at the PSC's address shown on the Cover Page of this contract or to another address as either party designates by notice given as required here.

(b) Notices must be effective when delivered in accordance with this provision or on the effective date of the notice that changes this provision, whichever is later.

14. Medical Evacuation (MEDEVAC) Services (Pursuant to class deviation OAA–DEV–2006–1c)

(a) The PSC must obtain MEDEVAC service coverage including coverage for authorized dependents while performing personal services abroad.

(b) Exceptions.

(1) A PSC and authorized dependents with a health insurance program that includes sufficient MEDEVAC coverage as approved by the Contracting Officer are not required to obtain MEDEVAC service coverage.

(2) The Mission Director at the post of assignment may make a written determination to waive the requirement for such coverage. The determination must be based on findings that the quality of local medical services or other circumstances obviate the need for such coverage for PSCs and their dependents located at post.

15. Incentive Awards

(a) TCNs paid under the local compensation plan are eligible to participate in the Joint Embassy Incentive Awards Program. The program is administered by an Embassy Joint Country Awards Committee.

(b) Meritorious step increases may be granted to TCNs paid under the local compensation plan provided the granting of such increases is the general practice locally.

(c) TCNPSCs whose compensation is based on the General Schedule for U.S. direct-hires may receive certain monetary and non-monetary awards. The monetary awards are limited solely to:

(1) *On-the-Spot Cash Awards.* This cash award is given to encourage and reward superior accomplishments, beyond the minimum satisfactory performance required under the contract, that contribute to the quality, efficiency, and/or economy of Government operations, or for special and specific nonrecurring commendable acts or contributions during the contract performance period. The Parameters/Limitations are as follows:

(i) A TCNPSC may receive one or more On-The-Spot Award not to exceed a total of $500 in any one year period from the individual's employing Bureau/Mission/Independent Office. A TCNPSC may receive additional On-The-Spot Cash Awards up to $500 combined total from USAID organizations outside of the individual's Bureau/Independent Office/Mission, in the same one year period.

(ii) The minimum dollar value for an individual On-The-Spot Cash Award is $25. The maximum dollar value of an individual On-The-Spot Award is $500. An award may be provided in any amount between $25 and $500, ensuring compliance with the limitation noted in paragraph (c)(1) of this provision.

(2) *Special Act Awards.* This cash award recognizes *a specific nonrecurring* superior act or contribution to the public interest that is beyond or outside normal job responsibilities as covered by the individual's job description. The specific act or contribution must be beyond the standard for minimum satisfactory performance required by the contract. Unlike other cash awards, this award may *not* be given for general superior performance of the work required by the contract. No more than one Special Act Award may be granted to a TCNPSC in any one year period.

(3) *Time-Off Awards.*

(i) This award is given in the form of excused absence from official duty time, without loss of pay or charge to the individual's leave balance. This award is given to encourage and reward superior accomplishments, beyond minimum satisfactory performance required under the contract, that contribute to the quality, efficiency, and/or economy of Government operations, or for special and specific nonrecurring commendable acts or contributions during the contract performance period.

(ii) A Time Off award is granted based on the same criteria as an On-the-Spot Cash award, and there is no general preference for one or the other, as a matter of agency policy. Conditions within the operating unit and circumstances of the individual being nominated will dictate the most appropriate choice. A Time-Off Award is categorized as a ''cash'' award because it represents paid time away from official duty. The Parameters/Limitations are as follows:

(A) A full-time TCNPSC (*i.e.*, 2087 work hours/year) may be granted up to a total of 27 hours in awards during any one-year period of the contract.

(B) The minimum amount of time for which a full-time TCNPSC may be granted time off is one (1) hour. The maximum amount of time for which an individual Time-Off Award may be granted is 27 hours. An award may be granted in any one-hour time increment between 1–27 hours for a full-time TCNPSC.

(C) The maximum amount of time for which any part-time TCNPSC may be granted a Time-Off Award is to be calculated by prorating the maximum available to a full-time TCNPSC (27 hours/year) commensurate with the number of work hours in the part-time TCNPSC's work year. As an example, if the individual works approximately 1044 hours/year the maximum amount of time in a year for which he/she may be granted a time-off award is 14 hours.

(D) The following scale is provided as a general guide in determining the appropriate amount of time to grant for a Time-Off Award. The scale is based on an individual working under a full-time (2087 hours/year) contract. The figures are to be prorated as noted above for individuals working under a part-time contract:

Contribution above and beyond satisfactory performance	Recommended time off award
A contribution that is of sufficient value to merit recognition. Beneficial change or modification to policies/procedures. Contribution benefits immediate unit or staff.	Up to One Work Day, (not to exceed 9 hours).
An important contribution to the value of an activity program, or service. Significant change to policies/procedures. Contribution benefits several units or an entire Mission/Bureau/Office.	Up to Two Work Days, (not to exceed 18 hours).
A highly significant contribution to the value of an activity, program, or service. A complete revision of policies/procedures with considerable impact. Contribution benefits an entire Mission/Bureau/Office or is of a cross-cutting nature impacting several organizations within the Agency.	Up to Three Work Days, (not to exceed 27 hours).

(E) The scheduling of Time-Off Awards must be approved by the individual's supervisor because this award type represents time away from official duty, which has the potential to impact the operating unit's operations.

(F) A PSC who becomes physically incapacitated while using a Time-Off Award may be granted sick leave for the period of incapacitation. The employee is responsible for notifying the supervisor immediately to report the illness during the period of excused absence.

(G) A Time-Off Award is granted to recognize a superior achievement and may not be used as a substitute for compensatory time off.

(H) In deciding whether a Time-Off award is the appropriate award type, the supervisor must consider the individual's leave balance. If the individual has an excessive leave balance, a cash award may be more appropriate, so as not to adversely affect the PSC who may have annual leave subject to forfeiture at the end of the contract.

(I) Time-Off Awards must be used within 6 months of approval and may not be transferred to a new or follow-on contract with either the same or new work unit under any circumstances. In cases where the time off is not used within six months after the date of approval, the time-off must be forfeited.

(J) Under no circumstances may a Time-Off Award be converted to a lump-sum payment or transferred to any other contract. A Time-Off Award not used by the end of the contract period must be forfeited, even if less than 6 months from the date of approval.

TCNPSCs are not eligible for nomination for any other types of cash awards other than the specific awards outlined above.

(4) *Multiple Award Nominations:*

(i) A TCNPSC may be nominated for more than one award within the period of contract performance, or other benchmark period stated in the contract. Each award nomination will be reviewed on its own merit, and decisions to approve it will be based on whether the employee's performance meets the criteria for that particular award. However, a TCNPSC may not receive multiple cash or time-off awards for the same act or service.

(ii) Cash Awards are separate and distinct from the pay comparability increase, and the annual increase for satisfactory performance available within the personal services contract.

16. Governing Law

This contract is established under the procurement authority of the United States Government and is governed by the laws of the United States including the procurement laws of the United States. This contract contains the entire agreement of the parties with respect to the subject matter thereof, and no representations, inducements, promises or arrangements, oral or written between the parties not embodied here shall have any force or effect. This contract is a complete statement of duties, compensation, benefits, leave, and all terms and conditions. Any disputes shall be resolved by the courts or administrative tribunals of the United States.

PART IV: For Inclusion in Foreign Service National Personal Service Contracts (FSNPSCs)

1. Physical Exams

Physical Fitness. The PSC must be examined by a licensed doctor of medicine, and must obtain a statement of medical opinion that, in the doctor's opinion, the PSC is physically qualified to engage in the type of activity for which s/he is to be employed under the contract. A copy of the medical opinion is provided to the Contracting Officer before the PSC starts work under the contract. USAID will pay for the cost of the physical examination based on current Mission practice.

2. Leave and Holidays

(a) *Vacation Leave.* The PSC may accrue, accumulate, use, and be paid for vacation in accordance with the Local Compensation Plan (LCP). No vacation leave is earned if the contract is for less than 90 days. Unused vacation leave may be carried over under an extension or renewal of the contract as long as it conforms to Mission policy, practice and the LCP. With the approval of the individual's supervisor and concurrence by the CO and if the circumstances warrant, a PSC may be granted advance vacation leave in excess of that earned, but in no case will a PSC be granted advance vacation leave in excess of that which the PSC will earn in one year of the contract. At the end of the contract, the PSC agrees to reimburse USAID for leave used in excess of the amount earned during the period of performance under the contract.

(b) *Sick Leave.* The PSC may accrue, accumulate, and use sick leave in accordance with the LCP. Unused sick leave may be carried over under an extension or renewal of the contract. Leave earned but unused at the completion of this contract will be disposed of in accordance with the LCP.

(c) *Leave Without Pay.* Leave without pay may be granted only with the written approval of the PSC's supervisor and concurrence by the Contracting Officer.

(d) *Holidays.* The PSC is entitled to all holidays granted by the Mission in accordance with the LCP.

(e) *Compensatory Time.* Comp time or overtime for FSNPSCs is governed by the local compensation plan. If the LCP does not address compensatory time, then the prevailing practice of the Mission must be followed. Comp time is not transferable from one contract to another.

3. Cooperating Country Taxes and Social Security

Funds for the Cooperating Country's Social Security, retirement, pension, vacation or other cooperating country programs as required by local law are deducted and withheld in accordance with laws and regulations and rulings of the cooperating country or any agreement concerning such withholding entered into between the cooperating government and the United States Government.

4. Insurance

Health and Life Insurance. The PSC is provided personal health and life insurance benefits in accordance with the Local Compensation Plan.

5. Travel and Transportation

(a) *General.* The Executive Officer at the Mission may furnish Travel Authorization (TAs) for travel authorized by this contract. When travel is not provided by Government issued TA, the PSC will procure the travel, and the costs are reimbursed. The following paragraphs provide specific guidance and limitations on particular items of cost.

(b) *Travel by Privately Owned Automobile (POV).* If travel by POV is authorized, USAID will reimburse the PSC for the cost of travel performed in the POV, provided that

(1) The POV is being driven within the cooperating country as authorized under the contract,

(2) The total cost of the mileage and per diem, if any, will be paid in accordance with Mission policy and procedures and Federal Travel Regulations.

6. Payment

(a) Payment of compensation is based on written documentation supporting time and attendance in accordance with Mission policies and procedures.

(b) Any other payments due under this contract are as prescribed by Mission policy for the type of payment being made.

(c) A final voucher and release of claims certification must be submitted by the PSC promptly following completion of the duties under this contract but in no event later than 120 days (or such longer period as the Contracting Officer may approve in writing) from the date of contract completion. The PSC's claim, which includes the final settlement of compensation, must not be paid until after the performance of the duties required under the terms of this contract has been approved by USAID. Following this approval by USAID, the PSC will submit the Release of Claims Certification and the voucher designated by the PSC as the ''final voucher''. This final voucher must be submitted on Form SF 1034 (original) and SF 1034–A (three copies). This final voucher must include a refund check for the balance remaining on hand of any funds which may have been advanced to the PSC, or the Government must pay any amounts due and owing to the PSC.

(d) *Release of Claims Certification. The following Release of Claims Certification must be included on the final voucher, signed and dated by the PSC.*

''WHERE AS, by the terms of the contract between the PSC, *(insert name)* and the United States, it is provided that after completion of all the work, and prior to final payment, the PSC shall furnish the United States with a release of all claims.

''NOW, THEREFORE, in consideration of the above premises and the payment (by the United States to the PSC, or by the PSC to the United States, as applicable) of the amount now due under the contract, to wit, the sum of _____ dollars ($_____), the PSC hereby remises, releases, and forever discharges the United States, its officers, agents, and employees, of and from all manner of liabilities, obligations, accounts, claims, and demands whatsoever, in law and in equity, under or arising from the contract, except: (if there are no exceptions, state ''None'' on the line below).

I, _____, certify that I am the PSC in the foregoing release, and who signed this release.

_____

Signed: _____ Date: _____''

7. Security

(a) The PSC is obligated to immediately notify the Contracting Officer if the PSC is arrested or charged with any offense during the term of this contract.

(b) The PSC will not normally have access to classified or administratively controlled information and must take conscious steps to avoid receiving or learning of such information. However, based on PSC's need to know, the Mission may authorize access to administratively controlled information for performance of assigned scope of work on a case-by-case basis in accordance with current security policies and procedures.

(c) The PSC agrees to submit immediately to the Mission Director or Contracting Officer a complete detailed report, marked ''Privileged Information'' of any information which the PSC may have concerning existing or threatened espionage, sabotage, or subversive activity against the United States of America or the USAID Mission or the cooperating country government.

8. Notices

(a) Any notice, given by any of the parties involved in this contract, will be sufficient only if in writing and delivered in person or sent by telegraph, telegram, registered, or regular mail as follows:

(1) TO USAID: To the Mission Director of the Mission in the Cooperating Country with a copy to the appropriate Contracting Officer.

(2) TO THE PSC: At the post of duty while in the Cooperating Country and at the PSC's address shown on the Cover Page of this contract or to another address as either party designates by notice given as required here.

(b) Notices must be effective when delivered in accordance with this provision or on the effective date of the notice that changes this provision, whichever is later.

9. Incentive Awards

(a) The PSC is eligible to participate in the Joint Embassy Incentive Awards Program. The program is administered by each post's Embassy Joint Country Awards Committee.

(b) Meritorious step increases may be granted to FSNs paid under the local compensation plan provided the granting of such increases is the general practice locally.

10. Governing Law

This contract is established under the procurement authority of the United States Government and is governed by the laws of the United States including the procurement laws of the United States. This contract contains the entire agreement of the parties with respect to the subject matter thereof, and no representations, inducements, promises or arrangements, oral or written between the parties not embodied here shall have any force or effect. This contract is a complete statement of duties, compensation, benefits, leave, and all terms and conditions. Any disputes shall be resolved by the courts or administrative tribunals of the United States.

Attachment 1 to Appendix A—Class Justification for Other Than Full and Open Competition for Personal Services Contracts With U.S. Citizens Contracted With Locally, With CCNs and TCNs Subject to the Local Compensation Plan, and for Overseas Contracts of $250,000 or Less

I. General

This document is a class justification for other than full and open competition as authorized by Section 6.303–1(c) of the Federal Acquisition Regulation (FAR). This class justification may be used in accordance with its terms by any USAID Contracting Officer acting within the scope of his/her delegated authority. This class justification is applicable to locally recruited U.S. personal services contracts and CCN and TCN personal services contracts, subject to the local compensation plan awarded pursuant to AID Acquisition Regulation (AIDAR) 706.302–70(b)(1), and to any contract of $250,000 or less awarded by an overseas contracting activity pursuant to AIDAR 706.302–70(b)(2), as authorized by 40 U.S.C. 474, provided the appropriate requirements for competition in Section II of this class justification are followed.

It has been determined that requiring full and open competition for procurement of U.S. locally recruited personal services contracts and CCN and TCN personal services (subject to the local compensation plan) or for procurement of $250,000 or less by overseas contracting activities would impair USAID's ability to meet the objectives of the foreign assistance program. Thus, Section 706.302–70 of the AIDAR provides that such procurements may be exempted from the full and open competition requirements. This class justification may be used to satisfy the requirements of AIDAR 706.302–70(c)(2) regarding preparation of justifications pursuant to FAR 6.303. It applies only to procurements specified above.

II. Conditions for Use

A. PSCs With United States Citizens Recruited Locally

If recruited locally, the position was publicized in the same way that the Mission announces direct-hire U.S. citizen positions. Renewals or extensions with the same individual for continuing service [3] do not need to be publicized.

B. PSCs With Cooperating Country Nationals and Third Country Nationals Subject to the Local Compensation Plan

New contracts were publicized consistent with Mission/Embassy practice on announcement of direct-hire FSN positions.[4] Renewals or extensions with the same

[3] ''continuing service'' means ''same services.''

[4] The reference to direct-hire means all FSN positions including FSN/CCN PSCs.

individual for continuing service [5] do not need to be publicized.

C. Local Procurements for Supplies and Services [6] Up to $250,000

This applies to procurements where the aggregate amount of the contract does not exceed the limits stated below:

(1) Procurements up to $100,000 were competed as provided in FAR 13.106, except that synopsis in the Commerce Business Daily [7] is not required in any case.

(2) Procurements between $100,001 and $250,000 were publicized locally sufficiently to ensure that a reasonable number of contractors were notified. This class justification may not be used if only one source was considered.

D. Certification, File Documentation

A copy of this class justification must be included in the contract file, together with a written statement, signed by the Contracting Officer, that: the contract is being awarded pursuant to AIDAR 706.302–70(b)(1) or (2), as applicable; that the conditions in Section II of this class justification have been met; and that the cost of the contract is fair and reasonable.

III. Effective Date

This class justification is effective on the date of signature below.

Date: July 22, 1997

/s/ Marcus L. Stevenson
USAID Procurement Executive

[5] ''continuing services'' means ''same services.''

[6] The term ''services'' in this part of the class justification does not include ''personal services.''

[7] ''Commerce Business Daily'' has been replaced with ''FedBizOpps.''

Appendix D [Removed and Reserved]

2. Remove and Reserve Appendix D—''Direct USAID Contracts with a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad'' in its entirety.

Appendix J [Removed and Reserved]

3. Remove and Reserve Appendix J—''Direct USAID Contracts with a Cooperating Country National and with a Third Country National for Personal Services Abroad'' in its entirety.

Michael F. Walsh,

Procurement Executive.

[FR Doc. E7–2311 Filed 2–12–07; 8:45 am]

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Federal Register

Tuesday,
February 13, 2007

Part III

Federal Trade Commission

16 CFR Part 305
Appliance Labeling Rule; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 305

[RIN 3084–AB03]

Appliance Labeling Rule

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: Section 137 of the Energy Policy Act of 2005 (Pub. L. 109–58) requires the Commission to conduct a rulemaking to examine the effectiveness of current energy efficiency labeling requirements for consumer products issued pursuant to the Energy Policy and Conservation Act. The Commission is seeking comments on proposed amendments to the existing labeling requirements.

DATES: Written comments must be received on or before April 16, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Appliance Labeling Rule Amendments, R511994'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/ Office of the Secretary, Room H–135 (Annex A), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential'' and must comply with Commission Rule 4.9(c).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments filed in electronic form should be submitted by following the instructions on the web-based form at *http://secure.commentworks.com/energyguide*. To ensure that the Commission considers an electronic comment, you must file it on that web-based form. You also may visit *http://www.regulations.gov* to read this proposed Rule, and may file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. postal mail at the Office of Management and Budget (''OMB'') is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326–2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room NJ–2122, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

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I. Introduction

Section 137 of the Energy Policy Act of 2005 (''EPACT 2005'') (Pub. L 109–58) amends the Energy Policy and Conservation Act of 1975 (EPCA)[2] to require the Commission to initiate a rulemaking to consider ''the effectiveness of the consumer products labeling program in assisting consumers in making purchasing decisions and improving energy efficiency.'' As part of this effort, the Act directs the Commission to consider ''changes to the labeling rules (including categorical labeling) that would improve the effectiveness of consumer product labels.'' The Act provides the Commission 90 days to initiate, and two years to complete, this rulemaking. Following the Act's passage in August 2005, the Commission published an Advance Notice of Proposed Rulemaking (ANPR), held a workshop, and conducted consumer research for this proceeding. The Commission is now publishing proposed amendments to the Appliance Labeling Rule (16 CFR Part 305) for public comment. The amendments would implement a new design for EnergyGuide labels, replace labeling requirements for heating and cooling equipment with marking requirements, and make several other changes to update and improve the Rule.

II. Energy Policy and Conservation Act Labeling Requirements

Section 324 of EPCA requires the FTC to prescribe labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for a variety of products covered by the statute, including home appliances (e.g., refrigerators, dishwashers, air conditioners, and furnaces), and lighting products, and for the disclosure of water use information for certain plumbing products.[3] Labels

[1] Any request for confidential treatment, including the factual and legal basis for the request, must accompany the comment and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] 42 U.S.C. 6291 *et seq.*

[3] 42 U.S.C. 6294. For most appliance products, the Commission must prescribe labeling rules unless it determines that labeling is not technologically or economically feasible (42 U.S.C. 6294(a)(1)). The statute requires labels for central air conditioners, heat pumps, furnaces, and clothes washers unless the Commission finds that labeling is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions (42 U.S.C. 6294(a)(2)(A)). Pursuant to § 6294(a)(1), the Commission previously

for appliances covered under EPCA must disclose the estimated annual operating cost of such products, as determined by the Department of Energy (DOE) test procedures (42 U.S.C. 6294(c)).[4] The Commission, however, may require a different measure of energy consumption if DOE determines that the cost disclosure is not technologically feasible, or the Commission determines the cost disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible. Section 324(c) also requires that the label for appliances contain information about the range of estimated annual operating costs (or energy consumption) for covered products. The Commission may require the disclosure of energy information found on the label in any printed material displayed or distributed at the point of sale. In addition, the Commission may direct manufacturers to provide additional energy-related disclosures on the label (or information shipped with the product) including instructions for the maintenance, use, or repair of the covered product.

III. FTC's Appliance Labeling Rule

The Commission's Appliance Labeling Rule implements the requirements of EPCA by directing manufacturers to disclose energy information about major household appliances. This information enables consumers to compare the energy use or efficiency of competing models.[5] When initially published in 1979,[6] the Rule applied to eight appliance categories: Refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. Subsequently, the Commission expanded the Rule's coverage to include central air conditioners, heat pumps, fluorescent lamp ballasts, plumbing products, lighting products, and pool heaters as well as some other types of water heaters.[7]

Under the Rule, manufacturers must disclose specific energy consumption or efficiency information about their appliances at the point of sale in the form of a yellow EnergyGuide label affixed to each unit. The information on the EnergyGuide label also must appear in catalogs from which covered products can be ordered. The Rule directs manufacturers to derive the information from standard DOE tests.

Required labels for appliances must also include a ''range of comparability'' (published by the Commission) that shows the highest and lowest energy consumption or efficiencies for all similar appliance models. These ranges of comparability are intended to help consumers determine how a specific model compares to others available in the market. Labels for most appliances also must provide the product's estimated annual operating cost. Manufacturers calculate these costs using national average energy cost figures published by DOE. In addition to the required EnergyGuide labels, manufacturers of furnaces, central air conditioners, and heat pumps must provide energy information for their products in either fact sheets or an industry directory.

The Rule contains very specific requirements for the content and format of the EnergyGuide labels. Manufacturers must use the FTC yellow label with the EnergyGuide headline and must provide information in the format and type prescribed. Additionally, manufacturers cannot place any information on the label other than that specifically allowed by the Rule. In 2000, the Commission issued an exemption allowing manufacturers to include the ''ENERGY STAR'' logo on the EnergyGuide label for covered appliances (65 FR 17554 (Apr. 3, 2000)). ENERGY STAR, which is administered by the Environmental Protection Agency (EPA) and DOE, is a voluntary U.S. Government labeling program to identify and promote energy-efficient products.[8]

The Commission's Rule also contains certain reporting requirements which direct manufacturers for most covered products to file reports with the FTC both annually and when they begin manufacturing new models. These reports must contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests conducted pursuant to the DOE procedures (16 CFR 305.8(b)). Under section 305.10, the Commission publishes new ranges of comparability if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission publishes a statement each year that the prior ranges remain in effect. Energy information submitted pursuant to these requirements is available on the Commission's Web site at *http://www.ftc.gov/appliances*.

Finally, the Rule has different labeling requirements for non-appliance consumer products (16 CFR 305.11(d),(e), and (f)). For example, manufacturers of fluorescent lamp ballasts and certain tube-type fluorescent bulbs must disclose an encircled ''E'' on ballasts and on luminaires containing ballasts, as well as on packaging. The ''E'' signifies compliance with DOE minimum efficiency standards. Manufacturers of showerheads, faucets, toilets, and urinals must disclose water usage information on their products, packaging, and labeling. Manufacturers of certain incandescent bulbs, spot and flood bulbs, and screw-base compact fluorescent bulbs must disclose on their packaging light output in lumens, energy used in watts, voltage, average life, and number of bulbs. They also must explain how purchasers can select the most energy efficient bulb for their needs.

IV. Procedural History

The Commission initiated this proceeding on November 2, 2005 with the publication of an ANPR that sought comments on the effectiveness of the FTC's energy labeling regulations for consumer products. (70 FR 66307 (Nov. 2, 2005)). The ANPR also announced the Commission would conduct its periodic regulatory review as part of this rulemaking. The Commission received 28 comments in response to the ANPR.[9] Based on these comments, the Commission conducted a Public Workshop (''Workshop'') on May 3, 2006 to discuss a variety of issues associated with the labeling program, including: (1) Overall label design issues, (2) refrigerator comparability ranges, (3) labels for heating and cooling equipment, and (4) television labeling. After conducting the Workshop, the Commission received ten additional written comments.[10]

determined not to require labeling for television sets, kitchen ranges, ovens, clothes dryers, humidifiers, dehumidifiers, and certain home heating equipment other than furnaces. See 44 FR 66466, 66468–66469 (Nov. 19, 1979).

[4] Section 323 of EPCA (42 U.S.C. 6293) directs DOE to develop test procedures for major household appliances. Manufacturers must follow these test procedures to determine their products' compliance with DOE's energy conservation standards (required by 42 U.S.C. 6295) and to derive the energy consumption or efficiency values to disclose on required labels.

[5] More information about the Rule can be found at *http://www.ftc.gov/appliances*.

[6] 44 FR 66466 (Nov. 19, 1979).

[7] See 52 FR 46888 (Dec. 10, 1987) (central air conditioners); 59 FR 49556 (Sept. 28, 1994) (pool heaters); 54 FR 28031 (July 5, 1989) (fluorescent lamp ballasts); 58 FR 54955 (Oct. 25, 1993) (certain plumbing products); and 59 FR 25176 (May 13, 1994) (lighting products).

[8] See *http://www.energystar.gov*.

[9] Comments on the ANPR are available online at: *http://www.ftc.gov/os/comments/energylabeling/index.htm*.

[10] The Commission announced the Workshop in an April 10, 2006 **Federal Register** notice (71 FR

Continued

On March 15, 2006, the Commission announced its plans to conduct consumer research on various label designs to examine the effectiveness of the current energy labeling requirements and to obtain information about alternatives (71 FR 13398). After the Workshop, the Commission published an additional notice containing details about its planned consumer research project, including drafts of the appliance labels that would be used in the project. (71 FR 36088). The Commission received eight comments in response to that June 23, 2006 notice.[11]

Based on all the comments, the Workshop, and consumer research conducted by the FTC staff (see below), we now propose various amendments to the Appliance Labeling Rule. We invite comments on these proposed changes.

V. FTC Consumer Research

The FTC staff conducted its consumer research in October 2006. The detailed results of the study and associated documents can be found at *http://www.ftc.gov/appliances*. The study results are also discussed in sections VII.A., VII.B., and VII.D. of this Notice. The FTC staff designed the research to provide information regarding consumer comprehension of various label designs and the perceived usefulness of various types of information related to energy use, energy efficiency, and operating costs. In drafting the changes proposed in this Notice, the FTC considered its consumer research results, the facts submitted in comments, and the broad range of policy and legal issues raised by commenters during the rulemaking proceeding.

In designing the consumer research, the FTC staff began with the findings and strategies of prior research and the comments received during the rulemaking proceeding. In 2002, the American Council for an Energy Efficient Environment (''ACEEE'') examined the efficacy of the EnergyGuide label as well as alternative formats and graphical elements.[12] In addition, in response to the Commission's 2005 ANPR, the Association of Home Appliance Manufacturers (''AHAM'') conducted research that also examined the current label and alternatives.[13] Similar to ACEEE's project, the FTC's research included questions designed to understand how well consumers comprehend information presented in different labeling formats. Like the research conducted by AHAM, the FTC's study involved an Internet panel. Although the FTC considered this prior work in developing its own research, the study addressed several issues not raised in the previous studies and tested a label design not addressed in detail by ACEEE or AHAM.

The FTC contracted with Harris Interactive, a consumer research firm that has substantial experience assessing consumer communications using the Internet and other alternative protocols. The study's sample universe was made up of members of the contractor's Internet panel. The panel consists of more than four million individuals recruited through a variety of convenience sampling procedures, rather than true probability sampling techniques. The sample for this research is therefore not nationally representative in the classic sense. However, the contractor has studied the relationship between samples from its Internet panel and samples collected using more traditional probability sampling techniques. Based on these studies, the contractor has developed procedures, including demographic weighting based on proprietary propensity scoring techniques, to minimize differences between the results of their Internet panel studies, and studies based on true probability samples of the nation. Although an Internet panel may not be not suitable for some types of research, the FTC staff expects the population of Internet users and the members of the Harris panel fairly well represent the population of major appliance purchasers.

The study yielded a sample of approximately 4,000 individuals who were at least 18 years old and likely or recent major appliance purchasers. In conducting this research, the contractor identified respondents using relevant, pre-existing data in its Internet panel database and necessary additional screening questions. FTC staff, in consultation with Harris, designed the screener questions to ensure that the demographic composition of the sample reasonably matched that of the target population. The study randomly assigned all respondents to one of ten label treatments. The online questionnaire then asked each respondent a set of questions. The study randomly assigned respondents to different label design groups. Each group viewed a single label design (and were not shown other designs). Under this approach, the responses yielded data about the relative effectiveness of each design in conveying energy information regardless of which design consumers would have preferred if shown multiple label designs.

Each of the ten treatment groups (i.e., cells) contained approximately 400 respondents. The four primary label designs consisted of the current EnergyGuide label (the control label), a revised version of the current design using a continuous bar graph to convey the comparability range, a categorical ''five-star'' label based on the model's energy performance compared to DOE minimum standards,[14] and a label prominently featuring operating costs (see Figure 1). Respondents in four cells viewed labels bearing the ENERGY STAR logo while respondents in four other cells viewed the same label without the ENERGY STAR logo. The study also included a control no-label (pure information) condition. For this condition, respondents viewed information about appliances in a table and text format. This no-label condition and the cells involving categorical labels were the only study conditions to include the five-star rating system and the term ''energy efficient.'' The research study also included a refrigerator condition that combined all similar capacity, full-size refrigerators into one category (i.e., eliminated separate ranges of comparability for configurations such as side-by-side doors and bottom-mounted freezers).[15]

18023). Written comments related to the Workshop are available online at: *http://www.ftc.gov/os/comments/energylabeling-workshop/index.htm*. A copy of the Workshop transcript is available online at: *http://www.ftc.gov/os/comments/energylabeling-workshop/060503wrkshoptrnscript.pdf*.

[11] Comments submitted in response to the June notice are available online at: *http://www.ftc.gov/os/comments/appliancelabelingresearch/index.htm*.

[12] Thorne, Jennifer and Egan, Christine, ''An Evaluation of the Federal Trade Commission's EnergyGuide Label: Final Report and Recommendations,'' ACEEE, August 2002. The report is available online at *http://aceee.org/pubs/a021full.pdf*.

[13] AHAM submitted its research results as part of its comments on the ANPR. See AHAM (#519870–00016) (available at *http://www.ftc.gov/os/comments/energylabeling/519870–00016.htm)*.

[14] The thresholds used to assign stars under the categorical system used in the study were published for comment at 71 FR 36088, 36091 (June 23, 2006).

[15] The overall comparability range on the labels for this condition was, therefore, much greater than the other conditions, although the energy efficiency and cost range among the four products remained constant.

TABLE 1.—LABEL CONDITIONS APPLIANCE LABEL RESEARCH

Cell	Condition (label design)
Cell 1	Current EnergyGuide Label.
Cell 2	Current EnergyGuide Label with ENERGY STAR logo.
Cell 3	Modified Version of Current Label.
Cell 4	Modified Version of Current Label with ENERGY STAR logo.
Cell 5	Categorical Label.
Cell 6	Categorical Label with ENERGY STAR logo.
Cell 7	Operating Cost Label.
Cell 8	Operating Cost Label with ENERGY STAR logo.
Cell 9	Pure Information (no recognizable label format, information formatted with equal font size).
Cell 10	Current EnergyGuide Label with Collapsed Refrigerator Categories for the refrigerator rotation and the Current Label for the dishwasher rotation.

The study employed four different hypothetical refrigerator models and four different hypothetical dishwasher models.[16] For example, one group of respondents viewed the current EnergyGuide label for four refrigerators and four dishwashers with different energy characteristics, whereas, a different group viewed a categorical version of the label for the same models. The order of the dishwasher sequence and the refrigerator sequence rotated, so that half of the respondents saw the dishwasher sequence first, while the other half saw the refrigerator sequence first.

Respondents answered a series of objective questions about the characteristics of the products described in the labels. The questionnaire directed respondents to rank the refrigerators in terms of annual operating costs, annual energy use, and energy efficiency. In addition, the study contained questions about cost, efficiency, and energy use differences, as well as questions about any differences in product quality communicated by the labels.

Respondents in all cells answered questions about which model or models in the set qualified for ENERGY STAR and the location of the ENERGY STAR logo on the label. The questionnaire also asked respondents about their prior experience using EnergyGuide labels to assess how useful the current labels have been. Respondents answered general questions about the perceived usefulness of certain types of energy-related information to assess whether labels emphasizing that information (*e.g.*, energy usage, categorical measures of efficiency, or operating costs) are likely to be particularly useful in real life settings.

After the study's completion, Harris Interactive provided the FTC staff with data summaries.[17] Harris also provided information regarding the statistical significance of the final results under the different label treatments.[18] Throughout this Notice, ''statistically significant'' differences among labels are those found to be significant at the 10% level (or lower) (i.e., the 90% confidence level or higher).

VI. Section-by-Section Description of Proposed Amendments

The following are brief descriptions of the proposed amendments set out in this Notice. Section 305.2: To make section 305.2 more user friendly, the Proposed Rule would place the definitions in alphabetical order. It would also amend the definition of catalog to clarify that the term covers both paper and Internet-based catalogs. Finally, the definition of ''range of energy efficiency ratings'' would be eliminated.

Section 305.3 Description of covered products: The Proposed Rule would amend the description of refrigerators and refrigerator freezers to make it consistent with DOE regulations.

Section 305.5 Determinations of estimated annual energy consumption, estimated annual operating cost, and energy efficiency rating, and of water use rate: The Proposed Rule would clarify that the Rule does not apply to covered appliances for which DOE has not issued test procedures.

Section 305.7 Determinations of capacity: Under the Proposed Rule, capacities for refrigerators and refrigerator-freezers would be determined for total refrigerated volume and adjusted total volume as determined by DOE regulations.[19]

Section 305.8 Submission of data: The Proposed Rule would clarify that required reports for appliances include the brand name of the reported model if it is different from the name of the manufacturer.

Section 305.9 Representative average unit energy cost: Under the Proposed Rule, this section would be removed and reserved.

Section 305.10 Ranges of comparability information on required labels: The Proposed Rule would amend this section to direct the Commission to amend range of comparability and representative average energy cost information every five years.

Redesignation of sections 305.13, 305.14, 305.15, 305.16, 305.17, 305.18 and 305.19: The Proposed Rule would redesignate these sections as 305.19, 305.20, 305.21, 305.22, 305.23, 305.24 and 305.25, respectively.

Requirements for lighting and plumbing products (newly designated sections 305.15 and 305.16): Under the Proposed Rule, the labeling and marking requirements for lighting and plumbing products currently in section 305.11

[16] The FTC published for comment the detailed attributes of all eight models, including their operating costs, electricity uses, and star rankings in a June 23, 2006 Notice (71 FR 36088). All of the treatments contained information about operating costs and energy use for the appliance. However, the prominence of this information differed across treatments.

[17] The data were generated in two ways: weighted and unweighted. The weighted data is based on the contractor's proprietary techniques to minimize the differences between questionnaire results from its Internet Panel and the questionnaire results from more traditional procedures. The results cited in this Notice are based on the weighted data. The FTC staff has compared the results for the weighted data with the unweighted data. Although there are some differences between the two approaches, the core findings discussed in this Notice are the same using both techniques.

[18] The null hypothesis for this test of statistical significance is that there is no difference between label conditions in the proportion of respondents correctly answering a question. A 10% level of significance was set, using appropriate two-tail tests. Various T-tests were applied by Harris using Quantum software. Under this condition, the hypothesis of no difference between two label conditions is rejected if a two-tailed test indicates significance at the 10% level. One interpretation of this procedure is that if there really is no difference between two label conditions (*i.e.*, the null hypothesis is true), then the odds are only one in ten of observing the difference produced by the data. Another interpretation is that the confidence level of the test is 90%. See Gilbert A. Churchill, Jr., *Marketing Research Methodological Foundations (Fifth Edition)*, The Dryden Press, Chicago, 1991.

[19] The Rule would continue to require only the disclosure of total refrigerated volume for the EnergyGuide label.

would be moved to redesignated sections 305.15 and 305.16, respectively. The Proposed Rule contains no substantive change to existing requirements for these products.

§ 305.11 Labeling for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, and pool heaters: The Proposed Rule would amend this section to require operating cost as the primary disclosure on the EnergyGuide label. The Proposed Rule would also require new language to clarify the scope of the comparison ranges for refrigerator products on the labels. The proposal would also modify and clarify requirements related to the label placement on covered products.

Sections 305.12 and 305.13 (newly designated) Marking requirements for heating and cooling equipment: The Proposed Rule would require manufacturers to mark permanently heating and cooling equipment (except water heaters) with energy efficiency information. The proposal would eliminate EnergyGuide labeling requirements for these products.

Section 305.14 (newly designated) Energy information disclosures for heating and cooling equipment: The Proposed Rule would streamline requirements related to the disclosure and distribution of consumer energy information for central air conditioners and furnaces.

Section 305.20 (newly designated) Paper catalogs and Web sites: The Proposed Rule would require the disclosure of annual estimated operating costs for these products in paper and Internet-based catalogs. Under the proposal, catalog sellers would no longer be required to provide range of comparability information.

Section 305.24 (newly designated) Exemptions: The exemption related to ENERGY STAR logos on EnergyGuide labels would be incorporated into section 305.11. Section 305.24 would be reserved.

Appendices: The Proposed Rule would amend the various appendices to include range of comparability information in the form of operating costs.

VII. Discussion of Comments and Proposed Amendments

A. Effectiveness and Benefits of the Current Label

Issue and Comments: In the ANPR, the Commission asked a series of questions related to the effectiveness of the current EnergyGuide label. Many comments indicated that the current label provides consumer benefits. The responses reflected a consensus that the current program is useful. The Consortium for Energy Efficiency (CEE) (#519870–00018), for example, stated that ''there is a strong belief among [CEE] members that the EnergyGuide label is an important tool to inform consumers of the efficiency of home appliances.''[20] Similarly, General Electric (#519870–00027) noted that the label has successfully provided ''comparative energy consumption information to consumers.'' AHAM (#522148–0007) stated that the label provides ''accurate, useful and comparative information.''

ACEEE (#519870–00021), however, reported that the current label has a ''low level of use'' and a ''minimal impact on consumer, manufacturer, and contractor comparisons and choices.'' ACEEE's research found that most consumers were unable to identify the label or correctly select the label from a group of different label designs. While assessments of the current label's effectiveness varied, most commenters agreed that there is much room for improvement in the label's design.

A few commenters urged the Commission to consider changes to the label in light of the policy goals of the EnergyGuide program. The nature of those goals, however, was a point of disagreement among commenters. For example, Whirlpool (#519870–00013) suggested that the current label be updated to improve its readability and effectiveness. A researcher (Payne #519870–00024) who worked on ACEEE's study wrote that the ''current Energy Guide label is reasonably effective in providing consumers with information about the annual operating cost associated with a particular product, but is less effective in conveying the energy efficiency.'' He explained that the label appears to encourage customers to choose higher efficiency products after comparing the annual operating costs between two options, but that the energy efficiency information is not effective at conveying this information. According to the comment, consumers generally consider a labeled product to be energy efficient, and the comparison graphic on the current label is poorly understood. Overall, however, he concluded that ''the net benefit of the current label is positive because consumers do glean cost information and can make choices based on that information.''

The same commenter identified two specific problems with the current label. First, there is an inconsistency in the ''directionality'' of the comparison graphic. For some products such as refrigerators, the comparison range provides information about electricity use. On these labels, more efficient products fall on the left (lower) part of the range. Conversely, for other products, such as room air conditioners, the comparison range provides information about energy efficiency. On these labels, the more efficient products fall on the right (higher) part of the scale. In the commenter's view, this can cause consumers to misinterpret the label. Second, he asserted that the division of some products, such as refrigerators, into multiple categories causes problems because the ranges are different for similar products (e.g., top mount and side-by-side refrigerator-freezers). (Payne #519870–00024).

In responding to the Commission's questions about the effectiveness of the current label, several commenters addressed what they perceived to be the purpose of the FTC's energy labeling program. There was some disagreement about the policy goals underlying the EnergyGuide label. According to some industry members, the FTC's labeling program should provide useful information about the energy usage of home appliance products. (See, e.g., AHAM #522148–00007). Some commenters questioned the role the label should play in promoting energy savings and in creating incentives for market transformation. Whirlpool (#522148–00005), for example, pointed to DOE's efficiency standards program and the ENERGY STAR program as the appropriate entities for energy efficiency promotion. It urged the FTC to focus instead on providing ''meaningful, helpful information to consumers to assist them in the purchase decision'' through ''clear, fair, and unbiased'' disclosures.

Other commenters believed that the effectiveness of the label also should be judged by its ability to encourage consumers to purchase high-efficiency products and its effectiveness in encouraging manufacturers to bring more high efficiency products to the marketplace. (See, e.g., ACEEE #519870–00021 and Payne #519870–00024). One such commenter explained that the Commission should consider whether the label ''convinces and encourages consumers to purchase higher energy-efficient products'' and encourages ''manufacturers to produce

[20] CEE also expressed support for the data collection activities conducted by the FTC. In addition to comments about the EnergyGuide label, the Commission received a comment from the National Electronics Manufacturers Association (NEMA) in support of existing disclosure requirements for lighting products. NEMA (#519870–00028).

more energy efficient products.'' (Payne #519870–00024). As ACEEE (#519870–00021) observed, amendments to EPCA set forth in the Energy Policy Act of 2005 direct the FTC to initiate a rulemaking to consider the effectiveness of the appliance labeling program ''in assisting consumers in making purchasing decisions and improving energy efficiency.''

Discussion: In promulgating the Appliance Labeling Rule in 1979 (44 FR 66466 (Nov. 19, 1979)), the Commission provided the following statement: ''The primary purpose of the Commission's Rule is to encourage consumers to comparison-shop for energy-efficient household appliances. By mandating a uniform disclosure scheme for energy consumption information, the Rule will permit consumers to compare the energy efficiency of competing appliances and to weigh this attribute against other product features in making their purchasing decisions. If the labeling program works as expected, the availability of this new information should enhance consumer demand for appliances that save energy. In turn, competition should be generated among manufacturers to meet this demand by producing more energy-efficient appliances.'' The Commission continues to believe that this statement accurately describes the role of the FTC's energy labeling program. Specifically, the label serves two important purposes. First, the detailed operating cost and energy consumption information on the label allow consumers to compare the total cost of competing models. Second, the label aids consumers who are seeking to buy high-efficiency products that reduce energy use and thus help the environment.

In the Commission's consumer research, several questions addressed the effectiveness of the label. These data suggest that consumers actually find the label much more useful than has been suggested by past research. Overall, the results indicate that the label exhibits a high level of recognition and usefulness as reported by the study's participants. Over 85% of recent appliance purchasers who visited a retail showroom recalled seeing a label with energy characteristics.[21] Of those respondents, 58% correctly recalled that the label was yellow with black letters.[22] Fifty-nine percent of respondents who recalled seeing a label scored the usefulness of the label[23] at a seven or higher on a scale of zero to ten.[24]

B. Alternative Label Designs

Issue: The ANPR sought comments on whether the Commission should change the current design and format of the EnergyGuide label. During this proceeding, the Commission has considered several different label designs. In particular, we have sought comments on whether label information should be presented in the form of a ''continuous'' bar graph or a ''categorical'' design. Labels using a continuous design, such as the current EnergyGuide label, contain a bar graph, or similar item, that displays information on a continuous scale without discrete ranks or categories. Labels under a categorical approach employ discrete categories, using a step ranking system such as stars or letters to indicate relative energy use. The Commission has also considered whether to adopt a continuous-style label that displays operating costs as the primary energy efficiency descriptor.[25]

A key feature of the current continuous-style label is that the range or scale is based on data for models available on the market. One end of the scale depicts the energy use of the most efficient model on the market while the other identifies the least efficient. For example, the bar graph on a label for a typical refrigerator category may have 539 kWh/yr (kilowatt-hours per year) on one end and 698 kWh/yr on the other.

The ratings on a categorical label (e.g., stars or letters) generally depict the model's energy efficiency as compared to minimum government efficiency standards. For example, a five star dishwasher would have an efficiency rating that exceeded the minimum government standard by a certain percentage (e.g., 20%). In some countries, the energy label categories stem from a consistently applied algorithm (e.g., New Zealand and Australia). (Roke #522148–00002). The framework behind the categorical label is fundamentally different from that used for the continuous-style label because the categorical range does not depict directly the energy use or efficiency of other products on the market. Instead, the categories (e.g., stars) correspond to thresholds defined by the agency administering the labeling program.

Comments: In 2002, ACEEE released a report summarizing its research on the EnergyGuide label's efficacy and on alternative formats and graphical elements for the label.[26] More recently, AHAM conducted research that also examined the current label and alternatives.[27] The conclusions reached by AHAM and ACEEE are not in accord. The ACEEE report considered various categorical and continuous labels. Among other things, the report recommended the adoption of a categorical label based on a star system (e.g., one to five stars). According to ACEEE (#519870–00021), its research demonstrated a clear preference for the categorical star-based label that consumers found the ''easiest to understand and most motivating.'' On the other hand, AHAM (#519870–00016) indicated that its study found that consumers prefer and understand the continuous label design over the categorical.

Comments on the Categorical Design

Many comments focused on the continuous and categorical designs. Commenters were clearly split on their preference for one design over the other. In general, advocates of the categorical label argued that the design is easier for consumers to understand and would be more effective at promoting energy efficiency. (See, e.g., Payne #519870–00024 and ACEEE #519870–00021). ACEEE's research indicated that a categorical label based on a star system ''is more easily understood than the current label, thereby enabling shoppers to more quickly and easily compare the energy performance of multiple models.'' ACEEE found in its research that consumers clearly preferred a categorical label, particularly one that employs a star-based rating system. ACEEE (#519870–00021) concluded that the star-based label was the easiest for

[21] Question Q435 reads: ''Do you recall seeing a label describing energy characteristics attached to the appliance?'

[22] Question Q440 asked qualified respondents: ''To the best of your knowledge, was the color of the energy label: (1) White with green letters, (2) Blue with white letters, (3) Yellow with black letters, (4) Red with black letters, or (5) Not sure?'

[23] Question Q445 asked qualified respondents: ''Using a scale from 0 to 10, where 0 is ''not at all useful'' and 10 is ''extremely useful,'' how useful was the energy label in your most recent [insert relevant appliance] purchase decision?'

[24] It is possible that some respondents actually recalled seeing ENERGY STAR information instead of the EnergyGuide label. We note, however, that only 8% of respondents recalled that the label they saw in the showroom was blue and white (colors often used for the ENERGY STAR logo). Moreover, the ENERGY STAR logo does not display energy characteristics.

[25] As part of the Workshop, the FTC sought comment on an alternative label design that compared a model's energy efficiency to DOE minimum standards in the form of a percentage. See 71 FR 18023. Several workshop participants raised concerns that percentage information may be confusing to consumers, inadequately distinguish the energy efficiency of some products (such as water heaters), and create complications as DOE minimum standards change over time. Taking these comments into account, the June 2006 notice indicated that the FTC would not continue to consider such a design (71 FR at 36093).

[26] Thorne and Egan, supra note 12.

[27] AHAM, supra note 13.

consumers to understand and ''most motivating.'' The categorical label also is useful for a wide range of consumers, including those with limited literacy, difficulty reading English, and discomfort with numerical concepts. Comments also suggested that the categorical label provides a greater incentive for manufacturers to produce high-efficiency products because of market benefits associated with having the highest energy rating. (Payne #519870–00024). Several commenters also noted that many other countries, including those in the European Union, employ a categorical labeling system. (Payne #519870–00024 and ACEEE #519870–00021). According to NRDC (#519870–00025), these labels have ''been extremely effective communication tools and have successfully moved consumers to purchase more energy efficient and cost effective models.''

Other comments raised a variety of concerns about the categorical approach. These concerns fell into five basic categories. First, some commenters warned that consumers would interpret the label's categories (e.g., a five-star system) as indicia of non-energy related factors such as product quality or performance.[28] In fact, according to some comments, categorical labels in some other countries are intended to convey performance attributes of the product beyond the limited energy disclosures intended by the EnergyGuide label. (Alliance Laundry Systems #519870–00008 and Whirlpool #522148–00005).

Second, several commenters cautioned that the categorical label would cause confusion related to the ENERGY STAR program.[29] For example, CEE (#519870–00018) raised concerns ''about the potential friction between a categorical label (that implicitly directs consumers toward more stars) and the ENERGY STAR label (that directs consumers to look for the mark on efficient products).'' EPA (#519870–00007), which runs the ENERGY STAR program along with DOE, wrote that a categorical label ''could undermine the natural synergies between the EnergyGuide education effort and the ENERGY STAR program and prevent these programs from working effectively together to provide important yet different information to consumers.''

Third, several commenters suggested that the categorical label would mislead consumers by inflating or understating the difference between appliances by using arbitrary cut-offs. (See, e.g., Whirlpool #519870–00013). ARI suggested that the label ''would likely discourage incremental efficiency improvements unless the improvement is sufficient to qualify the product for the next star.'' (ARI #519870–00010).

Fourth, some commenters believed the categorical system would require the FTC to make subjective judgments about thresholds for the various categories. (Whirlpool #522148–00005 and AHAM #522148–00007). According to Whirlpool (#522148–00005), such decisions are ''clearly beyond the scope of the current program and current expertise of the Commission.'' AHAM (#522148–00007) indicated that, for some products such as dishwashers, the FTC would have to establish separate category ratings for models ''that are essentially the same in energy efficiency.'' It warned that the categorical label ''overemphasizes very small differences in energy use simply for the sake of differentiation.'' AHAM (#519870–00016) also warned that a categorical approach would change ''the very nature of the label to one that would identify categories or groupings of products rather than'' providing range information that allows consumers to make their own judgments among different products.

Fifth, many commenters noted that the implementation of a categorical system will require extensive technical analysis and protracted negotiations with stakeholders.[30] ACEEE (#519870–00021) acknowledged that the effort would ''entail significant up front implementation efforts'' and suggested that the FTC convene a technical review group to advise the Commission on the appropriate category thresholds.

AHAM (#522148–00007) and other industry members urged the FTC to retain the current continuous style format. AHAM indicated that its own research demonstrates that consumers prefer the continuous style label because it provides ''useful information that could be used to compare different models'' and because the graphic format is clear, simple, and understandable.

Possible Improvements to the Current Label

Though there were sharp disagreements about whether to use a categorical label, most commenters believed that if the Commission were to retain a continuous format, improvements could be made to the current design. For example, EEI (#522148–00010) recommended that the Commission use a revised version of the continuous label that increases the font sizes of key information. GAMA (#519870–00011), which voiced a strong preference for maintaining a continuous label design, supported the consideration of changes to reduce clutter on the current label. ACEEE (#519870–00021), which supports a categorical style, indicated that improvements could be made to the existing label. It suggested that the label should ''clearly group and block off each informational element using the same text style and color; slightly reduce the level of explanatory text; and reposition the ENERGY STAR to the bottom right-hand corner of the label.''

Comments on Operating Cost Label

A few comments urged the Commission to consider a continuous label design that prominently displays operating (i.e., energy) cost. Whirlpool (#522148–00005) submitted a sample label featuring operating costs in large font. It suggested that such a label would be advantageous because it presented familiar information in a straightforward fashion. Similarly, Bosch explained that ''it is of critical importance that the main attention grabber be the dollar value of the operating expense.'' Bosch (#522148–00003) stated that operating cost ''is what people most want to know, and is the best value to use when comparison shopping.'' At the Workshop, AHAM suggested that consumers really would like to know how much the appliance will ''cost them to operate.'' (Workshop Tr. at 124–125). While ACEEE's research (#519870–00021) indicated that operating cost is considered one of the most important pieces of information on the label, it also found that consumers are interested in energy use. ACEEE's comments, however, also stated that ''[c]onsumers expressed little interest in replacing annual energy use with operating cost as the basis for the comparative graphic.''

Comments on Previous Research

Commenters also discussed prior research. Natural Resources Canada (NRCAN) (#519870–00020) provided an overview of that agency's past efforts to

[28] See Whirlpool #522148–00005, Edison Electric Institute (EEI) #522148–00010, Gas Appliance Manufacturers Association (GAMA) #519870–00011, AHAM #519870–00016, and Air-Conditioning and Refrigeration Institute (ARI) #519870–00010. ACEEE's comments stated that its research found that a star label did not imply quality or other requirements beyond energy consumption. (ACEEE #519870–00021).

[29] See, Whirlpool #522148–00005, AHAM #519870–00016, EPA #519870–00007, and GAMA #519870–00011.

[30] See AHAM (#519870–00016 and #522148–00007), Payne (#519870–00024), Whirlpool #522148–00005, EEI #522148–00010, EPA #519870–00012, and GAMA #519870–00011. Fisher and Paykel (#522148–0002) provided information about the rating algorithm used in Austra lia and New Zealand for refrigerators.

consider improvements to the Canadian EnerGuide label.[31] In general, NRCAN's work suggested that ''the majority of people find the information on the EnerGuide labels useful to some extent in helping select the most energy efficient model appliance.'' Its research, though, suggests consumers generally find labels with both kWh/yr and operational cost more useful than labels with kWh/yr alone. NRCAN considered the use of operating costs on its label, but concluded that ''the disparity of electricity costs across Canada could not provide comparable information in the same manner as the kWh/yr.'' In addition to considering operating costs, NRCAN explored the implementation of a categorical system, but found a star-based categorical label ''did not test well with many consumers.'' According to NRCAN, consumers raised concerns about the significance of differences among the categories.

In addition to NRCAN's comments about its own research, several comments addressed the strengths and weaknesses of the ACEEE and AHAM research. Whirlpool (#519870–00013) raised concerns about ACEEE's mall intercept approach and also questioned the statistical significance of the results of a shopping experiment ACEEE conducted. AHAM (#519870–00016) raised concerns that the ACEEE study was ''non-scientific'' and results driven aimed at concluding that the ''categorical-style label was the preference of consumers.'' ACEEE (#522148–00008) countered AHAM's critiques in detail, explaining, among other things, that throughout ''the project, the research design was reviewed with numerous experts and found to be a strong and valid approach without bias towards any particular outcome.'' Furthermore, ACEEE voiced criticisms of AHAM's approach arguing that, contrary to AHAM's assertions, the study actually found ''that the stars-based label best expresses energy efficiency and does not mislead consumers with regard to product quality, performance, and reliability.'' ACEEE also expressed concern that the AHAM study failed to test actual label comprehension, focusing instead on consumer preferences and self-reported ease of understanding.

Comments on ENERGY STAR and Alternative Label Designs

In 1992, the EPA introduced the voluntary ENERGY STAR program to promote energy-efficient products and thereby reduce greenhouse gas emissions. ENERGY STAR first covered labeling for computers and monitors. In 1996, EPA partnered with the U.S. Department of Energy. The ENERGY STAR label is now on major appliances, office equipment, lighting, home electronics, and more. Recognizing the importance of this program for consumers, the Commission in 2000 issued an exemption to the Appliance Labeling Rule that allows manufacturers to include the ENERGY STAR logo on the EnergyGuide label for covered appliances. (65 FR 17554 (Apr. 3, 2000); see also 16 CFR 305.19(a)). The exemption requires manufacturers to print an explanatory tag line next to the logo that states ''ENERGY STAR A symbol of energy efficiency.'' As part of EPACT 2005, Congress established a formal, statutory basis for the ENERGY STAR program. (See 42 U.S.C. 6294a).

Commenters raised several issues about the inclusion of ENERGY STAR information on the FTC's EnergyGuide label. Some expressed concern about the impact a categorical labeling system may have on the ENERGY STAR program, while others took issue with the current placement of the ENERGY STAR logo on the FTC label. As discussed above, EPA (#519870–00012) raised several concerns about the impact of the categorical label on its program. CEE (#519870–00018), which works extensively with utility companies on energy-efficiency programs, cautioned the FTC to avoid a course that could damage ENERGY STAR and warned of the ''potential friction'' between a categorical label and ENERGY STAR. AHAM (#519870–00016) was more direct. According to that industry group, the adoption of a categorical label, with its identification of super-efficient categories, would create a ''rival program to ENERGY STAR.'' The two programs service distinct purposes in AHAM's view. The FTC label assists consumers ''in understanding the long-term cost implications of purchasing a particular product,'' while the ENERGY STAR program ''has been specifically identified by the Congress to 'identify and promote energy-efficient products' for consumers.''[32]

On the other hand, ACEEE's research found that consumers ''easily distinguished the ENERGY STAR from the categorical rating scheme.'' In addition, ACEEE concluded that the two programs have a mutually reinforcing relationship because consumers recognize ENERGY STAR as an endorsement that the model has met specific standards, while the categorical rating ''provides a comparison scale for energy use among different models.'' According to another commenter involved in ACEEE's research, no ''consumer comprehension issues were found when consumers were shown a categorical stars system combined with an ENERGY STAR logo.'' (Payne #519870–00024). This commenter, however, explained at the Workshop that ''we probably need much more detailed research to understand the questions of how the Energy Guide label and the ENERGY STAR label interact.'' (Workshop Tr. at 101 (Payne)).

In addition to concerns about the impact of a categorical system on ENERGY STAR, commenters suggested improving the placement of the ENERGY STAR logo (or symbol) on the EnergyGuide label regardless of overall label design. Most commenters who addressed this issue suggested that the logo appear on the lower, right corner of the EnergyGuide label instead of above the comparability range, as currently required.[33] NRCAN (#519870–00020)) explained that the bottom location ''showcases'' the logo and that manufacturers believe the location provides more prominence to the symbol. EPA (#519870–00007) suggested that the explanatory text required for the logo be shortened because the words ''ENERGY STAR'' have now been incorporated into the logo.

Discussion: The Commission has reviewed the concerns raised by the comments and the results of the FTC's own research. Based on this review, as discussed further below, we propose replacing the existing label design with one that features estimated annual operating costs as the primary disclosure. The proposed label's comparison range would disclose energy cost information in dollars per year. The label would continue to provide consumers with information about the product's energy use (in kWh/year), but as a secondary disclosure. The Commission is also seeking comment on a variation of the cost label design that would provide a cost estimate over a period of years instead of annually.

The results of the FTC research yielded several general conclusions about the performance of the four label designs under consideration (i.e., the current energy use label, a modified version of the current energy use label, the categorical label, and the operating cost label). First, respondents performed well in the objective tasks of identifying and ranking operating costs (in dollars) and energy use (in kilowatt-hours) for

[31] The Canadian EnergGuide label is similar to the U.S. EnergyGuide label.

[32] Quoting section 131 of EPACT 2005.

[33] EPA (#519870–00021), and NRCAN (#19870–00020).

all label designs, suggesting that any of the designs should help consumers compare operating costs and energy use. The categorical label, however, was somewhat more effective for some objective tasks, particularly when compared to the modified version of the current energy use label. Second, the categorical label, which was the only label to include the term ''energy efficient,'' was generally more effective at aiding respondents in ranking products by energy efficiency than the labels more prominently featuring operating costs or energy use. Third, respondents viewing the categorical design were much more likely than respondents viewing other designs to identify models as ENERGY STAR-qualified when none of the models viewed contained ENERGY STAR logos. Fourth, the results suggest that respondents viewing the categorical labels were somewhat more likely to misidentify quality differences between models than those respondents viewing other label designs. Fifth, the research indicated that the categorical label had a substantially greater impact on respondents' reported willingness to pay for differences in energy performance between models. Finally, the study suggested that the respondents in all label conditions have a preference for the communication of energy characteristics in the form of operating costs over either electricity usage or a five-star categorical scale.

Identification of Operating Costs, Energy Use, and Energy Efficiency Ranking

In general, the research results for all label designs indicated that most respondents had little trouble identifying the correct operating cost and electricity use of a single model.[34] In most cases, at least 80% of the respondents consistently answered such questions correctly regardless of label design. Although no single label design consistently out performed all others on questions asking respondents to identify operating cost and energy use, some patterns emerged. For questions involving operating costs, the FTC staff found that the modified continuous label (Cell 3) performed worse than the other labels (Cell 1, Cell 5, and Cell 7) in seven out of twelve head-to-head comparisons of response results involving labels without the ENERGY STAR logo. When the same cost questions were asked for labels bearing the ENERGY STAR logo, however, the results identified no statistically significant differences. In addition, there were no statistically significant differences between the operating cost labels and the categorical labels for this sequence of operating costs questions, whether or not the ENERGY STAR logo was included.

Similar patterns emerged for the sequence of questions about energy use. Once again, the modified current label (Cell 3) performed worse than the operating cost design and the categorical design.[35] In addition, there were no statistically significant differences in the percentage of correct responses between the categorical labels and the operating cost labels.

The ranking task results suggested that a very high percentage of respondents could rank the models correctly by operating costs and electricity use.[36] At least 69% of respondents viewing each label design could rank correctly the models by operating costs and at least 65% of respondents viewing each label design could rank correctly the models by energy use. The categorical labels tended to outperform other designs on the ranking tasks, particularly the current label and the modified current label. The study indicated that the categorical label outperformed the other designs in seven out of twenty-four response comparisons for questions related to operating costs.[37] Most of these statistically significant differences (six of out the seven) involved comparisons of the categorical label to the current label or the modified current label. Only one of these seven differences involved a comparison of the categorical label result to the operating cost label and this occurred on the ranking task for refrigerators in the non-ENERGY STAR condition.[38]

For questions involving comparative energy efficiency, the categorical label performed better than the other label designs. For example, 82% of respondents viewing the categorical label (with the ENERGY STAR logo) correctly ranked refrigerators by energy efficiency whereas 72% did so for the current label, 69% for the modified version of the energy use label, and 71% for the operating cost label.

The Categorical Label

The results of the FTC research suggest that, while the categorical label can provide important benefits under the tested conditions, it presents some significant concerns. First, respondents were much more likely to exhibit confusion in identifying ENERGY STAR products when using the categorical label. Absent the ENERGY STAR logo, there was no way for respondents to identify correctly ENERGY STAR-qualified models without guesswork. Nevertheless, when shown categorical dishwasher labels without ENERGY STAR logos, 43% of the respondents indicated that they could tell whether any of the four labels were ENERGY STAR products.[39] In groups viewing the other three label designs under the same conditions, a substantially smaller percentage of respondents indicated that they could determine whether products qualified for the ENERGY STAR program (14% for the current label (Cell 1), 16% for the modified energy use label (Cell 3), and 11% for the operating cost label (Cell 7)).[40]

Additionally, when asked to identify ENERGY STAR-qualified models, a substantial number of respondents viewing the categorical design without the ENERGY STAR logo (Cell 5) identified the lower efficiency, non-ENERGY STAR models in the study as ENERGY STAR models. Specifically, 19% of the respondents in Cell 5 identified the ''three-star'' dishwasher (Model J) as ENERGY STAR-qualified

[34] These simple operating cost questions are Q520 ''Based on this information can you tell how much it typically costs to operate this model for one year?'' and Q522 ''How much would it typically cost to operate this model for one year?'' These energy use questions are Q521 ''Based on this information, can you tell how much energy is typically required to operate this model for one year?'' and Q525 ''How much energy is typically required to operate this model for one year?''

[35] Respondents who viewed the modified current label without the ENERGY STAR (Cell 3) had significantly fewer correct responses to three out of four questions about energy use than the respondents who viewed the categorical label (Cell 5) or the operating cost label (Cell 7).

[36] The questionnaire included three ranking questions: Q615 (operating costs), Q660 (energy use), and Q640 (energy efficiency). For example, Q615 asked: ''Please rank these refrigerators according to their typical yearly operating costs, starting with the most expensive to operate and then moving to the second most expensive to operate, and then the third most expensive to operate.'' The structure of all three ranking questions was the same. The order of the ranking questions was rotated to prevent order bias.

[37] For refrigerators and dishwashers, the FTC staff analysis examined differences among each of the four main labels without ENERGY STAR information (six comparisons for each product) and differences among the four main labels with ENERGY STAR information (six comparisons for each product).

[38] Results for the energy use ranking task were similar. There were statistically significant differences in ten out of twenty-four comparisons. The clearest difference was between the categorical label and the current label, where the categorical label did better in four out of four comparisons. The categorical label did better than the operating cost label in only one out of four comparisons.

[39] Respondents were asked Q629: ''Based on this information, can you tell if any of the dishwashers qualify for the federal govenment's ENERGY STAR program?''

[40] The difference in the percentage of respondents who answered correctly for the categorical labels versus each of the other labels is statistically significant at the 5% significance level (i.e., 95% confidence level).

and 16% identified the ''one-star'' dishwasher (Model M) as being ENERGY STAR-qualified. By contrast, for those viewing the operating cost label (Cell 7), only 4% of respondents identified dishwasher Model J as ENERGY STAR-qualified and only 3% identified dishwasher Model M as qualified.[41]

A substantial percentage of respondents who viewed the categorical label (39% for dishwashers) indicated that five stars (Model K) equated to an ENERGY STAR product even though there was no ENERGY STAR logo on the label.[42] While this assumption was correct in the context of the refrigerator or dishwasher labels used in the study, we are concerned that this tendency to guess could lead to inaccurate conclusions for some labeled products, such as water heaters, that are not covered under the ENERGY STAR program. Moreover, respondents' guesswork in interpreting the categorical label suggests that such a label system could cause significant confusion where FTC categories fail to align neatly with ENERGY STAR levels. We note that EPA raised concerns about the feasibility of aligning categorical rankings to ENERGY STAR criteria for all covered products. (Workshop Tr. at 97–98).

The study results also indicated that the categorical label caused more confusion than other designs with regard to the identification of the actual ENERGY STAR logo on the label itself. The questionnaire asked certain respondents to identify the information on the label signaling that the appliance qualified for the ENERGY STAR program.[43] In cells containing the ENERGY STAR logo, well over 90% of the qualified respondents viewing the current, modified current, and operating cost labels correctly identified the logo on the ENERGY STAR models (Models K and L) whereas only about 80%[44] of the qualified respondents viewing the categorical label with the ENERGY STAR logo correctly identified that logo on the labels. These results further support the conclusion that the categorical label is more likely to create confusion regarding ENERGY STAR than the other label designs.

The study also examined possible confusion about the effect of the label designs on perceptions of overall product quality.[45] On average, across all ten label conditions, a little over 70% of the respondents correctly understood that the label information did not include data on overall product quality. Respondents who viewed the categorical labels were less likely to answer the overall product quality question correctly than respondents who viewed the operating cost label or the modified current label.[46] This tendency for the categorical label to suggest quality was greatest when the label design was coupled with the ENERGY STAR logo.[47] For example, the research indicated that 24% of the respondents viewing the refrigerator categorical style labels (Cell 6) indicated quality differences among the models. Respondents viewing other label designs under the same conditions indicated lower levels of confusion on this issue: 16% for the current label, 15% for the modified energy use label, and 14% for the operating cost label.[48] These differences, though not large, are statistically significant at the 5% significance level and add to the concerns with the categorical label.

We also note that a significantly larger percentage of respondents who viewed the categorical label were willing to pay for energy performance differences compared to those respondents who viewed the other designs.[49] Specifically, 70% of respondents viewing a pair of dishwasher models with the categorical label (Cell 5) indicated a willingness to pay more for one model over another. Only about 45% of the respondents viewing the other three label designs under similar conditions (without the ENERGY STAR logo) indicated that they were willing to pay more for one model over the other.[50] The differences in willingness-to-pay across label designs when the ENERGY STAR logo was included on the label were also substantial, but not as pronounced (e.g., for dishwashers, 75% for the categorical design, 54% for the current label, 58% for the modified label, and 54% for the operating cost label).

These willingness-to-pay results suggest that the categorical label may be more effective at motivating consumers to purchase higher efficiency products than the other designs. However, it is difficult to predict the extent to which self-reported intentions to pay more would translate into actual behavior in the marketplace. The results also suggest that a categorical EnergyGuide

[41] The differences between the percentage of respondents viewing the categorical label who incorrectly identified ENERGY STAR models and the percentage of respondents viewing each of the other labels who incorrectly identified ENERGY STAR models is statistically significant at the 5% significance level (i.e., 95% confidence level). The results for refrigerators were similar: Cell 5 (13% for Model M and 16% for Model J) and Cell 7 (4% for Model M and 5% for Model J).

[42] For other label designs, the respondents were less likely to identify Model K as ENERGY STAR where there was no ENERGY STAR logo on the label (9% for the current label, 13% for the modified label, and 9% for the cost label). The difference between the categorical label and each of the other labels is statistically significant at the 5% significance level (i.e., 95% confidence level).

[43] Qualified respondents were asked Q725: ''Please use your mouse's cursor to point and click on the screen on the information that tells you that this [refrigerator/dishwasher] qualifies for the federal government's ENERGY STAR program.'' This question was asked of respondents who said they could tell that an appliance qualified for the ENERGY STAR program, and who also identified at least one model as ENERGY STAR-qualified.

[44] The specific results for the categorical label were: 81% Model L refrigerator, 77% Model K refrigerator, 83% Model L dishwasher, and 79% Model K dishwasher. The difference between the categorical label and each of the other labels is statistically significant at the 5% significance level in 12 out of 12 head-to-head comparisons.

[45] The questions involving product quality included Q675, Q680, and Q685. First, respondents were told: ''Now we would like to ask you some questions about the overall quality of the [refrigerators/dishwashers]. By 'overall quality' we mean to include factors such as performance, durability, and workmanship.'' Then, respondents were asked: ''Can you tell, from the information provided, if one [refrigerators/dishwasher] has a higher overall quality than the other [refrigerator/dishwashers]?'' Respondents who answered ''Yes'' to this question were then asked ''Which [refrigerator/dishwasher] has the highest overall quality?''

[46] When responses for the ENERGY STAR and non-ENERGY STAR versions of each label format are combined, the categorical labels result in significantly fewer correct responses than each of the other labels for dishwashers and refrigerators.

[47] We note there was not a statistically significant difference between the percentage of respondents identifying quality differences in Cell 5 (categorical label without the ENERGY STAR logo) and Cell 7 (operating cost without the ENERGY STAR logo) (Cell 5 Refrigerators—21%; Cell 5 Dishwashers—21%; Cell 7 Refrigerators—19%; and Cell 7 Dishwashers—16 %).

[48] In addition, those respondents viewing the categorical label who perceived quality differences were much more likely to identify the highest efficiency model (Model K) as the highest quality model than respondents in other cells whose responses identifying the highest quality model were more evenly distributed across the four models.

[49] The willingness-to-pay series of questions began with Q700: ''Now we would like to ask you some questions about how you would value the [refrigerators/dishwashers]. These two [refrigerators/dishwashers] are the same in all respects, except that one uses more energy than the other. They have the same performance, durability, features, capacity and workmanship, are made by the same manufacturer, and sold in the same store.'' Then, respondents were asked Q705: ''Would you be willing to pay more for one of these two models?'' Respondents who answer ''Yes'' were then asked Q707: ''Which model would you be willing to pay more for?'' Those who select a model were then asked: ''How much more would you be willing to pay for this [refrigerator/dishwasher]?'' Finally, respondents were asked Q715: ''Why do you say that? Please give as much detail as possible.''

[50] The willingness-to-pay differences were similar for refrigerators (70% for categorical label (Cell 5), 43% for the current label (Cell 1), 44% for the modified label (Cell 3), and 43% for the cost label (Cell 7)). The differences between the categorical label and each of these other labels are statistically significant at the 5% significance level for all of the relevant pair-wise comparisons.

label may serve a promotional function similar to the existing ENERGY STAR program. As the research suggests, however, the categorical label may actually have negative effects on the ENERGY STAR program, potentially creating substantial confusion and, in a significant number of cases, leading consumers to identify low-efficiency products as ENERGY STAR-qualified.

We believe the EnergyGuide label should complement, not detract from, the ENERGY STAR program. The combination of the FTC label and ENERGY STAR program appears to provide a sound framework for conveying energy information to consumers and promoting energy efficiency. The FTC label displays detailed energy information about all products regardless of energy efficiency. ENERGY STAR provides the U.S. Government's imprimatur for high-efficiency products.[51] This system, as a whole, provides a robust source of energy efficiency information to consumers.

In sum, we are not proposing a categorical label. The study suggests that there are benefits to the categorical label. It outperformed other labels on some objective performance tasks [52] and appears to provide a good tool for allowing consumers to rank competing models. With the exception of the energy efficiency ranking task, however, differences in performance between the categorical label and the operating cost label were fairly modest. Overall, the potential costs of the categorical label are likely to outweigh its potential benefits. We are concerned that the label design could confuse a significant number of consumers with regard to the well-established ENERGY STAR program and may tend to convey inaccurate product quality messages more often than other tested designs. These concerns outweigh the categorical design's potential benefits.[53] We request comment on the results of the FTC research with regard to the categorical label and the conclusions we have reached.

Proposed Operating Cost Label

After reviewing the results of the research and the comments submitted, the Commission is proposing to change the label design to require operating cost as the primary disclosure. Section 324 (a) of EPCA directs the Commission to require annual operating costs on the label, unless the Commission determines that such disclosures are not likely to assist consumers in making purchasing decisions. (42 U.S.C. 6294(c)). The FTC's consumer research clearly indicates that cost information is likely to assist consumers in making purchasing decisions. While all the designs considered comply with Section 324(a), and each has strengths and weaknesses, on balance, we believe the adoption of a design that presents cost as the primary disclosure best serves consumers in the current marketplace. Under the Proposed Rule, the operating cost design would be required for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, room air conditioners, pool heaters,[54] and water heaters.[55] A sample of the proposed label is included as Figure 1.

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[51] EPACT 2005 indicates that the purpose of the ENERGY STAR program is ''to identify and promote energy-efficient products and buildings.'' (42 U.S.C. 6294a(a)).

[52] We note that the study did not test conditions where two labels had the same number of stars, but different energy use and operating cost figures.

[53] We note commenters raised legitimate questions about the feasibility of implementing a categorical label system, including the alignment of FTC categories with ENERGY STAR criteria. Given our conclusions based on the research, we are not addressing such concerns in detail, but we recognize the serious issues that would be raised by the implementation of a categorical label.

[54] When the Commission first issued pool heater label requirements in 1994, the DOE test procedure did not contain a final procedure for measuring annual operating costs for these products. (See 10 CFR Part 430, Appendix P; and 59 FR 49556, 49558 (Sept. 28, 1994)). Since then, DOE has amended the procedure to allow manufacturers to calculate annual energy use and operating cost for pool heaters. (62 FR 26140 (May 12, 1997)). Accordingly, the Commission proposes to require the disclosure of estimated annual operating costs on pool heaters.

[55] As discussed in section VII.C of this Notice, we are proposing to eliminate EnergyGuide labeling requirements for heating and cooling equipment (except water heaters). Therefore, the operating cost label would not apply to those products.

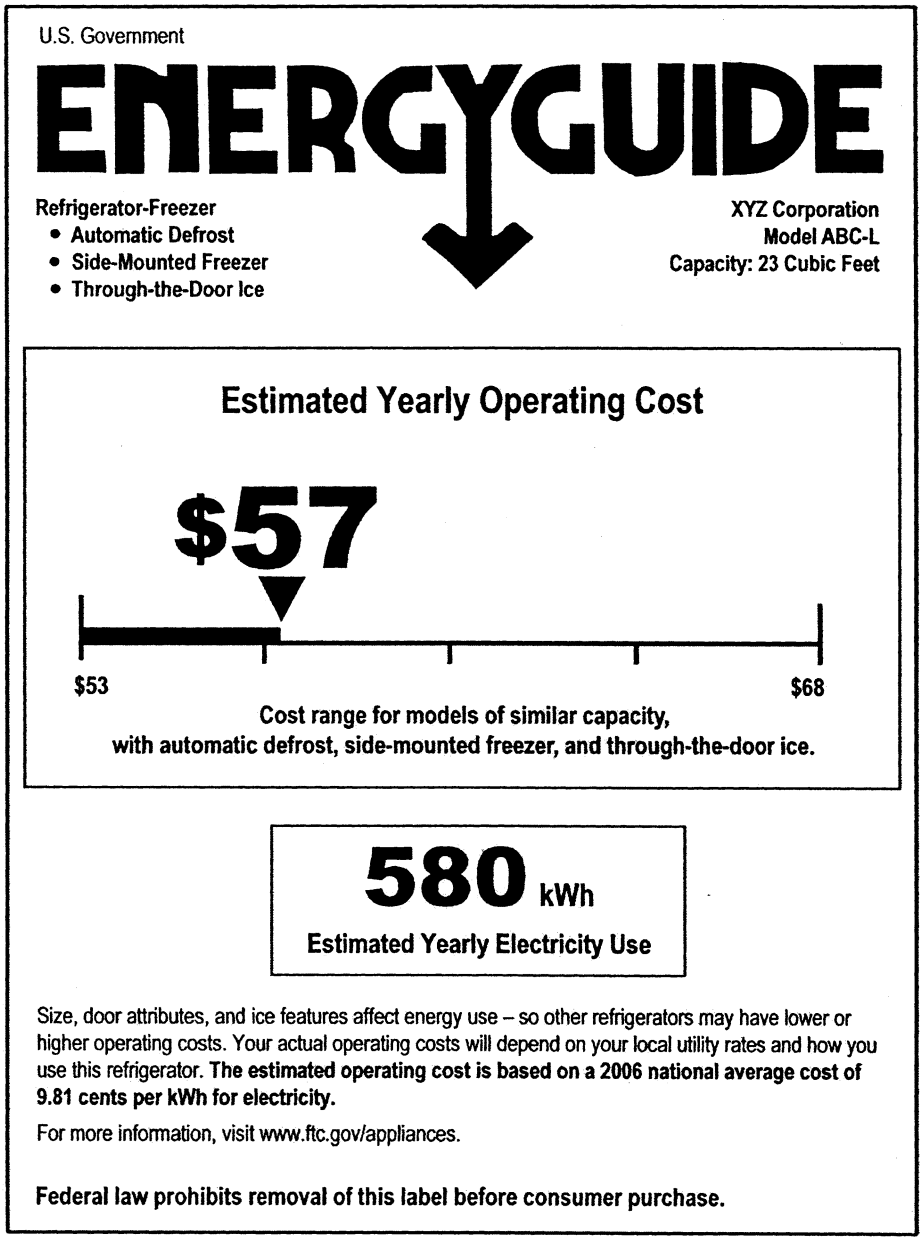

FIGURE 1 - PROPOSED LABEL (OPERATING COST LABEL)

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This proposed label marks a return to the prominence of operating costs on the label. When the Commission first issued EnergyGuide label requirements, the Rule required operating costs as the primary disclosure (44 FR 66466 (Nov. 19, 1979)). In 1994, the Commission relegated cost information to a secondary disclosure (*see* 59 FR 34014 (July 1, 1994)). At the time, the Commission explained that when DOE changed its national average energy costs, corresponding changes in the label's operating costs could result in inconsistent cost information on labels in the showroom. (58 FR 12827 (March 5, 1993)). As explained in more detail below, we believe this concern can be addressed by changing the frequency at which required average energy cost information is changed.

Our research indicated that respondents clearly identified operating costs as the preferred method for communicating energy performance in the marketplace. This preference was strong and consistent both in answers to open-ended questions at the beginning of the questionnaire and a series of closed-ended questions near the end.[56] The contractor coded responses to the open-ended questions and grouped them into larger categories. Although the open-ended responses suggested a tendency for respondents to identify the information most prominently featured on the label they viewed as the ''most useful'' information,[57] respondents tended to identify cost-related information as ''most useful'' more than other types of information regardless of which label they viewed. Across all label conditions, on average, 67% of respondents mentioned cost-related information when shown a refrigerator label, and 69% of respondents mentioned cost-related information when shown a dishwasher label. In contrast, roughly 40% of the respondents mentioned energy consumption, roughly 13% of respondents mentioned something about stars or an ENERGY STAR rating, and roughly 2% of respondents mentioned something about efficiency. The staff's separate review of a sub-sample of responses confirmed the contractor's finding that cost is mentioned most often as ''most useful.''

The preference for operating cost information also emerged in an analysis of responses to a series of closed-ended questions asked toward the end of the questionnaire.[58] For example, 40% of all respondents stated that operating cost was extremely useful (i.e., a 10 on a 0 to 10 scale). In addition, 80% of all respondents rated the usefulness of cost information a seven or greater rating on a scale of 0 to 10. By comparison, 28% of total respondents indicated that an energy use descriptor was extremely useful, and 67% of all respondents rated energy use a seven or greater on a 0 to 10 scale. Only 25% of total respondents found the five-star scale to be extremely useful and 64% rated the five-star scale a seven or greater on the same scale.[59]

Respondents who viewed the categorical label were more likely than those in other cells to assign high ratings to the five-star scale, giving the five-star system a mean score of 8.1 in the condition without the ENERGY STAR logo and 8.2 in the condition with the ENERGY STAR logo. Even for these respondents, however, the five-star system did not yield higher ratings than the operating cost measure. They gave the operating cost measure an average score of 8.4 in the condition without the ENERGY STAR logo and 8.5 in the condition with the ENERGY STAR logo.

In general, the operating cost design performed well on the objective tasks. For example, in head-to-head comparisons between the operating cost design and the categorical label design under the ENERGY STAR condition, there were no statistically significant differences in correct responses to questions about costs or energy use. The only statistically significant difference with the ENERGY STAR logo in place occurred in the energy efficiency ranking task. While the categorical label outperformed the operating cost label on some objective tasks, the differences in most cases were quite modest.

The research suggests that the operating cost disclosure provides a clear, understandable tool to allow consumers to compare the energy performance of different models. We expect that consumers find operating cost information most useful because it is familiar to them and provides a clear context from which they can gauge the energy efficiency differences of various appliances, and allows them to assess trade-offs between energy efficiency expenditures and other expenditures. An operating cost range also provides an energy efficiency descriptor that is consistent across appliance types, and addresses the ''directionality'' problem identified by comments (i.e., more efficient models are always lower on the range across appliance types).

We have two concerns, however, with the use of operating cost as the primary disclosure on a label. We seek comments on each. First, as discussed by the Commission in 1994, frequent changes to average energy cost figures used to calculate label disclosures could lead to inconsistent labels for models displayed in the showroom. To address this concern, the Proposed Rule would alter the frequency at which the FTC considers changing the national average energy cost information to once every five years.[60] We believe that such a system would reduce compliance costs in addition to concerns about inconsistent label information. This issue is discussed further in section VII.E of this Notice.

Second, because the operating cost on the label is based on a national average, the energy cost used to calculate information on the label may not be the same as the energy cost paid by the consumer examining the product. Comments at the Workshop suggested that most consumers will understand average cost information means that their actual energy costs are likely to be different. (Workshop Tr. at 100–101; and 211). For example, one participant stated that ''there are varying degrees to which an individual household relates to that annual operating cost and that annual kilowatt hour consumption, and

[56] Respondents were first advised: ''Imagine you were shopping for a [refrigerator/dishwasher] and this information was available. Please look at the information. You will be asked questions about [refrigerators/dishwashers] based on this information.'' Respondents then viewed a single energy label and asked (Q510): ''Would any of this information be useful to you in making your purchase decision?'' Those who answered ''Yes'' were then asked (Q515) ''Which parts of this information would be most useful to you? Please be as specific as possible.'' When asked about the usefulness of information on the label early in the questionnaire, roughly 80% of respondents across all ten conditions, on average, thought the information would be useful (84% for refrigerator purchases and 80% for dishwasher purchases).

[57] For example, in the refrigerator condition, at least 40% of those who saw an operating cost label mentioned yearly operating costs, but only about 25% of those who viewed a categorical label mentioned operating cost. This tendency suggests that the information featured most prominently on the label will be important to consumers.

[58] Question series 900 stated: ''There are different ways to communicate the energy characteristics of an appliance. You can get * information on how much energy an appliance uses measured in kilowatt-hours, * information on the cost of operating an appliance for a year, measured in dollars, * energy efficiency ratings based on a five-star rating system. On a scale from 0 to 10, with 0 being not at all useful and 10 being extremely useful, please rate the usefulness of each type of information.'' Answers were elicited for Energy Use in Kilowatt-hours (Q905), Operating Costs Measured in Dollars (Q910), and Energy Efficiency based on a Five-Star Scale (Q915); the ordering of the alternative measures in the statement text and questions was randomized.

[59] The mean score for kilowatt-hours, operating costs, and energy efficiency were 7.4, 8.2, and 7.2 respectively.

[60] Should energy costs change dramatically during the interim, the Commission would have the discretion to update the figures before the end of the five-year period.

* * * all the research shows that consumers are quite savvy and quite clear at moderating themselves to the average.'' (Workshop Tr. at 211). We seek comments on whether the regional variability of energy costs is a significant issue for implementing the energy cost label. We urge commenters to identify their concerns with specificity and provide any alternative approaches to addressing this issue.

Additionally, we seek comments on all aspects of the Commission's proposal to require operating cost as the primary disclosure on the label. To implement such a label, the Commission would also issue new range information in the form of costs for all affected products.[61] These ranges would replace those currently found in the Appendices to the Rule. The Commission is not proposing specific range numbers now because the 2007 DOE fuel cost information is not available yet. Publication of range numbers in this Proposed Rule Notice, therefore, may cause confusion.

Alternative Proposal: Multiple-Year Operating Cost Label

As an alternative to the annual operating cost information on the label, the Commission is considering a label that discloses operating cost over multiple years (e.g., a five-year period). Such a disclosure could provide consumers with a better understanding of the ''lifetime'' costs associated with operating the appliance. Thus, such a disclosure may also provide consumers with an easier way to gauge the money they will save by purchasing more efficient products. Additionally, a multi-year disclosure may make it easier for consumers to perceive the magnitude of energy efficiency differences among competing products. We recognize, however, that expected ownership durations may differ substantially across consumers and products, and consumers may be better able to perform their own calculations using a one-year estimate rather than a five-year estimate.

The Commission seeks comment on whether a ''five-year'' operating cost disclosure should be adopted. We have drafted such a label as Figure 2 (Alternative Proposal).[62] In particular, we ask commenters to address whether the label would suggest to consumers that the product would last only five years, whether the label should use a different time period (*e.g.*, 10 years), whether the cost information should be discounted to reflect the time-value of money, and if so, what assumptions should be used to institute a discounting procedure.[63]

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[61] The Proposed Rule would also eliminate the definition of ''range of energy efficiency ratings'' in section 305.2 because the term would no longer be used in the Rule.

[62] The label would also contain an annual cost disclosure in the explanatory language at the bottom of the label.

[63] The fact that respondents report ''willingness-to-pay'' figures greater than yearly operating costs across all treatments suggests that people may estimate cost savings over several years. Respondents who were willing to pay more for one appliance were asked (Q715) ''Why do you say that. Please give as much detail as possible.'' Preliminary analysis of these responses suggests that people often evaluate future savings based on their expected period of appliance use.

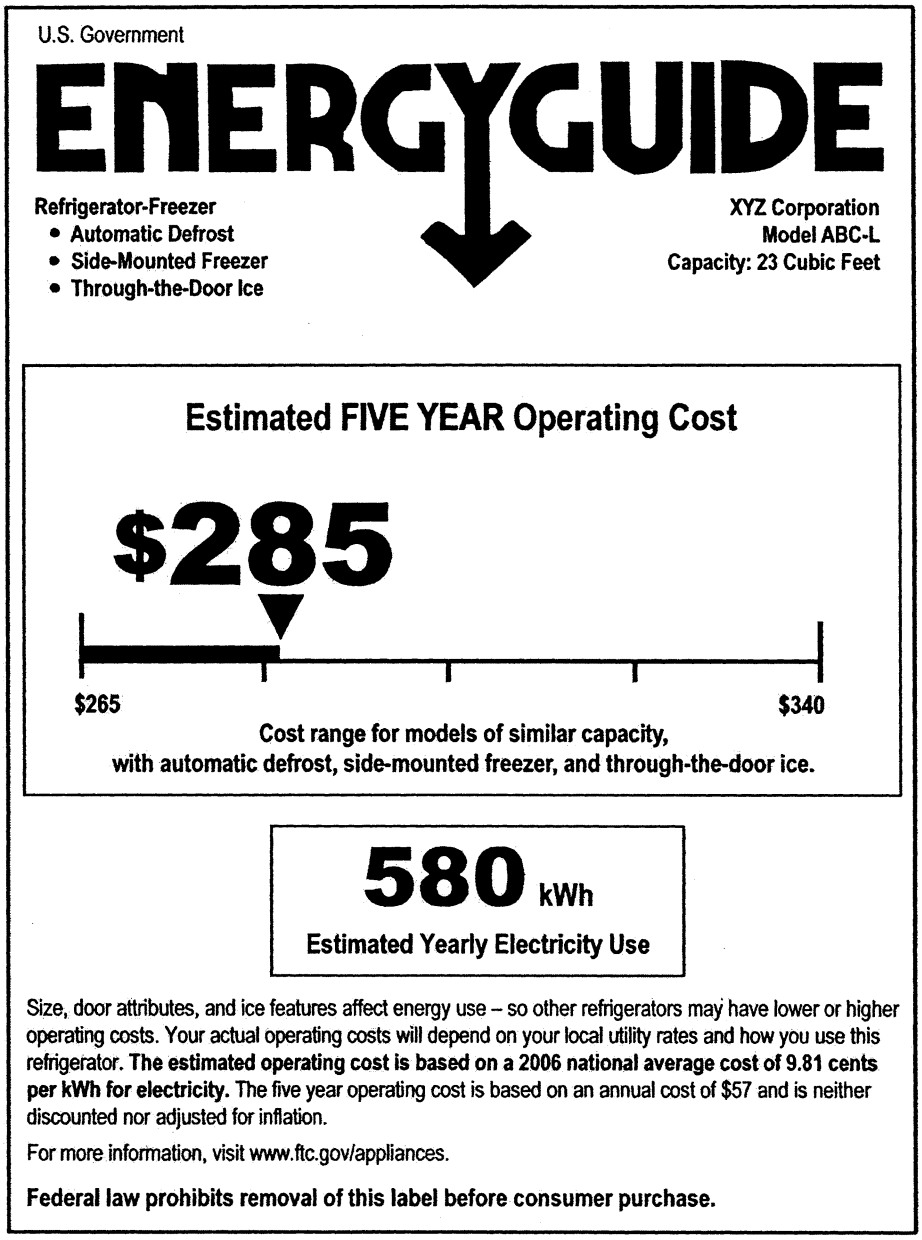

FIGURE 2 - ALTERNATIVE PROPOSAL (OPERATING COST LABEL WITH FIVE-YEAR DISCLOSURE)

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Proposed ENERGY STAR Placement

In response to comments, and consistent with the new designs tested in the research, the proposed amendments allow manufacturers to place the ENERGY STAR logo in the lower right-hand corner of the label for qualified products. Under this proposal, the logo may be up to one inch by one inch in size. Requirements related to the placement of the ENERGY STAR logo on the label are found in section 305.11(f)(12) of the Proposed Rule.

C. Requirements for Heating and Cooling Equipment

Issue: Currently, the Rule requires EnergyGuide labels on central air conditioners, heat pumps, furnaces, boilers, and water heaters. (16 CFR 305.11). Section 305.11 also requires manufacturers to provide energy information about most of these products in the form of fact sheets or industry directories. Additionally, retailers, including assemblers, who sell furnaces or central air conditioners to consumers must make available to consumers this energy information for the heating and cooling products they sell.[64]

These products generally do not appear in showrooms where consumers can compare labels on competing models.[65] In its ANPR, the Commission, therefore, sought comment on whether the Rule should continue to require labeling for heating and cooling equipment. The Commission also asked whether there were alternatives to labeling that would more effectively communicate energy efficiency information to consumers with respect to these products.

To address these questions, it is important to begin with a consideration of the statutory requirements related to labeling these products. Under section 324(a)(2) of EPCA, the Commission may exclude central air conditioners, heat pumps, and furnaces from labeling requirements if it determines that labeling is not technically or economically feasible or, alternatively, that labels are not likely to assist consumers in making purchasing decisions. (42 U.S.C. 6294(a)(2)). For water heaters, the statute directs the FTC to require labels unless the Commission determines that labeling is not technologically or economically feasible. (42 U.S.C. 6294(a)(1)). Section 6294(c) gives the Commission authority to require disclosures of energy information in printed material displayed or distributed at the point of sale. In addition, the Commission may direct manufacturers to provide additional energy-related disclosures in information shipped with or attached to the product, including instructions for the maintenance, use, or repair of the covered product. (42 U.S.C. 6294(c)(5)).

Comments: In response to the ANPR, several commenters expressed the belief that the Commission should discontinue labeling requirements for heating and cooling equipment. Both the Gas Appliance Manufacturers Association (GAMA) and the Air Conditioning and Refrigeration Institute (ARI) suggested that labels for heating and cooling equipment do not aid consumers because these products are not sold through showrooms or by other means that allow consumers to examine the label before purchase.[66] Industry representatives at the Workshop indicated that these purchases are usually made through in-person contractor visits or over the telephone. Contractors often conduct an on-site analysis to determine the appropriate equipment for the dwelling. (Workshop Tr. at 164). In addition, a GAMA representative noted that manufacturers currently provide directories to the dealers who have them available for their customers. (Workshop Tr. at 178). GAMA, therefore, urged the FTC to eliminate the labeling requirement for furnaces, boilers, and water heaters.[67] ARI made the same suggestion for central air conditioners and heat pumps. Finally, NRCAN, in its written comments, described its voluntary program for heating and cooling products, which does not use labeling, but instead urges manufacturers to print efficiency ratings for their products in brochures.[68]

In comments submitted after the Workshop, EEI (#522148–00010) agreed that most consumers do not see the label on these products until after purchase.[69] At the same time, it indicated that an ''appliance label can provide a document that verifies what the consumer agreed to purchase, and may help provide documentation for a utility rebate program, a state tax deduction or credit, or federal tax credit.'' ACEEE raised similar concerns about eliminating the EnergyGuide label from heating and cooling equipment. It suggested that the label information is useful even though most consumers do not see the EnergyGuide at the time of purchase. According to ACEEE, its research indicates that the label provides useful verification of the product's efficiency upon installation and allows auditors and consumers purchasing an existing home to determine the energy efficiency of equipment installed by previous owners. ACEEE (#519870–00021), therefore, urged the FTC to consider additional means for providing label information to consumers.

Many commenters provided suggestions for improving the current requirements to make it more likely that consumers will receive energy information prior to purchase. Both ARI and GAMA urged the Commission to require the provision of energy information for heating and cooling products through existing industry databases that are available over the Internet. (Workshop Tr. at 161–162, 163–165). GAMA stated, ''[I]f the FTC really wants to be relevant about this and really do an effective job with this, its focus ought to be on the modern, electronic means of communicating this information for products like this where the purchasing decision is made before you see the label.'' (Workshop Tr. at 167).

ARI explained that consumers can now obtain an ARI certificate for their equipment directly from its online directory. This certificate provides information about a product such as the model number, the name of the manufacturer, the product's efficiency, and capacity. This information allows consumers to compare what they are buying with what a contractor is telling them. (Workshop Tr. at 166). ARI indicated that it might be possible to add operating cost information as well.

EEI (#522148–00010) suggested that the FTC work with home builders and

[64] Retailers, including assemblers, who negotiate or make sales at a place other than their regular places of business must show the information to their customers and let them read the information before they agree to purchase the product. (*See* § 305.11(b)(1)(ii)).

[65] *See, e.g.*, 44 FR at 66470 (Nov. 19, 1979) (''The majority of furnaces are purchased either in the consumer's home or as part of the consumer's purchase of a home. As a result, few consumers have an opportunity to see a display model before the furnace is installed.'').

[66] GAMA #519870–00011, and ARI #519870–00010.

[67] GAMA explained that consumers sometimes purchase replacement residential water heaters from retail outlets, but, as often as not, they obtain them through contractors.

GAMA also argued that the recent DOE standards have significantly reduced the differences in energy use of storage water heaters on the market therefore reducing the need for labeling of these products. (GAMA #519870–00011).

[68] NRCAN #519870–00020.

[69] Artcraft (#519870–00004) suggested that the energy label for air conditioners and heat pumps should include a note steering people toward expert advice and also indicated that manufacturers and retailers should be encouraged (and preferably required) to include a depiction of the energy label in leaflets, brochures, and advertising for each model.

HVAC contractors to create ''certified fact sheets'' that provide efficiency information to consumers when they are deciding to install a new system. EEI indicated that the certified fact sheet could be based on information downloaded from the ARI or GAMA Web sites, and be available for use by all home builders and HVAC contractors. It could incorporate information shown on the current appliance labels as well.

In addition to issues related to central air conditioners and furnaces, commenters raised a number of issues involving water heaters.[70] Bosch (#522148–00003) urged the Commission to use the same scales of comparability for instantaneous water heaters and tank water heaters. Bosch commented that a ''water heater is a water heater in terms of meeting the needs of the consumer, and yet having different scales for storage tanks than for tankless muddles the message of efficiency. If the goal is to steer consumers toward energy efficient appliances, then I would recommend that the Federal Trade Commission use the same scale for all water heaters.'' When this issue was discussed at the Workshop, a GAMA representative suggested that several issues would need to be explored before addressing this issue because, for example, tank and tankless water heaters use different capacity measurements. Until such capacity issues can be resolved, he suggested that the FTC should not combine the two products in the same range. (Workshop Tr. at 193). Other participants also suggested that the ranges should not be combined at this time. (Workshop Tr. at 193 and 195). Finally, one commenter (Flanders Precisionnaire #519870–00003) suggested that EnergyGuide labels on heating and cooling equipment include a footnote indicating that conditions restricting airflow will immediately and perhaps significantly reduce energy efficiency below the levels stated on the label.

Discussion: The Commission has reviewed the comments and proposes to amend the current Rule to discontinue the EnergyGuide labeling requirements for furnaces, boilers, central air conditioners, and heat pumps. In lieu of a labeling requirement, the Proposed Rule would require manufacturers to mark their units permanently with certain energy information. In addition, the Commission proposes to amend the fact sheet and directory requirements in the Rule to streamline and improve existing requirements and provide manufacturers and contractors with different options, such as online sources, for providing energy information. The Rule would continue to require EnergyGuide labeling for water heaters.

As the comments indicate, there is very little evidence that the EnergyGuide labels currently affixed to heating and cooling equipment generally assist consumers in their purchasing decisions. The comments suggest that, in most cases, consumers buy these products through contractors. There is no evidence that these products are widely sold in a showroom or similar setting, where a comparative energy label would provide significant benefits. Instead, it appears that fact sheets and directories provide better vehicles for providing consumers with energy information before purchase. Unlike labels affixed to the products themselves, consumers can obtain fact sheets and directory information through retailers (including installers) and review the energy performance of competing products as they are making their decisions.

As several commenters observed, however, the information on labels appears to provide a benefit to consumers in both their use of existing heating and cooling equipment and their purchase of replacement products. For example, labels that remain on installed equipment may be useful to consumers when they are gauging their household energy use and considering new equipment purchases. It may also provide information to allow the consumer to confirm that the model they ordered is the model that has been installed by the contractor. Labels also can help energy auditors seeking to determine the energy characteristics of installed equipment.

Labeling does not appear to be the best vehicle for yielding these benefits because the stickers can easily be removed. Instead, a permanent nameplate appears to be a more effective tool to provide such information, and possibly less costly to industry members. EPCA authorizes the Commission to require manufacturers to attach to the product additional information related to energy consumption if that information would ''assist consumers in making purchasing decisions or in using the product and such requirements would not be unduly burdensome to manufacturers.'' (42 U.S.C. 6294(c)(5)). Accordingly, the Commission proposes requiring that manufacturers permanently mark their heating and cooling equipment with the product's model number and energy efficiency rating in lieu of labeling the products. This information could be placed on the product's nameplate or other convenient location.[71]

We expect that such a marking requirement would involve minimal burden to industry. The California Energy Commission already requires that these products be marked with model number and efficiency information. (See, 20 C.C.R. § 1607). As a result, it is likely that the FTC marking requirement would not create any additional burden for most manufacturers. In addition, the nameplates for these types of products provide an existing location to place such information. We expect that the addition of energy rating information would involve a small incremental burden. We seek comments on this marking proposal. In particular, we request that commenters address whether additional information should be required and the burdens such a proposal would impose.

Finally, because we are proposing to eliminate the label, we are not proposing to require information about restricted airflow on labels as suggested by one comment. Manufacturers may provide such information in their marketing material and instruction manuals as long as such information is substantiated. We seek comment on whether such disclosures should be mandatory.

The Commission is also proposing to amend the fact sheet requirements for these products to provide more flexibility to sellers, ensuring consumers have access to energy information. Under section 305.14 of the Proposed Rule, therefore, manufacturers would have the flexibility to provide this energy information about their products to distributors and retailers through fact sheets, directories, or product brochures. In addition, manufacturers could choose to make the information available electronically. In turn, the Rule would continue to require retailers (including assemblers) to make this information available to customers. They could make the information available in any manner, as long as customers are likely to notice the information. For example, the information could be provided in a display, where customers can take copies. It could be kept in a binder or made available electronically at a

[70] GAMA, in written comments, and at the Workshop, indicated that water heaters now appear in some retail stores. (Workshop Tr. at 185).

[71] The proposed marking requirements are in section 305.12 and 305.13 of the Proposed Rule. Under the Proposed Rule, the marking ''must be permanent, legible, and placed on the outside surface of the product.'' To be ''legible,'' the information must be easily viewed by a person examining the surface of the product.

counter or service desk, with a sign telling customers where the information can be found. Retailers, including assemblers, who negotiate or make sales at a place other than their regular places of business would have to show the required information to their customers, just as required under the current Rule. If the information is Internet-based, retailers (and assemblers) would have the option to provide customers with instructions to access the information online.

Under the Proposed Rule, the fact sheet-related information provided would be a simplified version of that currently required by the Rule. The manufacturer information would include: (1) The name of manufacturer or private labeler; (2) the trade (brand) name; (3) model number(s); (4) capacity determined in accordance with section 305.7; (5) energy efficiency rating as determined in accordance with section 305.5; (6) a statement that the energy efficiency ratings are based on U.S. Government standard tests; and (7) for central air conditioners, the information about efficiency ratings for specific condenser/coil combinations or, alternatively, for the ''most common'' condenser-evaporator coil combinations, as currently required by the Rule. We seek comments on all aspects of this proposal, including whether these disclosures are appropriate, and whether manufacturers and retailers should have the option to provide this information to customers through the Internet in lieu of showing them paper fact sheets or directories.

The Commission is not proposing to require information about operating costs for these products. Operating costs for heating and cooling equipment are highly dependent on regional conditions.[72] Although the current DOE test procedures provide instructions for calculating operating costs in several different regions, the calculations can be difficult to perform for the average consumer. In addition, we are not proposing to require range information for these disclosures. Range information is likely to be of reduced value to consumers in the context of industry directories and online databases where data for comparative models is readily available. It addition, it is unclear how separate range information can be incorporated into catalogs in a way that is beneficial to the average consumer. We seek comments on this proposal.

We note that using a uniform national average energy cost may be more useful to consumers than the multi-region cost information currently required in the Rule. As an alternative to the proposed elimination of cost information for these products, the Rule could require manufacturers to provide a single estimated operating cost for their models based on national average figures for cooling/heating loads and for energy costs (e.g., heating/cooling loads based on Region IV as delineated in 10 CFR Part 430, Subpt. B, Appendix M). This information could be accompanied by an explanation that the cost information represents a national average and that individual costs will vary based on usage and location. We ask for comments on such an annual cost disclosure. Comments should address whether such a change would be feasible for manufacturers, technically appropriate, and useful for consumers.

Finally, the comments indicated that some water heaters are sold in retail stores where consumers can examine and compare the product labels. Accordingly, we do not propose to eliminate EnergyGuide labeling requirements for these products nor do we propose to require permanent marking. In addition, we do not propose to change the ranges of comparability for these products to combine information for tank and tankless water heaters. Comments provided to the Commission suggest the merger of this range information is not currently feasible because storage and instantaneous models are rated using different capacity descriptors. We note that the proposed operating cost label will allow consumers to compare energy cost across different water heater types.

D. Refrigerator Categories

Issue: During this proceeding, the Commission has explored whether the range categories for refrigerators should be combined to include models with different door configurations and features. The current labeling requirements designate separate comparability ranges for various refrigerator sub-categories (or styles) such as side-by-side door configurations or models with top-mounted freezers. This allows consumers easily to compare the energy use of similarly configured refrigerators, but not the energy use of models across subcategories. Consumers, however, can employ the energy use and operating cost information to compare the product's energy performance to other refrigerators in the showroom regardless of configuration.

Some refrigerator configurations are generally less efficient than others. For example, top-mounted freezer models generally use less electricity than comparably sized side-by-side models. As a result, the range information on a particular side-by-side refrigerator label may compare favorably to other side-by-sides, but fail to show that the model uses significantly more energy than an average refrigerator with a top-mounted freezer. To address this concern, the FTC sought comments on whether the refrigerator labels should present comparability information for all refrigerators regardless of configurations.

Comments: Consumers Union (#519870–00017) indicated that the current system for labeling refrigerators is deeply flawed. It stated that ''consumers trying to select a refrigerator based on energy efficiency must be able to compare across categories, instead of within the current very narrowly defined subclasses.'' In particular Consumers Union suggested that ''the EnergyGuide label show the energy use of the appliance in kWh/yr, as currently done, but that the label also compare the energy used by the appliance to the most energy consumption allowed by law for any refrigerator of comparable internal volumes—independent of style.'' In its view, this approach would inform consumers that certain product configurations use less energy than others. At the Workshop, a participant from Consumers Union described that organization's approach, which focuses on the volume of the product and not the configuration. The Consumers Union representative raised concerns about the fact that ENERGY STAR levels are different for various product configurations stating: ''You do not want to have an ENERGY STAR model that uses more energy than a similarly sized and split refrigerator that does not get an ENERGY STAR.'' (Workshop Tr. at 134).

Other commenters raised similar concerns, urging the Commission to consider using the same classification category for most refrigerator models. ACEEE (#519870–00021) wrote that products ''offering the same service should be compared on the same label regardless of differences in technology or design to avoid consumer confusion and diminished credibility of the label.'' ACEEE comments noted that the FTC amended the Appliance Rule in the past to include comparison of top-loading and front-loading washers on the same label. At the Workshop, an ACEEE representative explained: ''for those consumers who are interested in looking for the most efficient product in their size category or that want to do a

[72] The current Rule does not require cost information on EnergyGuide labels for heating and cooling equipment.

comparison across class, combining them will allow them to do that cross-class comparison, which is otherwise very difficult to do.'' (Workshop Tr. at 139). Another commenter at the Workshop suggested that the use of multiple categories for refrigerators may confuse consumers, particularly where ENERGY STAR models in one class use more electricity than non-ENERGY STAR models in another class. (Workshop Tr. at 146).

Other commenters cautioned against changes to the current ranges for refrigerators. AHAM (#522148–00007) indicated that its ''research shows when consumers enter a retail establishment to purchase a refrigerator product, their first criteria is product configuration.'' In its view, ''consumers have already decided on the desired configuration prior to stepping into a retail outlet.'' According to AHAM, an amendment that merged the different categories of products ''would run counter to marketplace and consumer purchase drivers'' and would diminish the efficacy of the label. At the Workshop, an AHAM representative indicated that information currently on the label, such as operating costs, already permits consumers to make comparisons across different refrigerator configurations. (Workshop Tr. at 142–143). EEI (#522148–00010) agreed, stating that the current system allows for an ''apples to apples'' comparison of products, such as side-by-side refrigerators. EEI suggested that consumers may be confused by comparisons of models that have different energy efficiency requirements or sizes.

Whirlpool (#522148–0005) indicated that refrigerator labels should continue to be unique by configuration: ''Configuration (top freezer vs. bottom freezer vs. side-by-side) is a primary determinant in the purchase decision along with physical size of the unit. Before the consumer even begins the shopping process, they will identify any size constraints and consider which configuration unit they want.'' Whirlpool also stated that its proprietary market research over the past five years repeatedly indicates that size, internal configuration, and features are major considerations when shopping.

Whirlpool noted that the current label classification is consistent with those used under DOE's energy efficiency standards that reflect the inherent differences in efficiency resulting from the physical design of the product. Whirlpool believes it would be confusing for consumers to combine all configurations of refrigerators within a cubic foot range.

Discussion: The Commission is not proposing to change the current range categories for refrigerators. We recognize that requiring more inclusive ranges may help consumers to compare energy use across model configurations. Such an approach, however, runs counter to the system used by DOE and by the ENERGY STAR rating system. In some cases, the combination of refrigerator ranges could place ENERGY STAR designated models lower on the label range than non-ENERGY STAR models. This could cause consumer confusion in the showroom and may cause confusion about the ENERGY STAR designation. Accordingly, the Commission does not believe that a change in the current range system would provide significant benefits for consumers and may create confusion.

Although we do not plan to change the range categories for these products, it may be useful to provide consumers with additional information to help them understand that different door and ice service configurations can affect energy consumption. Accordingly, section 305.11 of the Proposed Rule would require the following explanatory statement on refrigerator labels: ''Size, door attributes, and ice features affect energy use—so other refrigerators may have lower or higher operating costs.'' We request comments on the need for and wording of this statement.

The FTC research also suggested that consumers may not understand that the comparability range on refrigerators applies to a specific category of refrigerator-freezers (e.g., freezer on top). One question in the study asked consumers whether the label allowed them to determine how a model compared to ''all'' similarly sized refrigerator-freezers on the market. Over 70% of the respondents indicated they could make such a determination based on the information from the label. The range information on the label in question, however, only applied to models with side-by-side doors and through-the-door ice service.[73]

The label currently states that the range compares ''similar'' models. To reduce the consumer confusion, section 305.11 of the Proposed Rule would require more explicit language on the refrigerator-freezer label to clarify that the range only applies to the specific subcategories of products. For instance, the range for a side-by-side through-the-door ice label would state: ''Range for models of similar capacity with automatic defrost, side-mounted freezer, and through-the-door ice.'' We seek comment on whether such language is needed for the label.

Finally, we note that some manufacturers recently have introduced refrigerator-freezers with a bottom-mounted freezer and through-the-door ice service. This configuration does not match any of the existing FTC or DOE categories for refrigerator-freezers. At this time, we are not aware that there are a significant number of these models on the market. Accordingly, we are not proposing to amend the categories to take these models into account. However, we are seeking comment on whether the number of such models is likely to increase significantly. If so, we ask how the categories in the Rule should take these models into account, if at all (e.g., should an existing category be expanded).

E. Revisions to Ranges of Comparability and Energy Price Information

Issue: The EnergyGuide label must contain a range of comparability that shows the highest and lowest energy consumption or efficiencies for all similar appliance models.[74] EPCA does not specify when the Commission must change the ranges, but states it cannot do so ''more often than annually.'' (42 U.S.C. 6296(c)). The Commission's regulations indicate that the FTC will revise ranges annually, if the upper or lower limit on the range for a product changes by 15% or more. (16 CFR 305.10). For some products, the Commission has changed the applicable ranges several times over the last few years, for others less frequently. When the Commission makes these changes, manufacturers must amend their labels to reflect the new ranges and update the fuel costs on the labels using new national average fuel costs, published annually by DOE. Accordingly, the average fuel costs used on the label are tied to the year in which the ranges were last amended.

Range changes can cause the labels on different models in the same showroom to display inconsistent information because the models on display may have been manufactured at different times. This potential confusion is exacerbated by frequent range changes.

[73] We believe this percentage of respondents may be overstated because the question simply asked whether respondents could compare the model to all similarly-sized models on the market, instead of asking respondents to choose from two possible answers (e.g., comparison to all similarly-sized models vs. comparison to similarly-sized and configured models). Many of the respondents may have assumed the question related to the range on the label without focusing on the subtleties of the question's wording. Nevertheless, the responses raise some concerns about whether consumers understand that the range of comparability applies to specific classes of appliances as opposed to all models available on the market.

[74] 42 U.S.C. 6294(c)(1)(B).

Frequent range revisions also impose burdens on manufacturers who must expend resources to change their product labels. The ANPR contained a series of questions about these issues, including whether the FTC should change the frequency at which it examines the ranges.

Comments: Several commenters suggested that the Commission consider uniform changes to range and fuel price information on a consistent schedule. AHAM (AHAM #519870–00021) indicated that the current Rule requirements result in inconsistent energy rates used to calculate information across appliance types (e.g., dishwashers compared to refrigerators). Under the current system this can happen where the ranges for particular appliances do not change over a long period of time. In such a case, the Rule directs manufacturers to continue to base their operating costs estimates on energy prices that may have been published by DOE five or even ten years previously. AHAM, therefore, recommended that ''the same average fuel rates be used on all appliances, and that they be uniformly changed every two to three years.'' In its view, this would ''avoid the use of rates that are too old, keep all appliances using the same rates, and allow sufficient time for manufacturers to plan inventory of labels accordingly.'' (Workshop Tr. at 133). Alliance Laundry Systems (#519870–00008) concurred with AHAM's recommendation, but suggested that the Commission continue to consider changes to the comparability ranges annually. Artcraft (#519870–00004) recommended that the Commission make revisions more often than annually because significant changes are occurring in the market all the time.

Discussion: Over the past decade, the frequency of range amendments has varied by appliance type. Ranges for some products, such as dishwashers, have changed several times while ranges for other products, like room air conditioners and water heaters, have changed less frequently. Frequent changes to the range and cost information can exacerbate the problem of inconsistent information on comparable models sitting side-by-side in a showroom. We are concerned that the consumer benefit from frequent updates to range and cost information may be outweighed by the detriment caused by this inconsistent information in the showroom.

There also may be confusion caused by the use of inconsistent energy price information across appliance categories. For example, at this time, the operating cost on dishwasher labels is based on the 2004 average electricity cost of 8.60¢ per kilowatt-hour, whereas the cost on refrigerator labels is based on the 2005 figures of 9.06¢ per kilowatt-hour.

Given these concerns, the Commission proposes to amend section 305.10 to change the frequency with which it alters range and national average energy price information to once every five years. Under the amendment, the Commission would change automatically both the range information and the underlying cost information to reflect the most recent data once every five years. This approach will minimize problems associated with inconsistent cost and range information on showroom models, and make energy cost information uniform across appliance categories. If energy costs or range information change substantially within the five-year period, the Commission can consider amendments in the interim through rulemaking. We seek comments on this five-year schedule for updating cost and range information. Among other things, we ask that commenters address whether a five-year cycle is appropriate, whether there are other ways to minimize confusion caused by updates to the energy cost information on labels, and whether there is a typical length of time that individual display models remain on showroom floors.[75]

F. Energy Descriptors

Issue: The ANPR sought comment on whether the Commission should change any of the EnergyGuide's current energy descriptors. For example, the notice sought comment on whether the clothes washer label should disclose the model's efficiency rating using the measure currently required by DOE (the ''Modified Energy Factor'' or ''MEF'') instead of the product's annual energy consumption.

Comments: Several commenters responded that the Commission should not change current descriptors.[76] Whirlpool (#519870–00013) explained that the use of Energy Factor information would cause consumer confusion. AHAM (#522148–00007) added that energy consumption information (in KWh/yr) is meaningful across product categories.

Discussion: The Commission received no comments in support of adopting efficiency ratings beyond those currently in use. We note that a recent news report questions the consistency between the MEF information used for ENERGY STAR ratings and the washer electricity use information on the EnergyGuide label.[77] Accordingly, we seek further comment on this issue. In particular, comments should address whether MEF information should be provided on the label and whether, under current test procedures, manufacturers can derive annual operating cost information from MEF ratings.

G. Placement of the EnergyGuide Label on Covered Products

Issue and Comments: Whirlpool's comments noted that some dishwasher manufacturers are placing the EnergyGuide label in a plastic bag along with the use and care guide warranty. Whirlpool (#522148–00005) requested that the Commission become more diligent in ensuring that manufacturers display the label properly.

Discussion: In the Proposed Rule, the Commission has modified and clarified the requirements for posting labels. Labels must be posted on products in one of two ways: an adhesive label or a hang tag. In either case, the label must be attached to the product so that the label ''is prominent to a consumer examining the product.'' Manufacturers would be allowed to place the label on the exterior or interior of the product if it is prominent to consumers examining the appliance and as long as it will not become dislodged during normal handling throughout the chain of distribution to the retailer and consumer. This directive sets a clear performance-based standard that allows manufacturers to adjust the location of the label depending on the product type and configuration. Such an approach appears preferable to highly detailed, prescriptive requirements that may not account for all existing situations or for product changes in the future. The proposal would also eliminate the Rule's prescriptive requirements related to the location of adhesive strips on the

[75] As noted in VII.B, the Commission is not proposing specific range numbers in the Proposed Rule because the 2007 DOE fuel cost information is not available at this time and publication of range numbers in this Notice may cause confusion. Therefore, the proposed range tables are blank. In addition, the proposed amendments would move the energy cost chart from section 305.9 to Appendix H. We also note that the FTC staff has completed its review of the 2006 data for central air conditioners, refrigerators, and clothes washers. Although ranges for some of these products have changed by more than 15%, the Commission plans to delay any amendments to existing ranges and cost information until the completion of the present proceeding so that all ranges can be changed at the same time. We seek comments on this approach.

[76] Alliance Laundry Systems (#519870–00008), Whirlpool (#519870–00013), AHAM (#519870–00016), NRCAN (#519870–00020), and GE (#519870–00027).

[77] See, ''Washers & Dryers, Cycles of Change,'' Consumer Reports, Vol. 72, No. 1, Jan. 2007, at 39.

back of the label. We are seeking comments on this proposal, particularly whether hang tags should be allowed on the exterior surface of products.

We note that the insertion of the label in a plastic bag along with other instructions or marketing material does not meet the current or proposed requirements because it is neither an adhesive label nor a hang tag. In addition, this practice could obscure the label from view particularly if it is layered under other material such as manuals or warranties.

H. Catalog Requirements

Issue and Comments: Section 305.14 of the Rule currently requires that any manufacturer, distributor, retailer, or private labeler who advertises a covered product in a catalog, including a Web site that qualifies as a catalog, disclose the product's capacity, energy use (or efficiency) and range of comparability information. No comments addressed the current requirements.

Discussion: The Proposed Rule would redesignate section 305.14 as 305.20 and amend the section to require disclosures of estimated annual operating costs for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, room air conditioners, and water heaters. This change would make the catalog requirements consistent with the changes proposed for the EnergyGuide label. The Proposed Rule would continue to require the disclosure of energy efficiency rating information for central air conditioners and furnaces.

The Proposed Rule also would eliminate the requirement for catalog sellers to include range information along with their disclosures in the catalogs.[78] Consumers viewing catalogs are likely to see information for a much larger number of models than consumers in a showroom. Thus, catalog shoppers do not have the same need for market ranges. In addition, because the range information in the catalogs cannot always be presented in the same form as they appear on the label, it may cause confusion or fail to provide significant benefit to consumers. While the benefits may be small, the burdens of providing this information may be significant. The burdens often fall on retailers who are not producing and labeling the products themselves. For these reasons, we propose to eliminate the range information from the catalog requirements. We seek comments on this proposal.

Finally, the Proposed Rule also contains several changes to the catalog disclosure requirements in section 305.2(m) and newly designated section 305.20 to clarify that Internet-based catalogs must also provide these disclosures.[79] The Commission promulgated these provisions before the advent of the Internet. The proposed amendments will ensure that Web-based catalog sellers understand that they must meet the Rule's disclosure requirements. The Commission seeks comments on these changes to the catalog requirements.

I. Fuel Cycle Energy Consumption

Issue and Comments: The American Gas Association (AGA) (#519870–00014) urged the Commission to include information on the label about ''energy consumption over the full fuel cycle (i.e., total energy efficiency) and externalities such as emissions of criteria air pollutants and carbon dioxide over the full fuel cycle'' in addition to information currently provided. AGA indicated that without this information, the label does not allow consumers to ''make truly informed choices'' and provides information that is incomplete and misleading.

Discussion: AGA raised similar comments in an earlier Commission proceeding on the EnergyGuide label. (65 FR 17554, 17559 (Apr. 3, 2000)). The statute, however, contains a relevant restriction on the type of information the Commission can require. Under section 324(c)(1)(A) of EPCA (42 U.S.C. 6294(c)(1)(A)), the Commission must derive the energy consumption information required on the label from DOE's test procedures. These procedures measure end-use energy only and not the type of energy consumption described in AGA's comment. Accordingly, the Commission is not proposing to add the type of information suggested by AGA.

J. Clothes Washer Labels

Issue and Discussion: In 2003, the Commission published amendments requiring a special headline on clothes washer labels indicating that the product had been tested under the 2004 DOE test procedure (68 FR 35458 (June 18, 2003)). The FTC added this headline at the request of industry members because the results of the 2004 DOE test differed significantly from the previous test. Although the explanatory language served a good purpose at the time, we believe that its continued presence on the label will lose its value over time and could even confuse consumers as the years pass. As the 2004 date becomes more distant, the headline may suggest that the label or the product itself is old, or even obsolete. Given the proposed changes to the overall label design, we believe the current proceeding provides a convenient opportunity to eliminate this language. Accordingly, the Commission proposes amending 305.11 by discontinuing this explanatory language on the clothes washer label.[80]

K. Plumbing Issues

Issue and Comment: The Appliance Labeling Rule contains marking and package disclosure requirements for certain plumbing products such as toilets, showerheads, and faucets (see 16 CFR 305.11(f)). EPA's Municipal Support Division (#519870–00012) suggested several changes to the labeling requirements for these products. EPA staff indicated that its own informal survey of retail packaging ''revealed that on many plumbing products it [the required disclosure] is obscured either through extremely small type fonts or lost amongst other information.'' To address these concerns, EPA suggested that the rule require the prominent placement of the information on the package, a minimum font size (e.g., 16 point or greater), and the identification of a range of water use for similar products.

Discussion: As with all required disclosures, the labeling for plumbing products must be clear and conspicuous so that consumers can easily find and read the relevant information. Accessible placement of the information not only allows building code officials and other professionals to determine a product's water use rate, but also facilitates consumers' ability to comparison shop for efficient products. EPA's comments appear to identify compliance problems, not defects with existing requirements. We are reluctant to impose additional requirements on all manufacturers to address the failure of a few manufacturers to comply with the Rule. If problems persist and can be traced to defects in the current requirements, the Commission may consider revisiting this issue and

[78] EPCA indicates that catalogs must ''contain all information required to be displayed on the label, except as otherwise provided by the rule of the Commission.'' (42 U.S.C. 6296(a)).

[79] We note that the required information should appear on each page that lists the covered product. (See § 305.21(a)).

[80] EPA (#519870–00012) recommended that the Commission include water-use information on the EnergyGuide label. Under EPCA, however, the information required on clothes washers and other covered appliances is limited to information related to energy consumption. See 42 U.S.C. 6294.

promulgating more prescriptive disclosure requirements.

Additionally, the Commission is not proposing to require the inclusion of water use range information on packaging. The statute does provide a mechanism for the Commission to establish a format for manufacturers to use in making claims involving costs or the range of costs of plumbing products. The Commission discussed this issue in detail in issuing its initial labeling rules for plumbing products and decided to defer prescribing requirements on this issue. (58 FR 54955, 54961 (Oct. 25, 1993)). At this time, the Commission has no evidence that the inclusion of a water use range on packaging would provide a significant benefit to consumers. In addition, such changes would likely require manufacturers to change existing packaging and update packaging in the future. We see no compelling need to issue new requirements at this time but seek comments on this issue.[81]

One commenter, the California Urban Water Conservation Council (#19870–00015), suggested that labels for toilets indicate whether the product is a High Efficiency Toiler (HET). According to the commenter, a HET functions at a maximum flush volume of 20 percent less than the current national standard of 1.6 gallons per flush (equal to a maximum of 1.28 gallons per flush). EPCA, however, directs that the Commission issue labeling rules for water closets that are consistent with the marking and labeling requirements of ASME A112.19.2M. While the inclusion of HET information is not inconsistent with ASME requirements, we see no need to direct manufacturers to provide this information when companies appear to have a clear incentive to provide this high-efficiency information on their own. Manufacturers may advertise the efficiency of their plumbing products through marking, separate labeling, or otherwise as long as the product has been tested under the applicable DOE procedures and the representations fairly disclose the results of such testing (see 42 U.S.C. 6293(c)). Accordingly, the Commission is not proposing any amendments.

L. Television Labeling

Issue: Section 324(a) of EPCA requires labels for televisions unless the Commission determines that labeling is not technologically or economically feasible. (42 U.S.C. 6294(a)). In 1979, the Commission determined that labeling for televisions was not economically feasible; there was little variation in the annual energy costs of competing television models and such costs were a small fraction of the purchase price. The Commission, therefore, believed it was unlikely that labels for televisions would promote industry efforts to increase energy efficiency, or provide benefits to consumers. (44 FR 66466, 66468 (Nov. 19, 1979)). As part of the May Workshop, the FTC sought comment on whether the Rule now should require television labeling.

Comments: Several commenters urged that the Commission revisit its 1979 decision. According to the Natural Resources Defense Council (NRDC),[82] there are now many ''large-screen'' digital televisions on the market that use 500 or more kilowatt-hours per year, as much energy as many new refrigerators.[83] NRDC asserted that, in some cases, consumers will pay several hundred dollars in electricity costs for their televisions over the lifetime of the product. NRDC's comments also indicated that there is now a large variation in active mode power use among similarly-sized televisions. In its view, there is no reliable, model-specific, source of energy-use information for new televisions. CEE also urged the Commission to consider labeling for televisions stating that ''new technologies and larger sizes of televisions that are currently offered on the market argue for their inclusion within the scope of the Appliance Labeling Rule.'' [84] CEE noted that according to 2001 DOE estimates ''99 percent of all homes have at least one television, with 35 percent having two, 22 percent having three, and 10 percent having four televisions.'' The DOE data also indicate that over a third of households had ''large-screen'' televisions. CEE believes that televisions warrant EnergyGuide labels because they are ''large energy users and their energy use has increased over recent years.'' CEE recommended a label that would allow comparisons across model types and technologies (e.g., plasma, LCD, and CRT).

Other commenters questioned the need and feasibility of television labeling. The Consumer Electronics Association (CEA) noted that televisions are much more energy efficient than they were several decades ago. According to CEA, the energy consumption of a typical 20-inch color television has decreased dramatically in the last several decades (from 450 watts in the 1960s to less than 100 watts in 1995). CEA also argued that technological innovation, not government programs, have driven these energy efficiency improvements. One Workshop participant, Christopher Payne, however, suggested that the overall improvement in energy performance of consumer electronics, though admirable, is not really relevant to the question of labeling if there is a broad range of energy usage among various models.[85]

Several commenters also expressed concerns about the usage estimates that would be employed to determine annual energy use or operating costs. CEA (#522148–00009) stated that ''consumer use varies significantly with high tech products, which typically contain multiple features and functions that are used in many ways. Consequently, determining an average usage pattern is very challenging.'' EEI (#522148–00010) noted that the ''energy usage pattern of televisions is directly related to the number of sets and occupants per household'' and that the test procedure should take into account the diversity factor of usage. One Workshop participant, David Kline of JVC, cautioned against using a ''one size fits all'' approach for consumer usage estimates. (Workshop Tr. at 206).

In contrast, another commenter suggested that the precise usage estimate is not as important as ensuring consumers receive comparative information about energy use over a given time period. (Workshop Tr. at 210). At the Workshop, a representative of the Collaborative Labeling and Appliance Standards Program indicated that research demonstrates that consumers are capable of understanding and gauging information about average use on labels. (Workshop Tr. at 211–212).

To label products consistently, manufacturers must have a reliable test procedure to generate energy consumption information about their products. According to CEA (#522148–00009), current DOE test procedures were intended for black-and-white analog televisions and ''are entirely inappropriate for measuring the energy use of digital televisions.'' NRDC's comments (#519870–00025) also indicated that the DOE ''test method is

[81] Under EPCA, however, manufacturers may elect to include such information on their products. 42 U.S.C. 6294(c)(8).

[82] NRDC (#519870–00025).

[83] At the Workshop, one participant suggested that the average 42-inch plasma televisions draws 334 watts, with a minimum draw of 201 watts and a maximum draw of 520 watts. Workshop Tr. at 198.

[84] CEE (#519870–00018).

[85] Mr. Payne also indicated that it is not necessary to have a minimum efficiency standard to require labeling for these products. (Workshop Tr. at 208–209).

grossly outdated'' because it was designed for black and white, tube-based televisions. CEE (#522148–00006), which supports the development of an energy label for televisions, also acknowledged that the current federal test procedure for television is not applicable to today's technology, but noted that there is an ongoing industry effort to establish a new procedure. According to CEA, the consumer electronics industry is developing a standard test method as part of an initiative hosted by the International Electrotechnical Commission (IEC). EEI (#522148–00010) stated that the FTC would need to wait for a new DOE test procedure before adding a label for televisions. EEI suggested, however, that DOE ''may not be able to revise the test procedure for television sets in the near future, due to their current workload.''

CEE urged that ''the test procedure development should be finalized in advance of this rulemaking, a timeline that enables the FTC's active consideration of this issue.'' Until the development of such a standard method, CEA questioned whether the need for televison labeling could be adequately assessed. At the Workshop, Douglas Johnson of CEA suggested that energy consumption estimates offered during the meeting were ''relatively useless'' without a standard means of measurement. (Workshop Tr. at 199). In addition, CEA's comment concluded that the FTC should not pursue a labeling program for digital televisions given the lack of an acceptable test procedure for digital televisions and the success of voluntary initiatives.

Some comments suggested that the Commission leave the issue of television energy use labeling to the ENERGY STAR program. CEA (#522148–00009) argued that the ENERGY STAR ''program creates a competitive incentive for energy savings without compromising industry innovation or consumer choice.'' It noted that widespread use of the voluntary program ''promotes energy efficiency and has resulted in significant energy savings and reduced greenhouse gas emissions.'' EEI (#522148–00010) suggested that the FTC consider working with EPA and DOE to revise the use of the ENERGY STAR labeling for television sets. At the Workshop, an NRDC representative recognized the importance of ENERGY STAR, but suggested ''it is not enough here'' because ENERGY STAR only identifies the top 25% of the market and, in the absence of an EnergyGuide label, consumers would not be able to determine the energy consumption of models within the balance of the market. (Workshop Tr. at 229–231).

Discussion: The information provided by commenters suggests that energy labeling for televisions may assist consumers in making purchasing decisions. This information also indicates that many televisions on the market use as much, or more, electricity than products currently labeled under the Rule. In addition, several commenters indicated that there is a significant range of energy use among similar products on the market. The energy consumption characteristics of televisions, therefore, appear to be significantly different than when the Commission decided to forgo labeling in the 1970s. Based on these comments, we believe this issue deserves serious consideration.

At the same time, the record indicates that current DOE test procedures are inadequate to test most televisions currently on the market. Because the energy information for a FTC television label must stem from test procedures prescribed by DOE (see 42 U.S.C. 6294(c)), the Commission cannot proceed until the DOE test is revised. At such time, the Commission can consider whether the attributes of televisions on the market warrant energy labeling. We invite further comments on this issue.

M. Miscellaneous Amendments and Issues

The Commission is proposing several minor substantive and formatting amendments to improve the current Rule. These include the reorganization of some sections, a new requirement related to refrigerator reporting, and the elimination of obsolete or incorrect references in the Rule. Commenters raised several additional issues that are also discussed in this section.

Alphabetize Definitions and Update Definition of Refrigerators and Refrigerator Freezers: To make the Rule more user-friendly, the Commission is proposing to alphabetize the list of definitions in § 305.3 and the descriptions of covered products in § 305.4. We also are proposing to amend the definition of ''refrigerators and refrigerator freezers'' at § 305.3(a) so that it is consistent with DOE's current definition (10 CFR 430.2).

Adjusted Volume Information for Refrigerators: The Rule currently does not require refrigerator and freezer manufacturers to submit the adjusted volume of their models to the FTC. Adjusted volume data is essential for determining whether a refrigerator or freezer model meets DOE minimum efficiency standards, and thus whether it should be considered in updating range information for refrigerator labels. Absent adjusted volume data, the FTC staff has had difficulty determining whether submitted models are compliant with DOE standards. The staff must make such compliance determinations to exclude obsolete models from its range calculations.

The Proposed Rule therefore would require refrigerator, refrigerator-freezer, and freezer manufacturers to report the adjusted volume of their models along with the information currently required by the Rule. The Commission proposes to require this information in data submissions by amending § 305.7(a)&(b) and § 305.8. We do not expect that this will be a significant burden because this information should be readily available to manufacturers as it is already necessary for determining compliance with DOE conservation standards.

Brand Name Reporting: The Commission is proposing to amend § 305.8 to clarify that manufacturers must report both the manufacturer name and the brand name (if different from the manufacturer) of their models. This information helps the FTC staff and the public identify appliances in the data submitted by manufacturers.

Reorganization of Section 305.11: The Commission proposes to break section 305.11 into several sections organized by product category to make it easier for manufacturers to identify the requirements applicable to their products. The new proposed sections are: § 305.11 Labeling for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, and pool heaters; § 305.12 Marking Requirements for Central Air Conditioners and Heat Pumps; § 305.13 Marking Requirements for Furnaces; § 305.14 Energy Information Disclosures for Heating and Cooling Equipment; § 305.15 Labeling Requirements for Lighting Products; and § 305.16 Labeling and Marking Requirements for Plumbing Products.

Applicability of DOE Test Procedures: The Commission proposes to amend section 305.5 to clarify that the Rule does not apply to covered appliance products for which DOE does not have a test procedure. The Rule already contains such information in the descriptions of certain covered products in section 305.3 (e.g., water heaters and pool heaters). This proposed amendment explicitly would apply the same sentence to all applicable appliance products listed in section 303.5(a).

Elimination of Appendix K: The Commission proposes to eliminate the suggested reporting format in Appendix K. Most manufacturers submit data via

e-mail using spreadsheet templates provided on the FTC Web site. In addition, the reporting format in Appendix K does not apply to products that have been added since the Rule was first promulgated in 1979. Accordingly, we believe that Appendix K is no longer needed.

Review of Technological Changes: CEE (#519870–00018) recommended that the Commission consider instituting a semi-annual process to review technological advancements and modify the scope of labeling accordingly. The Commission conducts periodic reviews of all its regulations on a rotating schedule, as it is conducting now for the Appliance Labeling Rule. During these reviews, the Commission seeks comments on the effectiveness of the rule in question, the burden it imposes, and possible improvements. Between such reviews, individuals and organizations may contact the Commission about problems or possible amendments to rules that may be needed. Therefore, we have no plans to institute formal semi-annual reviews.

Third-Party Testing: One commenter (Schau #519870–00002) urged the Commission to require third-party testing for covered products. Under current DOE and FTC requirements, manufacturers may conduct testing themselves as long as they follow DOE test procedures. The Commission is not aware of any evidence of widespread energy disclosure problems stemming from the fact that third-party testing is not required by DOE and FTC regulations. Accordingly, we have no plans to propose such a requirement.

VIII. Paperwork Reduction Act

The Rule contains disclosure and reporting requirements that constitute ''information collection requirements'' as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act (PRA).[86] OMB has approved the Rule's information collection requirements through August 31, 2009 (OMB Control No. 3084–0069). The proposed amendments make minor changes in the current Rule's existing recordkeeping, labeling, and reporting requirements. Accordingly, the Commission has submitted this proposed Rule and a Supporting Statement to OMB for review under the PRA.

The Commission's burden estimates for the proposed Rule are based on data submitted by manufacturers to the FTC under current requirements and the staff's general knowledge of manufacturing practices.

[86] 44 U.S.C. 3501–3520.

The proposed amendments would require manufacturers of products with the EnergyGuide label to change their labels to the new design. Under the current Rule, manufacturers routinely change labels to reflect new range and cost data. The new label design will require a one-time drafting change for the manufacturers. The Commission estimates that this one time change will take 40 hours per manufacturer. The Commission further estimates that there are approximately 300 manufacturers of affected covered products. Therefore, the proposed label design change would result in a one-time burden of 12,000 hours (300 manufacturers × 40 hours). In calculating the associated labor cost estimate, the Commission assumes that the label design change will be implemented by clerical workers at an hourly wage rate of $14.59 per hour based on Bureau of Labor Statistics information. Thus, the Commission estimates that the proposed label design change would result in a one-time labor cost of approximately $175,080 (12,000 hours × $14.59 per hour)

The proposal to eliminate labels for heating and cooling equipment will significantly reduce the burden for manufacturers of those products. While there will be additional burden in marking their products with efficiency rating information, this burden is likely to be offset by the elimination of the labeling requirements.

As discussed above, the Commission anticipates that the provision of adjusted volume information for refrigerator manufacturers will not result in a significant burden increase because this information should be readily available to manufacturers as it is necessary to determine compliance with DOE conservation standards. Accordingly, the Commission has not made an adjustment to its previous burden estimate due to this de minimis increase in reporting of the data already required by the Rule.

The Proposed Rule would also require retailers who sell through catalogs to disclose information about annual operating cost information instead of the annual energy consumption information for certain products and provide an explanatory statement in the catalog similar to that which appears on the label. It would also eliminate the requirement for catalog sellers to list the range of comparability information. The Commission's previous estimate of the Rule's burden on catalog sellers (including Internet sellers) has assumed conservatively that catalog sellers must enter their data for each product into the catalog each year (see 69 FR 64289, 64293 (Nov. 4, 2004)). The proposed Rule changes would not alter that assumption because the amendments would require a one-time change of all products in affected catalogs. This one-time change is consistent with previous burden estimates. Accordingly, the Commission does not believe any change is required to the existing burden estimates for catalog sellers.

The Commission invites comments that will enable it to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections 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 collections of information on those who must comply, including through the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. postal mail at the OMB is subject to lengthy delays due to heightened security precautions.

IX. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed Rule and a Final Regulatory Flexibility Analysis (''FRFA''), if any, with the final Rule, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603–605.

The Commission does not anticipate that the proposed Rule will have a significant economic impact on a substantial number of small entities. The Commission recognizes that some of the affected manufacturers may qualify as small businesses under the relevant thresholds. We do not expect that the economic impact of implementing the design change will be significant. The Commission plans to

provide manufacturers with ample time to implement this new design. The Commission estimates that these new requirements will apply to about 300 product manufacturers and an additional 150 online and paper catalog sellers of covered products. Out of these companies, the Commission expects that approximately 300 qualify as small businesses. In addition, the Commission does not expect that the requirements specified in the Proposed Rule will have a significant impact on these entities.

Accordingly, this document serves as notice to the Small Business Administration of the FTC's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed Rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed Rule, the number of these companies that are ''small entities,'' and the average annual burden for each entity. Although the Commission certifies under the RFA that the Rule proposed in this notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed Rule on small entities. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Taken

Section 137 of the Energy Policy Act of 2005 (''EPACT 2005'') (Pub. L 109–58) requires the Commission to conduct a rulemaking to consider the effectiveness of the consumer products labeling program.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed Rule is to improve the effectiveness of the current appliance labeling program. Section 137 of EPACT 2005 amends section 324 of EPCA to require the Commission to examine ''the effectiveness of the consumer products labeling program in assisting consumers in making purchasing decisions and improving energy efficiency.''

C. Small Entities to Which the Proposed Rule Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, refrigerator and laundry equipment manufacturers qualify as small businesses if they have fewer than 1,000 employees (for other household appliances the figure is 500 employees). Appliance retailers qualify as small businesses if their sales are less than $8.0 million annually. The Commission estimates that fewer than 300 entities subject to the Proposed Rule's requirements qualify as small businesses. The Commission seeks comment and information with regard to the estimated number or nature of small business entities for which the proposed Rule would have a significant economic impact

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The Commission recognizes that the proposed labeling rule will involve some increased drafting costs and reporting requirements for appliance manufacturers. As discussed in this notice, the increase reporting burden should be de minimis. The transition to the use of a new label design should represent a one-time cost that will not be substantial. The Commission does not expect that the labeling requirements will impose significant additional costs on catalog sellers. All of these burdens are discussed in section VIII. of this notice and there should be no difference in that burden as applied to small businesses. The Commission invites comment and information on these issues.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed Rule. The Commission invites comment and information on this issue.

F. Significant Alternatives to the Proposed Rule

The Commission seeks comment and information on the need, if any, for alternative compliance methods that, consistent with the statutory requirements, would reduce the economic impact of the rule on such small entities. As one alternative to reduce burden, the Commission could delay the Rule's effective date to provide additional time for small business compliance. The Commission could also consider further reductions in the amount of information catalog sellers must provide. If the comments filed in response to this notice identify small entities that are affected by the Rule, as well as alternative methods of compliance that would reduce the economic impact of the Rule on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

X. Additional Questions for Comment

All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before April 16, 2007. In addition to the questions and requests for comment found throughout this Notice, we also ask that commenters address the following questions: What costs or burdens, and any other impacts, would the proposed requirements impose, and on whom? What regulatory alternatives to the proposed requirements are available that would reduce the burdens of the proposed requirements? How would such alternatives affect the benefits provided by the proposed Rule?

XI. Proposed Rule Language

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

For the reasons set out above, the Commission proposes the following amendments to 16 CFR Part 305:

PART 305—[AMENDED]

1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Section 305.2 is revised to read as follows:

§ 305.2 Definitions.

(a) *Act* means the Energy Policy and Conservation Act (Pub. L. 94–163), and amendments thereto.

(b) *ANSI* means the American National Standards Institute and, as used herein, is the prefix for national standards and codes adopted by ANSI.

(c) *ASME* means the American Society of Mechanical Engineers and, as used herein, is the prefix for national standards and codes adopted by ASME.

(d) *Average lamp efficacy* means the lamp efficacy readings taken over a statistically significant period of manufacture with the readings averaged over that period.

(e) *Ballast efficacy factor* means the relative light output divided by the power input of a fluorescent lamp ballast, as measured under test conditions specified in American National Standards Institute (''ANSI'') standard C82.2–1984, or as may be prescribed by the Secretary of Energy. Copies of ANSI standard C82.2–1984 may be obtained from the American National Standards Institute, 11 West 42nd St., New York, NY 10036.

(f) *Base* for lamps means the portion of the lamp which screws into the socket.

(g) *Bulb shape* means the shape of the lamp, especially the glass portion.

(h) *Catalog* means printed material, including material disseminated over the Internet, which contains the terms of sale, retail price, and instructions for ordering, from which a retail consumer can order a covered product.

(i) *Color rendering index* or CRI for lamps means the measure of the degree of color shift objects undergo when illuminated by a light source as compared with the color of those same objects when illuminated by a reference source of comparable color temperature.

(j) *Commission* means the Federal Trade Commission.

(k) *Consumer product* means any article (other than an automobile, as ''automobile'' is defined in 15 U.S.C. 2001(1) [sec. 501(1) of the Motor Vehicle Information and Cost Savings Act]) of a type—

(1) Which in operation consumes, or is designed to consume, energy or, with respect to showerheads, faucets, water closets, and urinals, water; and

(2) Which, to any significant extent, is distributed in commerce for personal use or consumption by individuals;

Without regard to whether such article or such type is in fact distributed in commerce for personal use or consumption by an individual, except that such term includes fluorescent lamp ballasts, general service fluorescent lamps, medium base compact fluorescent lamps, general service incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets, and urinals distributed in commerce for personal or commercial use or consumption.

(l) *Consumer appliance product* means any of the following consumer products, excluding those products designed solely for use in recreational vehicles and other mobile equipment:

(1) Refrigerators, refrigerator-freezers, and freezers that can be operated by alternating current electricity, excluding—

(i) Any type designed to be used without doors; and

(ii) Any type which does not include a compressor and condenser unit as an integral part of the cabinet assembly.

(2) Dishwashers.

(3) Water heaters.

(4) Room air conditioners.

(5) Clothes washers.

(6) Clothes dryers.

(7) Central air conditioners and central air conditioning heat pumps.

(8) Furnaces.

(9) Direct heating equipment.

(10) Pool heaters.

(11) Kitchen ranges and ovens.

(12) Television sets.

(13) Fluorescent lamp ballasts.

(14) General service fluorescent lamps.

(15) Medium base compact fluorescent lamps.

(16) General service incandescent lamps, including incandescent reflector lamps.

(17) Showerheads.

(18) Faucets.

(19) Water closets.

(20) Urinals.

(21) Any other type of consumer product that the Department of Energy classifies as a covered product under section 322(b) of the Act (42 U.S.C. 6292).

(m) *Correlated color temperature* for lamps means the absolute temperature of a blackbody whose chromaticity most nearly resembles that of the light source.

(n) *Covered product* means any consumer product or consumer appliance product described in § 305.3 of this part.

(o) *Distributor* means a person (other than a manufacturer or retailer) to whom a consumer appliance product is delivered or sold for purposes of distribution in commerce.

(p) *Energy efficiency rating* means the following product-specific energy usage descriptors: *annual fuel utilization efficiency* (AFUE) for furnaces; *energy efficiency ratio* (EER) for room air conditioners; *seasonal energy efficiency ratio* (SEER) for the cooling function of central air conditioners and heat pumps; *heating seasonal performance factor* (HSPF) for the heating function of heat pumps; and, *thermal efficiency* (TE) for pool heaters, as these descriptors are determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293). These product-specific energy usage descriptors shall be used in satisfying all the requirements of this part.

(q) *Estimated annual energy consumption and estimated annual operating cost*—(1) *Estimated annual energy consumption* means the energy or (for products described in sections 305.3(n)–(q)) water that is likely to be consumed annually in representative use of a consumer product, as determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293).

(i) *Kilowatt-hour use per year,* or *kWh/yr.,* means estimated annual energy consumption expressed in kilowatt-hours of electricity.

(ii) *Therm use per year,* or *therms/yr.,* means estimated annual energy consumption expressed in therms of natural gas.

(iii) *Gallon use per year,* or *gallons/yr.,* means estimated annual energy consumption expressed in gallons of propane or No. 2 heating oil.

(2) *Estimated annual operating cost* means the aggregate retail cost of the energy that is likely to be consumed annually in representative use of a consumer product, as determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293).

(r) *Flow restricting or controlling spout end device* means an aerator used in a faucet.

(s) *Flushometer valve* means a valve attached to a pressured water supply pipe and so designed that, when actuated, it opens the line for direct flow into the fixture at a rate and quantity to operate properly the fixture, and then gradually closes to provide trap reseal in the fixture in order to avoid water hammer. The pipe to which this device is connected is in itself of sufficient size that, when opened, will allow the device to deliver water at a sufficient rate of flow for flushing purposes.

(t) *IES* means the Illuminating Engineering Society of North America and, as used herein, is the prefix for test procedures adopted by IES.

(u) *Lamp efficacy* means the light output of a lamp divided by its wattage, expressed in lumens per watt (LPW).

(v) *Lamp type* means all lamps designated as having the same electrical and lighting characteristics and made by one manufacturer.

(w) *Life and lifetime* for lamps mean length of operating time of a statistically large group of lamps between first use and failure of 50 percent of the group.

(x) *Light output* for lamps means the total luminous flux (power) of a lamp in lumens.

(y) *Luminaire* means a complete lighting unit consisting of a fluorescent lamp or lamps, together with parts designed to distribute the light, to position and protect such lamps, and to connect such lamps to the power supply through the ballast.

(z) *Manufacturer* means any person who manufactures, produces, assembles, or imports a consumer appliance product. Assembly operations which are solely decorative are not included.

(aa) *New covered product,* as used in § 305.4, means a covered product the title of which has not passed to a purchaser who buys the product for purposes other than resale or leasing for a period in excess of one year.

(bb) *Private labeler* means an owner of a brand or trademark on the label of a

consumer appliance product which bears a private label.

(cc) *Range of comparability* means a group of models within a class of covered products, each model of which satisfies approximately the same consumer needs.

(dd) *Range of estimated annual energy cost* means the range of estimated annual energy cost per year of all models within a designated range of comparability.

(ee) *Retailer* means a person to whom a consumer appliance product is delivered or sold, if such delivery or sale is for purposes of sale or distribution in commerce to purchasers who buy such product for purposes other than resale. The term *retailer* includes purchasers of appliances who install such appliances in newly constructed or newly rehabilitated housing, or mobile homes, with the intent to sell the covered appliances as part of the sale of such housing or mobile homes.

(ff) *Water use* means the quantity of water flowing through a showerhead, faucet, water closet, or urinal at point of use, determined in accordance with test procedures under section 323 of the Act, 42 U.S.C. 6293.

(gg) *Wattage* for lamps means the total electrical power consumed by a lamp in watts, after an initial seasoning period and including, for fluorescent lamps, arc watts plus cathode watts.

3. In § 305.3, paragraphs (a)(1), (d), and (r) are revised to read as follows:

§ 305.3 Description of covered products.

(a) * * * (1) *Electric refrigerator* means a cabinet designed for the refrigerated storage of food at temperatures above 32 [deg] F and below 39 [deg] F, configured for general refrigerated food storage, and having a source of refrigeration requiring single phase, alternating current electric energy input only. An electric refrigerator may include a compartment for the freezing and storage of food at temperatures below 32 [deg] F, but does not provide a separate low temperature compartment designed for the freezing and storage of food at temperatures below 8 [deg]F.

* * * * *

(d) *Water heater* means a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand, including—

(1) Storage type units which heat and store water at a thermostatically controlled temperature, including gas storage water heaters with an input of 75,000 Btu per hour or less, oil storage water heaters with an input of 105,000 Btu per hour or less, and electric storage water heaters with an input of 12 kilowatts or less;

(2) Instantaneous type units which heat water but contain no more than one gallon of water per 4,000 Btu per hour of input, including gas instantaneous water heaters with an input of 200,000 Btu per hour or less, oil instantaneous water heaters with an input of 210,000 Btu per hour or less, and electric instantaneous water heaters with an input of 12 kilowatts or less; and

(3) Heat pump type units, with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, which are products designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all ancillary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function.

* * * * *

(r) *Pool heater* means an appliance designed for heating nonpotable water contained at atmospheric pressure, including heating water in swimming pools, spas, hot tubs and similar applications.

4. In § 305.5, paragraph (a) is revised to read as follows:

§ 305.5 Determinations of estimated annual energy consumption, estimated annual operating cost, and energy efficiency rating, and of water use rate.

(a) Procedures for determining the estimated annual energy consumption, the estimated annual operating costs, the energy efficiency ratings, and the efficacy factors of the following covered products are those located in 10 CFR part 430, subpart B. For the following list of covered products, the requirements of this part apply only to products for which the Department of Energy has adopted and published test procedures for measuring energy usage.

(1) Refrigerators and refrigerator-freezers § 430.23(a).

(2) Freezers—§ 430.23(b).

(3) Dishwashers—§ 430.23(c).

(4) Water heaters—§ 430.23(e).

(5) Room air conditioners—§ 430.23(f).

(6) Clothes washers—§ 430.23(j).

(7) Central air conditioners and heat pumps—§ 430.23(m).

(8) Furnaces—§ 430.23(n).

(9) Pool Heaters—§ 430.23(p)

(10) Fluorescent lamp ballasts—§ 430.23(q).

* * * * *

5. Section 305.7 (a) and (b) are revised to read as follows:

§ 305.7 Determinations of capacity.

* * * * *

(a) *Refrigerators and refrigerator-freezers.* The capacity shall be the total refrigerated volume (VT) and the adjusted total volume (AV) in cubic feet, rounded to the nearest one-tenth of a cubic foot, as determined according to appendix A1 to 10 CFR part 430, subpart B.

(b) *Freezers.* The capacity shall be the total refrigerated volume (VT) and the adjusted total volume (AV) in cubic feet, rounded to the nearest one-tenth of a cubic foot, as determined according to appendix B1 to 10 CFR part 430, subpart B.

* * * * *

6. In § 305.8, paragraph (a)(1) is revised to read as follows:

§ 305.8 Submission of data.

(a)(1) Each manufacturer of a covered product (except manufacturers of fluorescent lamp ballasts, showerheads, faucets, water closets, urinals, general service fluorescent lamps, medium base compact fluorescent lamps, or general service incandescent lamps including incandescent reflector lamps) shall submit annually to the Commission a report listing the estimated annual energy consumption (for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers and water heaters) or the energy efficiency rating (for room air conditioners, central air conditioners, heat pumps, furnaces, and pool heaters) for each basic model in current production, determined according to § 305.5 and statistically verified according to § 305.6. The report must also list, for each basic model in current production: the manufacturer name, the brand name (if different from the manufacturer's name), the model numbers for each basic model; the total energy consumption, determined in accordance with § 305.5, used to calculate the estimated annual energy consumption or energy efficiency rating; the number of tests performed; and its capacity, determined in accordance with § 305.7. For those models that use more than one energy source or more than one cycle, each separate amount of energy consumption, measured in accordance with § 305.5, shall be listed in the report. Starting serial numbers or other numbers identifying the date of manufacture of covered products shall be submitted whenever a new basic model is introduced on the market.

* * * * *

§ 305.9 [Removed and Reserved]

7. Section 305.9 is removed and reserved.

8. Section 305.10 is revised to read as follows:

§ 305.10 Ranges of Comparability Information on the Required Labels.

(a) *Range of Estimated Annual Operating Cost.* The range of estimated annual estimated operating costs for each covered product (except fluorescent lamp ballasts, lamps, central air conditioners, heat pumps, furnaces, showerheads, faucets, water closets or urinals) shall be taken from the appropriate appendix to this rule in effect at the time the labels are affixed to the product. The Commission shall publish revised ranges every five years beginning in 2012 in the **Federal Register**. When the ranges are revised, all information disseminated after 90 days following the publication of the revision shall conform to the revised ranges. Products that have been labeled prior to the effective date of a modification under this section need not be relabeled.

(b) *Representative average unit energy cost.* The National Average Representative Unit Cost to be used on labels as required by § 305.11 of this Part are listed in Appendix H to this Part. The Commission shall publish revised National Average Representative Unit Cost figures every five years beginning in 2012 in the **Federal Register**. When the cost figures are revised, all information disseminated after 90 days following the publication of the revision shall conform to the new cost figure.

(c) *Operating Costs Outside Current Range.* When the estimated annual operating cost of a given model of a covered product falls outside the limits of the current range for that product, which could result from the introduction of a new or changed model, the manufacturer shall:

(1) Omit placement of such product on the scale, and

(2) Add the sentence below, as appropriate, in the space just below the scale, as follows:

The estimated annual operating cost of this model was not available at the time the range was published.

§§ 305.13, 305.14, 305.15, 305.16, 305.17, 305.18, and 305.19 [Redesignated as 305.19, 305.20, 305.21, 305.22, 305.23, 305.24 and 305.25]

9. Sections 305.13, 305.14, 305.15, 305.16, 305.17, 305.18 and 305.19 are redesignated as 305.19, 305.20, 305.21, 305.22, 305.23, 305.24 and 305.25 respectively.

10. Section 305.15 is added to read as follows:

§ 305.15 Labeling Requirements for Lighting Products.

(a) *Fluorescent Lamp Ballasts and Luminaires*—(1) *Contents.* Fluorescent lamp ballasts that are ''covered products,'' as defined in § 305.2(n), and to which standards are applicable under section 325 of the Act, shall be marked conspicuously, in color-contrasting ink, with a capital letter ''E'' printed within a circle. Packaging for such fluorescent lamp ballasts, as well as packaging for luminaires into which they are incorporated, shall also be marked conspicuously with a capital letter ''E'' printed within a circle. For purposes of this section, the encircled capital letter ''E'' will be deemed ''conspicuous,'' in terms of size, if it is as large as either the manufacturer's name or another logo, such as the ''UL,'' ''CBM'' or ''ETL'' logos, whichever is larger, that appears on the fluorescent lamp ballast, the packaging for such ballast or the packaging for the luminaire into which the covered ballast is incorporated, whichever is applicable for purpose of labeling.

(2) *Product Labeling.* The encircled capital letter ''E'' on fluorescent lamp ballasts must appear conspicuously, in color-contrasting ink, (*i.e.*, in a color that contrasts with the background on which the encircled capital letter ''E'' is placed) on the surface that is normally labeled. It may be printed on the label that normally appears on the fluorescent lamp ballast, printed on a separate label, or stamped indelibly on the surface of the fluorescent lamp ballast.

(3) *Package Labeling.* For purposes of labeling under this section, packaging for such fluorescent lamp ballasts and the luminaires into which they are incorporated consists of the plastic sheeting, or ''shrink-wrap,'' covering pallet loads of fluorescent lamp ballasts or luminaires as well as any containers in which such fluorescent lamp ballasts or the luminaires into which they are incorporated are marketed individually or in small numbers. The encircled capital letter ''E'' on packages containing fluorescent lamp ballasts or the luminaires into which they are incorporated must appear conspicuously, in color-contrasting ink, on the surface of the package on which printing or a label normally appears. If the package contains printing on more than one surface, the label must appear on the surface on which the product inside the package is described. The encircled capital letter ''E'' may be printed on the surface of the package, printed on a label containing other information, printed on a separate label, or indelibly stamped on the surface of the package. In the case of pallet loads containing fluorescent lamp ballasts or the luminaires into which they are incorporated, the encircled capital letter ''E'' must appear conspicuously, in color-contrasting ink, on the plastic sheeting, unless clear plastic sheeting is used and the encircled capital letter ''E'' is legible underneath this packaging. The encircled capital letter ''E'' must also appear conspicuously on any documentation that would normally accompany such a pallet load. The encircled capital letter ''E'' may appear on a label affixed to the sheeting or may be indelibly stamped on the sheeting. It may be printed on the documentation, printed on a separate label that is affixed to the documentation or indelibly stamped on the documentation.

(b) *Lamps*—(1)(i) Any covered product that is a compact fluorescent lamp or general service incandescent lamp (including an incandescent reflector lamp) shall be labeled clearly and conspicuously on the product's principal display panel with the following information:

(A) The number of lamps included in the package, if more than one;

(B) The design voltage of each lamp included in the package, if other than 120 volts;

(C) The light output of each lamp included in the package, expressed in average initial lumens;

(D) The electrical power consumed (energy used) by each lamp included in the package, expressed in average initial wattage;

(E) The life of each lamp included in the package, expressed in hours.

(ii) The light output, energy usage and life ratings of any covered product that is a medium base compact fluorescent lamp or general service incandescent lamp (including an incandescent reflector lamp), shall appear in that order and with equal clarity and conspicuousness on the product's principal display panel. The light output, energy usage and life ratings shall be disclosed in terms of ''lumens,'' ''watts'' and ''hours'' respectively, with the lumens, watts and hours rating numbers each appearing in the same type style and size and with the words ''lumens,'' ''watts'' and ''hours'' each appearing in the same type style and size. The words ''light output,'' ''energy used'' and ''life'' shall precede and have the same conspicuousness as both the rating numbers and the words ''lumens,'' ''watts'' and ''hours,'' except that the letters of the words ''lumens,'' ''watts'' and ''hours'' shall be approximately 50% of the sizes of those used for the words ''light output,'' ''energy used'' and ''life'' respectively.

(iii) The light output, energy usage and life ratings of any covered product that is a medium base compact fluorescent lamp or general service

incandescent lamp (including an incandescent reflector lamp), shall be measured at 120 volts, regardless of the lamp's design voltage. If a lamp's design voltage is 125 volts or 130 volts, the disclosures of the wattage, light output and life ratings shall in each instance be:

(A) At 120 volts and followed by the phrase ''at 120 volts.'' In such case, the labels for such lamps also may disclose the lamp's wattage, light output and life at the design voltage (*e.g.*, ''Light Output 1710 Lumens at 125 volts''); or

(B) At the design voltage and followed by the phrase ''at (125 volts/130 volts)'' if the ratings at 120 volts are disclosed clearly and conspicuously on another panel of the package, and if all panels of the package that contain a claimed light output, wattage or life clearly and conspicuously identify the lamp as ''(125 volt/130 volt),'' and if the principal display panel clearly and conspicuously discloses the following statement:

This product is designed for (125/130) volts. When used on the normal line voltage of 120 volts, the light output and energy efficiency are noticeably reduced. See (side/back) panel for 120 volt ratings.

(iv) For any covered product that is an incandescent reflector lamp, the required disclosure of light output shall be given for the lamp's total forward lumens.

(v) For any covered product that is a compact fluorescent lamp, the required light output disclosure shall be measured at a base-up position; but, if the manufacturer or private labeler has reason to believe that the light output at a base-down position would be more than 5% different, the label also shall disclose the light output at the base-down position or, if no test data for the base-down position exist, the fact that at a base-down position the light output might be more than 5% less.

(vi) For any covered product that is a compact fluorescent lamp or a general service incandescent lamp (including an incandescent reflector lamp), there shall be clearly and conspicuously disclosed on the principal display panel the following statement:

To save energy costs, find the bulbs with the (beam spread and) light output you need, then choose the one with the lowest watts.''

(vii) For any covered product that is a general service incandescent lamp and operates with multiple filaments, the principal display panel shall disclose clearly and conspicuously, in the manner required by paragraph (b)(1)(i)–(iii) and (vi) of this section, the lamp's wattage and light output at each of the lamp's levels of light output and the lamp's life measured on the basis of the filament that fails first.

(2) Any covered product that is a general service fluorescent lamp or an incandescent reflector lamp shall be labeled clearly and conspicuously with a capital letter ''E'' printed within a circle and followed by an asterisk. The label shall also clearly and conspicuously disclose, either in close proximity to that asterisk or elsewhere on the label, the following statement:

*[The encircled ''E''] means this bulb meets Federal minimum efficiency standards.

(i) If the statement is not disclosed on the principal display panel, the asterisk shall be followed by the following statement:

See [Back, Top, Side] panel for details.

(ii) For purposes of this paragraph (b), the encircled capital letter ''E'' shall be clearly and conspicuously disclosed in color-contrasting ink on the label of any covered product that is a general service fluorescent lamp and will be deemed ''conspicuous,'' in terms of size, if it appears in typeface at least as large as either the manufacturer's name or logo or another logo disclosed on the label, such as the ''UL'' or ''ETL'' logos, whichever is larger.

(3)(i) A manufacturer or private labeler who distributes general service fluorescent lamps, compact fluorescent lamps, or general service incandescent lamps (including incandescent reflector lamps) without labels attached to the lamps or without labels on individual retail-sale packaging for one or more lamps may meet the disclosure requirements of paragraphs (b)(1) and (b)(2) of this section by making the required disclosures, in the manner and form required by those paragraphs, on the bulk shipping cartons that are to be used to display the lamps for retail sale.

(ii) Instead of labeling any covered product that is a general service fluorescent lamp with the encircled ''E'' and with the statement described in paragraph (b)(2) of this section, a manufacturer or private labeler who would not otherwise put a label on such a lamp may meet the disclosure requirements of that paragraph by permanently marking the lamp clearly and conspicuously with the encircled ''E''.

(4) Any manufacturer or private labeler who makes any representation on a label of any covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), regarding the cost of operation of such lamp shall clearly and conspicuously disclose in close proximity to such representation the assumptions upon which it is based, including, *e.g.*, purchase price, unit cost of electricity, hours of use, patterns of use.

(5) Any cartons in which any covered products that are general service fluorescent lamps, medium base compact fluorescent lamps, or general service incandescent lamps (including incandescent reflector lamps), are shipped within the United States or imported into the United States shall disclose clearly and conspicuously the following statement:

These lamps comply with Federal energy efficiency labeling requirements.

11. Section 305.16 is added to read as follows:

§ 305.16 Labeling and Marking Requirements for Plumbing Products.

(a) *Showerheads and Faucets.* Showerheads and faucets shall be marked and labeled as follows:

(1) Each showerhead and flow restricting or controlling spout end device shall bear a permanent legible marking indicating the flow rate, expressed in gallons per minute (gpm) or gallons per cycle (gpc), and the flow rate value shall be the actual flow rate or the maximum flow rate specified by the standards established in subsection (j) of section 325 of the Act, 42 U.S.C. 6295(j). Except where impractical due to the size of the fitting, each flow rate disclosure shall also be given in liters per minute (L/min) or liters per cycle (L/cycle). For purposes of this section, the marking indicating the flow rate will be deemed ''legible,'' in terms of placement, if it is located in close proximity to the manufacturer's identification marking.

(2) Each showerhead and faucet shall bear a permanent legible marking to identify the manufacturer. This marking shall be the trade name, trademark, or other mark known to identify the manufacturer. Such marking shall be located where it can be seen after installation.

(3) Each showerhead and faucet shall be marked ''A112.18.1M'' to demonstrate compliance with the applicable ASME standard. The marking shall be by means of either a permanent mark on the product, a label on the product, or a tag attached to the product.

(4) The package for each showerhead and faucet shall disclose the manufacturer's name and the model number.

(5) The package or any label attached to the package for each showerhead or faucet shall contain at least the

following: ''A112.18.1M'' and the flow rate expressed in gallons per minute (gpm) or gallons per cycle (gpc), and the flow rate value shall be the actual flow rate or the maximum flow rate specified by the standards established in subsection (j) of section 325 of the Act, 42 U.S.C. 6295(j). Each flow rate disclosure shall also be given in liters per minute (L/min) or liters per cycle (L/cycle).

(b) *Water Closets and Urinals.* Water closets and urinals shall be marked and labeled as follows:

(1) Each such fixture (and flushometer valve associated with such fixture) shall bear a permanent legible marking indicating the flow rate, expressed in gallons per flush (gpf), and the water use value shall be the actual water use or the maximum water use specified by the standards established in subsection (k) of section 325 of the Act, 42 U.S.C. 6295(k). Except where impractical due to the size of the fixture, each flow rate disclosure shall also be given in liters per flush (Lpf). For purposes of this section, the marking indicating the flow rate will be deemed ''legible,'' in terms of placement, if it is located in close proximity to the manufacturer's identification marking.

(2) Each water closet (and each component of the water closet if the fixture is comprised of two or more components) and urinal shall be marked with the manufacturer's name or trademark or, in the case of private labeling, the name or registered trademark of the customer for whom the unit was manufactured. This mark shall be legible, readily identified, and applied so as to be permanent. The mark shall be located so as to be visible after the fixture is installed, except for fixtures built into or for a counter or cabinet.

(3) Each water closet (and each component of the water closet if the fixture is comprised of two or more components) and urinal shall be marked at a location determined by the manufacturer with the designation ''ASME A112.19.2M'' to signify compliance with the applicable standard. This mark need not be permanent, but shall be visible after installation.

(4) The package, and any labeling attached to the package, for each water closet and urinal shall disclose the flow rate, expressed in gallons per flush (gpf), and the water use value shall be the actual water use or the maximum water use specified by the standards established in subsection (k) of section 325 of the Act, 42 U.S.C. 6295(k). Each flow rate disclosure shall also be given in liters per flush (Lpf).

(5) With respect to any gravity tank-type white 2-piece toilet offered for sale or sold before January 1, 1997, which has a water use greater than 1.6 gallons per flush (gpf), any printed matter distributed or displayed in connection with such product (including packaging and point-of-sale material, catalog material, and print advertising) shall include, in a conspicuous manner, the words ''For Commercial Use Only.''

(c) *Annual Operating Cost Claims for Covered Plumbing Products.* Until such time as the Commission has prescribed a format and manner of display for labels conveying estimated annual operating costs of covered showerheads, faucets, water closets, and urinals or ranges of estimated annual operating costs for the types or classes of such plumbing products, the Act prohibits manufacturers from making such representations on the labels of such covered products. 42 U.S.C. 6294(c)(8). If, before the Commission has prescribed such a format and manner of display for labels of such products, a manufacturer elects to provide for any such product a label conveying such a claim, it shall submit the proposed claim to the Commission so that a format and manner of display for a label may be prescribed.

12. Section 305.11 is revised to read as follows:

§ 305.11 Labeling for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, and pool heaters.

(a) *Layout.* All energy labels for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, pool heaters, and room air conditioners shall use one size, similar colors and typefaces with consistent positioning of headline, copy and charts to maintain uniformity for immediate consumer recognition and readability. Trim size dimensions for all labels shall be as follows: width must be between 5¼ inches and 5½ inches (13.34 cm. and 13.97 cm.); length must be between 7⅜ inches (18.78 cm.) and 7⅝ (19.34 cm.). Copy is to be set between 27 picas and 29 picas and copy page should be centered (right to left and top to bottom). Depth is variable but should follow closely the prototype labels appearing at the end of this part illustrating the basis layout. All positioning, spacing, type sizes and line widths should be similar to and consistent with the prototype and sample labels in Appendix I.

(b) *Type style and setting.* The Arial series typeface or equivalent shall be used exclusively on the label. Specific sizes and faces to be used are indicated on the prototype labels. No hyphenation should be used in setting headline or copy text. Positioning and spacing should follow the prototypes closely. Generally, text must be set flush left with two points leading except where otherwise indicated. See the prototype labels for specific directions.

(c) *Colors.* The basic colors of all labels covered by this section shall be process yellow or equivalent and process black. The label shall be printed full bleed process yellow. All type and graphics shall be print process black.

(d) *Label Types*— The labels must be affixed to the product in the form of an adhesive label or a hang tag.

(1) *Adhesive labels.* All adhesive labels should be applied so they can be easily removed without the use of tools or liquids, other than water, but should be applied with an adhesive with an adhesion capacity sufficient to prevent their dislodgment during normal handling throughout the chain of distribution to the retailer or consumer. The paper stock for pressure-sensitive or other adhesive labels shall have a basic weight of not less than 58 pounds per 500 sheets (25″ × 38″) or equivalent, exclusive of the release liner and adhesive. A minimum peel adhesion capacity for the adhesive of 12 ounces per square inch is suggested, but not required if the adhesive can otherwise meet the above standard.

(2) *Hang tags.* Labels may be affixed to the product in the form of a hang tag using string or similar material. The paper stock for hang tags shall have a basic weight of not less than 110 pounds per 500 sheets (25½″ × 30½″ index). When materials are used to attach the hang tags to appliance products, the materials shall be of sufficient strength to insure that if gradual pressure is applied to the hang tag by pulling it away from where it is affixed to the product, the hang tag will tear before the material used to affix the hang tag to the product breaks.

(e) *Placement*—(1) *Adhesive labels:* Manufacturers shall affix adhesive labels to the covered products in such a position that it is easily read by a consumer examining the product. The label should be generally located on the upper-right-front corner of the product's front exterior. However, some other prominent location may be used as long as the label will not become dislodged during normal handling throughout the chain of distribution to the retailer or consumer. The top of the label should not exceed 74 inches from the base of taller products. The label can be displayed in the form of a flap tag adhered to the top of the appliance and bent (folded at 90°) to hang over the

front, as long as this can be done with assurance that it will be readily visible.

(2) *Hang tags.* A hang tag shall be affixed in such a position that it can be easily read by a consumer examining the product. A hang tag can be affixed in any position that meets this requirement as long as the label will not become dislodged during normal handling throughout the chain of distribution to the retailer or consumer.

(f) *Label Content for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, and pool heaters*—(1) Headlines and texts, as illustrated in the Prototype Labels in Appendix I to this Part.

(2) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(3) Model number(s) will be the designation given by the manufacturer or private labeler.

(4) Capacity or size is that determined in accordance with § 305.7. For refrigerators, refrigerator-freezers, and freezers, the capacity provided on the label shall be the model's total refrigerated volume (VT) as determined in accordance § 305.7.

(5) Estimated annual operating costs for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, room air conditioners, pool heaters, and water heaters are as determined in accordance with § 305.5 and Appendix H to this Part.

(6) Ranges of comparability for estimated annual operating costs, as applicable, are found in the appropriate appendices accompanying this part.

(7) For refrigerators, refrigerator-freezers, and freezers, the range of comparability, the following statements shall be placed immediately below the range as illustrated in the sample labels in Appendix I:

(i) For models covered under Appendix A1, the statement shall read: *Range for models of similar capacity with Automatic Defrost.*

(ii) For models covered under Appendix A2, the statement shall read: *Range for models of similar capacity with Manual Defrost.*

(iii) For models covered under Appendix A3, the statement shall read: *Range for models of similar capacity with Partial Automatic Defrost.*

(iv) For models covered under Appendix A4, the statement shall read: *Range for models of similar capacity with Automatic Defrost, Top-Mounted Freezer, and without Through-the-door Ice.*

(v) For models covered under Appendix A5, the statement shall read: *Range for models of similar capacity with Automatic Defrost, Side-Mounted Freezer, and without Through-the-door Ice.*

(vi) For models covered under Appendix A6, the statement shall read: *Range for models of similar capacity with Automatic Defrost, Bottom-Mounted Freezer, and without Through-the-door Ice.*

(vii) For models covered under Appendix A7, the statement shall read: *Range for models of similar capacity with Automatic Defrost, Bottom-Mounted Freezer, and with Through-the-door Ice.*

(viii) For models covered under Appendix A8, the statement shall read: *Range for models of similar capacity with Automatic Defrost, Side-Mounted Freezer, and with Through-the-door Ice.*

(ix) For models covered under Appendix B1, the statement shall read: *Range for upright freezer models of similar capacity with Manual Defrost.*

(x) For models covered under Appendix B3, the statement shall read: *Range for upright freezer models of similar capacity with Automatic Defrost.*

(xi) For models covered under Appendix B3, the statement shall read: *Range for chest and other freezer models of similar capacity.*

(8) Placement of the labeled product on the scale shall be proportionate to the lowest and highest estimated annual operating costs.

(9) Labels must contain the model's estimated annual energy consumption or energy efficiency rating as determined in accordance with § 305.5.

(10) Labels must contain a statement explaining information on the label as illustrated in the prototype labels in Appendix I.

(*i*) For refrigerators, refrigerator-freezers, and freezers, the statement will read as follows (fill in the blanks with the appropriate appliance name, the operating cost, the year, and the energy cost figures):

Size, door attributes, and ice features affect energy use—so other [refrigerators/freezers] *may have lower or higher operating costs. Your actual operating costs will depend on your local utility rates and how you use this product. The estimated operating cost is based on a [Year] national average cost of* [$ ____ per kWh, therm, or gallon] *for electricity.*

For more information, visit www.ftc.gov/appliances.

(*ii*) For room air conditioners and water heaters, the statement will read as follows (fill in the blanks with the appropriate appliance name, the operating cost, the year, and the energy cost figures):

Your actual operating costs will depend on your local utility rates and how you use this product. The estimated operating cost is based on a [Year] national average cost of [$ ____ per kWh, therm, or gallon] for [electricity, natural gas, propane, or oil].

For more information, visit www.ftc.gov/appliances.

(*iii*) For clothes washers and dishwashers, the statement will read as follows (fill in the blanks with the appropriate appliance name, the operating cost, the number of loads per week, the year, and the energy cost figures):

Based on [4 washloads a week for dishwashers, or 8 washloads a week for clothes washers] *a week. Your actual operating costs will depend on your local utility rates and how you use this product. The estimated operating cost is based on a [Year] national average cost of $ ____ per kWh for electricity and $ ____ per therm for natural gas.*

For more information, visit www.ftc.gov/appliances.

(*iv*) For pool heaters, the statement will read as follows (fill in the blanks with the appropriate appliance name, the operating cost, the year, and the energy cost figures):

The Thermal Efficiency (as expressed by a percent) is the measure of energy efficiency for pool heaters. Only pool heaters fueled by [natural gas/oil] *305.yare used in this scale. Your actual operating costs will depend on your local utility rates and how you use this product. The estimated operating cost is based on a [Year] national average cost of* [$ ____ per kWh, therm, or gallon] *for* [natural gas or oil].

For more information, visit www.ftc.gov/appliances.

(11) The following statement shall appear at the bottom of the label: *Federal law prohibits removal of this label before consumer purchase.*

(12) No marks or information other than that specified in this part shall appear on or directly adjoining this label except that:

(*i*) A part or publication number identification may be included on this label, as desired by the manufacturer. If a manufacturer elects to use a part or publication number, it must appear in

the lower right-hand corner of the label and be set in 6-point type or smaller.

(*ii*) The energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer.

(*iii*) The manufacturer may include the ENERGY STAR logo on the bottom right corner of the label for qualified products. The logo must be no larger than 1 inch by 1 inch. Only manufacturers that have signed a Memorandum of Understanding with DOE or EPA may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

13. Section 305.12 is revised to read as follows:

§ 305.12 Marking Requirements for Central Air Conditioners and Heat Pumps.

(a) Central air conditioners and heat pumps covered by this part must be marked permanently with the model number, the Seasonal Energy Efficiency Ratio for the model's cooling function, if applicable, and the Heating Seasonal Performance Factor (HSPF) for the model's heating function, if applicable. The marking must be permanent, legible, and placed on the outside surface of the product.

(b) For the model's cooling function, the seasonal energy efficiency ratio shall be determined in accordance with § 305.5. For the heating function, the heating seasonal performance factor shall be calculated for heating Region IV for the standardized design heating requirement nearest the capacity measured in the High Temperature Test in accordance with § 305.5. In addition, the energy efficiency rating(s) for split system condenser-evaporator coil combinations shall be either:

(1) The energy efficiency rating of the condenser-evaporator coil combination that is the particular manufacturer's most commonly sold combination for that condenser model; or

(2) The energy efficiency rating of the actual condenser-evaporator coil combination comprising the system to which the label is to be attached.

14. Section 305.13 is added to read as follows:

§ 305.13 Marking Requirements for Furnaces.

(a) Furnaces (including boilers) covered by this part must be marked permanently with the model number, and the model's Annual Fuel Utilization Efficiency (AFUE) determined in accordance with § 305.5. The marking must be permanent, legible, and placed on the outside surface of the product.

(b) Manufacturers of boilers shipped with more than one input nozzle to be installed in the field must mark such boilers with the AFUE of the system when it is set up with the nozzle that results in the lowest annual fuel utilization efficiency rating.

(c) Manufacturers that ship out boilers that may be set up as either steam or hot water units must mark the boilers with the AFUE rating derived by conducting the required test on the boiler as a hot water unit.

15. Section 30.14 is added to read as follows:

§ 305.14 Energy Information Disclosures for Heating and Cooling Equipment

(a) *Required Information:* Manufacturers of central air conditioners, heat pumps, and furnaces (including boilers) must provide energy information about the equipment they sell to distributors and retailers, including contractors. This information can be provided through means such as fact sheets, product brochures, and directories. All required information must be disclosed clearly and conspicuously. The information must include:

(1) Name of manufacturer or private labeler [in the case of a corporation, the name shall be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used.]

(2) Trade name (if different from manufacturer);

(3) Model number(s) (given by the manufacturer or private labeler);

(4) Capacity or size as determined in accordance with § 305.7;

(5) Energy efficiency rating as determined in accordance with § 305.5.

(6) A statement that the energy efficiency ratings are based on U.S. Government standard tests.

(7) For central air conditioners and heat pumps, the required information must disclose efficiency ratings for the ''most common'' condenser-evaporator coil combinations. The statement should be made in one of the following three ways:

(i) For information disclosing the seasonal energy efficiency ratio for cooling, the statement should read:

This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating may vary slightly with different coils.

(ii) For information disclosing both the seasonal energy efficiency ratio for cooling and the heating seasonal performance factor for heating, the statement should read:

This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating will vary slightly with different coils and in different geographic regions.

(iii) For information disclosing the heating seasonal performance factor for heating, the statement should read:

This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating will vary slightly with different coils and in different geographic regions.

(8) Information for central air conditioners disclosing the efficiency ratings for specific condenser/coil combinations does not have to contain any of the above three statements. Instead, it must contain a general disclosure that the energy costs and efficiency ratings are based on U.S. Government tests.

(b) *Distribution.* (A) Manufacturers and private labelers must give distributors and retailers, including assemblers, the information covered under section 305.14(a) for the central air conditioners, heat pumps, and furnaces (including boilers) they sell to them. This information may be provided in paper or electronic form (including Internet-based access). Distributors must give this information to retailers, including assemblers, they supply.

(B) Retailers, including assemblers, who sell furnaces (including boilers), central air conditioners, or heat pumps to consumers must have the required information for the furnaces and central air conditioners they sell. They must make the information available to their customers. The required information may be made available to customers in any manner, as long as customers are likely to notice them. For example, it can be available in a display, where customers can take copies of them. It can be kept in a binder or made available electronically at a counter or service desk, with a sign telling customers where the required information is.

(C) Retailers, including assemblers, who negotiate or make sales at a place other than their regular places of business must show the required information to their customers and let them read the fact information before they agree to purchase the product. If the information is Internet-based, retailers, including assemblers, who negotiate or make sales at a place other

than their regular places of business, may choose to provide customers with instructions to access such information in lieu of showing them a paper version of the information. Retailers who choose to use the Internet for the required information, must let customers read such information before the customers agree to purchase the product.

16. In newly designated § 305.20, the heading and paragraph (a) are revised to read as follows:

§ 305.20 Paper Catalogs and Web sites.

(a) Any manufacturer, distributor, retailer, or private labeler who advertises in a catalog, a covered product (except fluorescent lamp ballasts, general service fluorescent lamps, medium base compact fluorescent lamps, general service incandescent lamps including incandescent reflector lamps, showerheads, faucets, water closets or urinals) shall include in such catalog the following information required to be disclosed on the label:

(1) The capacity of the model on each page that lists the covered product.

(2) The estimated annual operating costs for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, room air conditioners, pool heaters, and water heaters as determined in accordance with § 305.5 on each page that lists the covered product.

(3) A statement conspicuously placed in the catalog explaining the information as follows:

(*i*) For refrigerators, refrigerator-freezers, and freezers, the statement will read as follows (fill in the blanks with the appropriate appliance name, the operating cost, the year, and the energy cost figures):

Your actual operating costs will depend on your local utility rates and how you use this product. The estimated operating cost is based on a [Year] national average cost of [$____ per kWh, therm, or gallon] *for electricity.*

For more information, visit www.ftc.gov/appliances.

(*ii*) For room air conditioners and water heaters, the statement will read as follows (fill in the blanks with the appropriate appliance name, the operating cost, the year, and the energy cost figures):

Your actual operating costs will depend on your local utility rates and how you use this product. The estimated operating cost is based on a [Year] national average cost of [$____ per kWh, therm, or gallon] *for* [electricity, natural gas, propane, or oil].

For more information, visit www.ftc.gov/appliances.

(*iii*) For clothes washers and dishwashers, the statement will read as follows (fill in the blanks with the appropriate appliance name, the operating cost, the number of loads per week, the year, and the energy cost figures):

Based on [4 washloads a week for dishwashers, or 8 washloads a week for clothes washers] *a week. Your actual operating costs will depend on your local utility rates and how you use this product. The estimated operating cost is based on a* [Year] *national average cost of* $____ *per kWh for electricity and* $____ *per therm for natural gas.*

For more information, visit www.ftc.gov/appliances.

(*iv*) For pool heaters, the statement will read as follows (fill in the blanks with the appropriate appliance name, the operating cost, the year, and the energy cost figures):

The Thermal Efficiency (as expressed by a percent) is the measure of energy efficiency for pool heaters. Only pool heaters fueled by [natural gas/oil] *are used in this scale. Your actual operating costs will depend on your local utility rates and how you use this product. The estimated operating cost is based on a* [Year] *national average cost of* [$____ per kWh, therm, or gallon] *for* [natural gas or oil].

For more information, visit www.ftc.gov/appliances.

(4) The energy efficiency ratings for central air conditioners and furnaces on each page that lists the covered product.

* * * * *

§ 305.25 Exemptions. [Removed and Reserved]

17. The text of newly designated § 305.25 is removed and reserved.

18. Appendix A1 to part 305 is revised to read as follows:

Appendix A1 to Part 305—Refrigerators With Automatic Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 2.5		
2.5 to 4.4		
4.5 to 6.4		
6.5 to 8.4		
8.5 to 10.4		
10.5 to 12.4		
12.5 to 14.4		
14.5 to 16.4		
16.5 and over		

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

19. Appendix A2 to part 305 is revised to read as follows:

Appendix A2 to Part 305—Refrigerators and Refrigerator-Freezers With Manual Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 2.5		
2.5 to 4.4		
4.5 to 6.4		
6.5 to 8.4		
8.5 to 10.4		
10.5 to 12.4		
12.5 to 14.4		
14.5 to 16.4		
16.5 to 18.4		
18.5 to 20.4		
20.5 to 22.4		
22.5 to 24.4		
24.5 to 26.4		
26.5 to 28.4		
28.5 and over		

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

20. Appendix A3 to part 305 is revised to read as follows:

Appendix A3 to Part 305—Refrigerator-Freezers With Partial Automatic Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5		
10.5 to 12.4		
12.5 to 14.4		
14.5 to 16.4		
16.5 to 18.4		
18.5 to 20.4		
20.5 to 22.4		
22.5 to 24.4		
24.5 to 26.4		
26.5 to 28.4		
28.5 and over		

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

21. Appendix A4 to part 305 is revised to read as follows:

Appendix A4 to Part 305—Refrigerator-Freezers With Automatic Defrost With Top-Mounted Freezer Without Through-the-Door Ice Service

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5		
10.5 to 12.4		
12.5 to 14.4		
14.5 to 16.4		
16.5 to 18.4		
18.5 to 20.4		
20.5 to 22.4		
22.5 to 24.4		
24.5 to 26.4		
26.5 to 28.4		

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
28.5 and over		

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

22. Appendix A5 to Part 305 is revised to read as follows:

Appendix A5 to Part 305—Refrigerator-Freezers With Automatic Defrost With Side-Mounted Freezer Without Through-the-Door Ice Service

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5		
10.5 to 12.4		
12.5 to 14.4		
14.5 to 16.4		
16.5 to 18.4		
18.5 to 20.4		
20.5 to 22.4		
22.5 to 24.4		
24.5 to 26.4		
26.5 to 28.4		
28.5 and over		

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

23. Appendix A6 to Part 305 is revised to read as follows:

Appendix A6 to Part 305—Refrigerator-Freezers With Automatic Defrost With Bottom-Mounted Freezer Without Through-The-Door Ice Service

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5		
10.5 to 12.4		
12.5 to 14.4		
14.5 to 16.4		
16.5 to 18.4		
18.5 to 20.4		
20.5 to 22.4		
22.5 to 24.4		
24.5 to 26.4		
26.5 to 28.4		
28.5 and over		

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

24. Appendix A7 to Part 305 is revised to read as follows:

Appendix A7 to Part 305—Refrigerator-Freezers With Automatic Defrost With Top-Mounted Freezer With Through-The-Door Ice Service Range Information

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5		
10.5 to 12.4		
12.5 to 14.4		
14.5 to 16.4		
16.5 to 18.4		
18.5 to 20.4		
20.5 to 22.4		
22.5 to 24.4		
24.5 to 26.4		
26.5 to 28.4		
28.5 and over		

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

25. Appendix A8 to Part 305 is revised to read as follows:

Appendix A8 to Part 305—Refrigerator-Freezers With Automatic Defrost With Side-Mounted Freezer With Through-the-Door Ice Service

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 10.5		
10.5 to 12.4		
12.5 to 14.4		
14.5 to 16.4		
16.5 to 18.4		
18.5 to 20.4		
20.5 to 22.4		
22.5 to 24.4.		
24.5 to 26.4		
26.5 to 28.4		
28.5 and over		

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

26. Appendix B1 to Part 305 is revised to read as follows:

Appendix B1 to Part 305—Upright Freezers With Manual Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 5.5		
5.5 to 7.4		
7.5 to 9.4		
9.5 to 11.4		
11.5 to 13.4		
13.5 to 15.4		
15.5 to 17.4		
17.5 to 19.4		
19.5 to 21.4		
21.5 to 23.4		
23.5 to 25.4		
25.5 to 27.4		
27.5 to 29.4		

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
29.5 and over		

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

27. Appendix B2 to Part 305 is revised to read as follows:

Appendix B2 to Part 305—Upright Freezers With Automatic Defrost

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 5.5		
5.5 to 7.4		
7.5 to 9.4		
9.5 to 11.4		
11.5 to 13.4		
13.5 to 15.4		
15.5 to 17.4		
17.5 to 19.4		
19.5 to 21.4		
21.5 to 23.4		
23.5 to 25.4		
25.5 to 27.4		
27.5 to 29.4		
29.5 and over		

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

28. Appendix B3 to Part 305 is revised to read as follows:

Appendix B3 to Part 305—Chest Freezers and All Other Freezers

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual operating costs (dollars/year)	
	Low	High
Less than 5.5		
5.5 to 7.4		
7.5 to 9.4		
9.5 to 11.4		
11.5 to 13.4		
13.5 to 15.4		
15.5 to 17.4		
17.5 to 19.4		
19.5 to 21.4		
21.5 to 23.4		
23.5 to 25.4		
25.5 to 27.4		
27.5 to 29.4		
29.5 and over		

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

29. Appendix C1 to Part 305 is revised to read as follows:

Appendix C1 to Part 305—Compact Dishwashers

RANGE INFORMATION

["Compact" includes countertop dishwasher models with a capacity of fewer than eight (8) place settings. Place settings shall be in accordance with appendix C to 10 CFR part 430, subpart B. Load patterns shall conform to the operating normal for the model being tested.]

Capacity	Range of estimated annual operating costs (dollars/year)	
	Low	High
Compact		

30. Appendix C2 to Part 305 is revised to read as follows:

Appendix C2 to Part 305—Standard Dishwashers

RANGE INFORMATION

["Standard" includes dishwasher models with a capacity of eight (8) or more place settings. Place settings shall be in accordance with appendix C to 10 CFR part 430, subpart B. Load patterns shall conform to the operating normal for the model being tested.]

Capacity	Range of estimated annual operating costs (dollars/year)	
	Low	High
Compact		

31. Appendices D1 through D5 to Part 305 are revised to read as follows:

Appendix D1 to Part 305—Water Heaters—Gas

RANGE INFORMATION

Capacity	Range of estimated annual operating costs (dollars/year)			
	Natural gas ($/year)		Propane ($/year)	
First hour rating	Low	High	Low	High
Less than 21				
21 to 24				
25 to 29				
30 to 34				
35 to 40				
41 to 47				
48 to 55				
56 to 64				
65 to 74				
75 to 86				
87 to 99				
100 to 114				
115 to 131				
Over 131				

*No data submitted.

Appendix D2 to Part 305—Water Heaters—Electric

RANGE INFORMATION

Capacity	Range of estimated annual operating costs (dollars/year)	
First hour rating	Low	High
Less than 21		
21 to 24		
25 to 29		
30 to 34		
35 to 40		

RANGE INFORMATION—Continued

Capacity	Range of estimated annual operating costs (dollars/year)	
First hour rating	Low	High
41 to 47		
48 to 55		
56 to 64		
65 to 74		
75 to 86		
87 to 99		
100 to 114		
115 to 131		
Over 131		

*No data submitted.

Appendix D3 to Part 305—Water Heaters—Oil

RANGE INFORMATION

Capacity	Range of estimated annual operating costs (dollars/year)	
First hour rating	Low	High
Less than 65		
65 to 74		
75 to 86		
87 to 99		
100 to 114		
115 to 131		
Over 131		

*No data submitted.

Appendix D4 to Part 305—Water Heaters—Instantaneous—Gas

RANGE INFORMATION

Capacity	Range of estimated annual operating costs (dollars/year)			
First hour rating	Natural gas ($/year)		Propane ($/year)	
	Low	High	Low	High
Under 1.00				
1.00 to 2.00				
2.01 to 3.00				
Over 3.00				

*No data submitted.

Appendix D5 to Part 305—Water Heaters—Heat Pump

RANGE INFORMATION

Capacity	Range of estimated annual operating costs (dollars/year)	
First hour rating	Low	High
Less than 21		
21 to 24		
25 to 29		
30 to 34		

RANGE INFORMATION—Continued

Capacity	Range of estimated annual operating costs (dollars/year)	
First hour rating	Low	High
35 to 40		
41 to 47		
48 to 55		
56 to 64		
65 to 74		
75 to 86		
87 to 99		
100 to 114		
115 to 131		
Over 131		

*No data submitted.

32. Appendix E to Part 305 is revised to read as follows:

Appendix E to Part 305—Room Air Conditioners

RANGE INFORMATION

Manufacturer's rated cooling capacity in Btu's/yr	Range of estimated annual operating costs (dollars/year)	
	Low	High
Without Reverse Cycle and with Louvered Sides:		
Less than 6,000 Btu		
6,000 to 7,999 Btu		
8,000 to 13,999 Btu		
14,000 to 19,999 Btu		
20,000 and more Btu		
Without Reverse Cycle and without Louvered Sides:		
Less than 6,000 Btu		
6,000 to 7,999		
8,000 to 13,999 Btu		
14,000 to 19,999 Btu		
20,000 and more Btu		
With Reverse Cycle and with Louvered Sides.		
With Reverse Cycle, without Louvered Sides		

*No data submitted for units meeting Federal Minimum Efficiency Standards effective October 1, 2000.

33. Appendix F1 to Part 305 is revised to read as follows:

Appendix F1 to Part 305—Standard Clothes Washers

RANGE INFORMATION

[''Standard'' includes all household clothes washers with a tub capacity of 1.6 cu. ft. or more.]

Capacity	Range of estimated annual operating costs (dollars/year)	
	Low	High
Standard		

34. Appendix F2 to Part 305 is revised to read as follows:

Appendix F2 to Part 305—Compact Clothes Washers

RANGE INFORMATION

[“Compact” includes all household clothes washers with a tub capacity of less than 1.6 cu. ft.]

Capacity	Range of estimated annual operating costs (dollars/year)	
	Low	High
Compact		

Appendices G1 through G8, H, and I to Part 305 [Removed]

35. Appendices G1 through G8, H, and I to Part 305 are removed.

Appendices J1 and J2 to Part 305 [Redesignated as G1 and G2]

36. Appendices J1 and J2 to Part 305 are redesignated as Appendices G1 and G2 and revised to read as follows:

Appendix G1 to Part 305—Pool Heaters—Gas

RANGE INFORMATION

Manufacturer’s rated heating capacities	Range of estimated annual operating costs (dollars/year)			
	Natural gas		Propane	
	Low	High	Low	High
All capacities				

Appendix G2 to Part 305—Pool Heaters—Oil

RANGE INFORMATION

Manufacturer’s rated heating capacities	Range of estimated annual operating costs (dollars/year)	
	Low	High
All capacities		

37. Appendix H to Part 305 is revised to read as follows:

Appendix H to Part 305—Representative Average Unit Energy Costs

This Table contains the representative unit energy costs that must be utilized to calculate operating cost disclosures required under sections 305.11, 305.14, and 305.20. This Table is based on information published by the U.S. Department of Energy in 2007.

Representative average unit costs of energy for five residential energy sources

Type of energy	In commonly used terms	As required by DOE test procedure	Dollars per million Btu [1]
Electricity	____¢/kWh [2 3]	$_.__/kWh	$__.__
Natural Gas	$_.__/therm [4]	$_.____/Btu	$__.__
	$_.__/MCF [5 6].		
No. 2 heating oil	$_.__/gallon [7]	$_._____/Btu	$__.__
Propane	$_.__/gallon [8]	$_._____/Btu	$__.__
Kerosene	$_.__/gallon [9]	$_._____/Btu	$__.__

[1] Btu stands for British thermal unit.
[2] kWh stands for kiloWatt hour.
[3] 1 kWh = 3,412 Btu.
[4] 1 therm = 100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,031 Btu.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, 1 gallon of kerosene has an energy equivalence of 135,000 Btu.

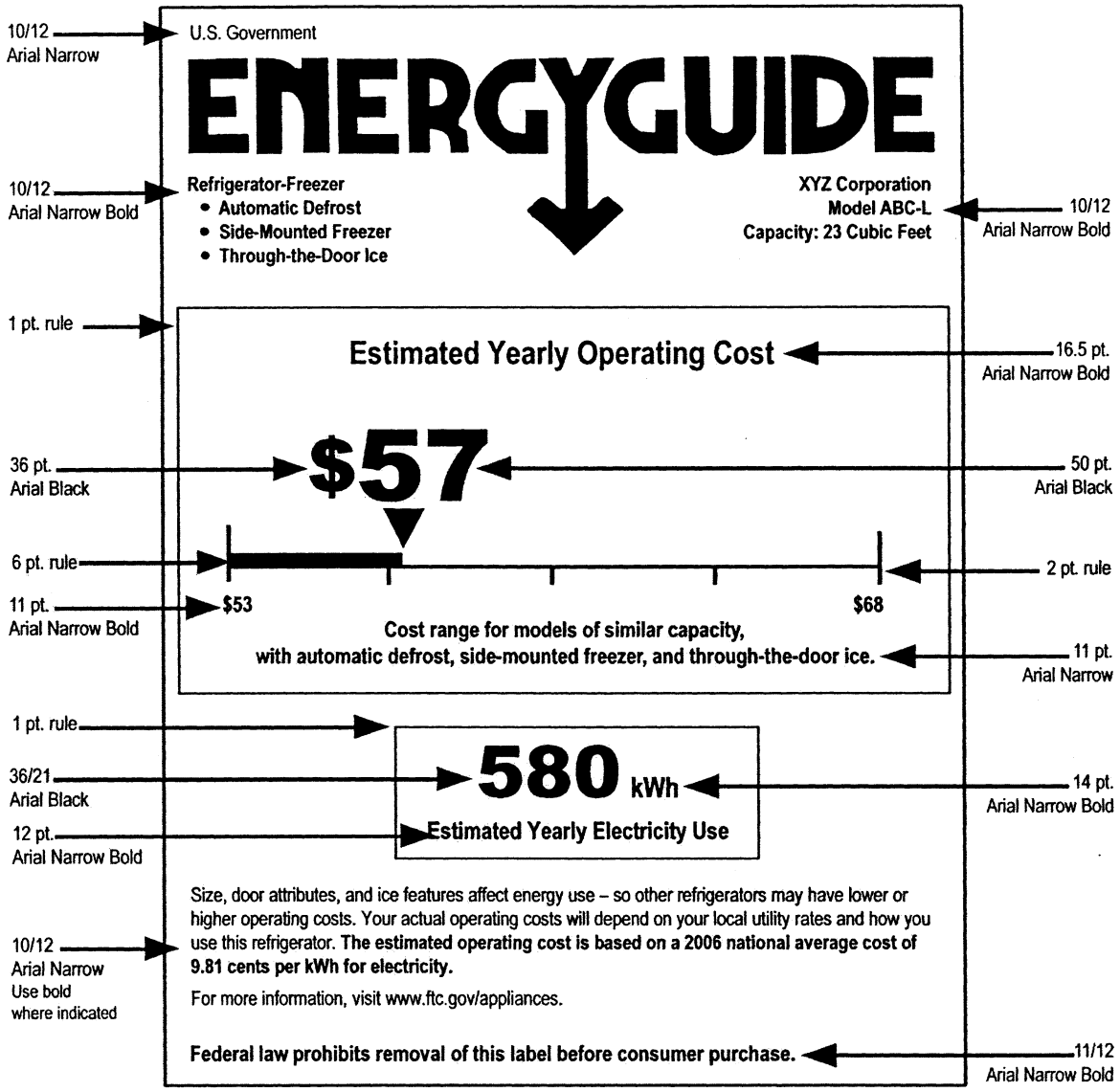
Appendix L [Redesignated as Appendix I]

38. Appendix L is redesignated as Appendix I.

39. Prototype label 1 and Sample labels 1 and 2 are revised and Prototype labels 2 through 5 and Sample labels 3 through 11 in newly designated Appendix I are removed to read as follows:

Appendix I to Part 305—Sample Labels

BILLING CODE 6750–01–P



PROTOTYPE LABEL 1

U.S. Government

ENERGYGUIDE

Refrigerator-Freezer
- **Automatic Defrost**
- **Side-Mounted Freezer**
- **Through-the-Door Ice**

XYZ Corporation
Model ABC-L
Capacity: 23 Cubic Feet

Estimated Yearly Operating Cost

$57

$53 **$68**

Cost range for models of similar capacity, with automatic defrost, side-mounted freezer, and through-the-door ice.

580 kWh

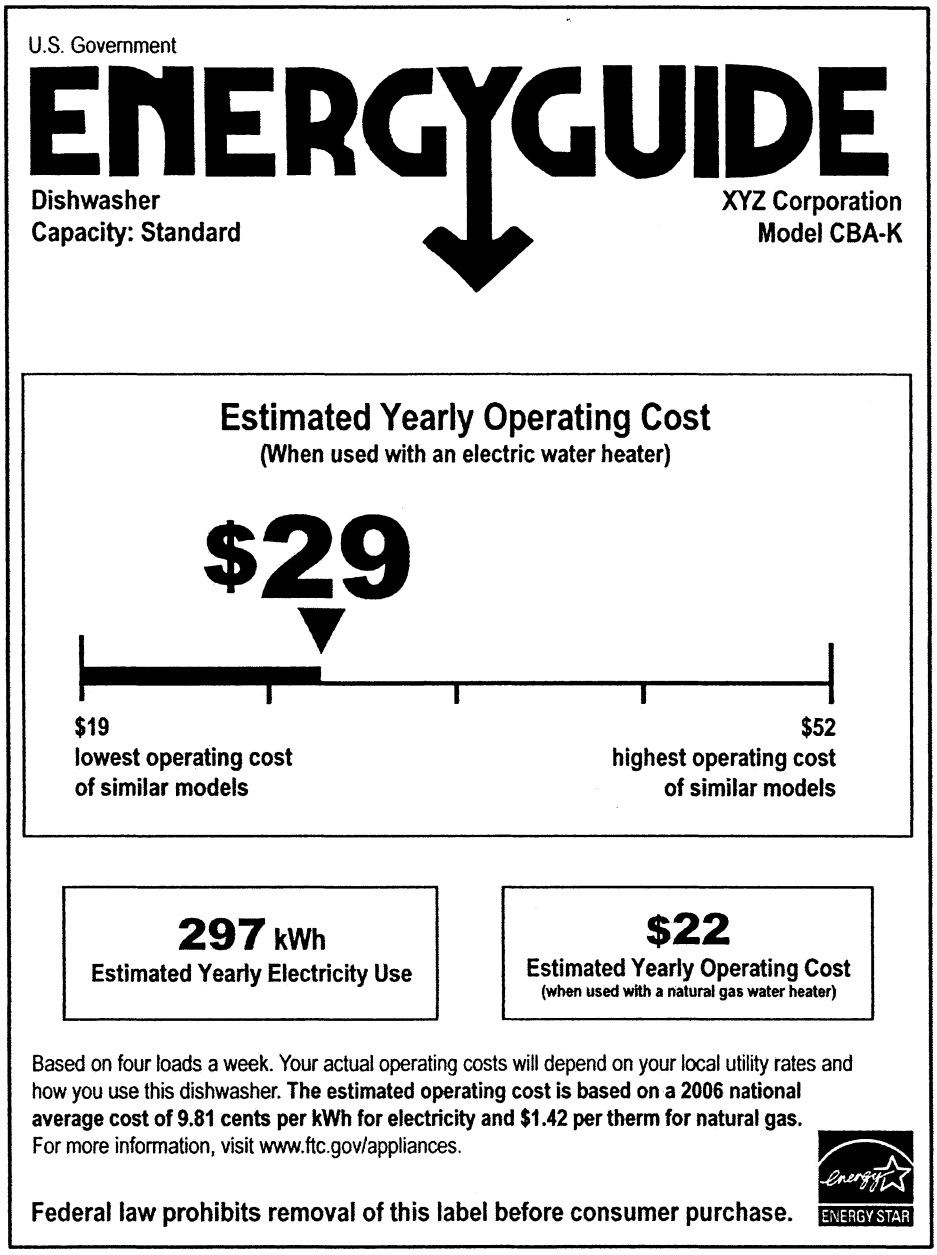
Estimated Yearly Electricity Use

Size, door attributes, and ice features affect energy use – so other refrigerators may have lower or higher operating costs. Your actual operating costs will depend on your local utility rates and how you use this refrigerator. **The estimated operating cost is based on a 2006 national average cost of 9.81 cents per kWh for electricity.**

For more information, visit www.ftc.gov/appliances.

Federal law prohibits removal of this label before consumer purchase.

SAMPLE LABEL 1



SAMPLE LABEL 2

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 07–613 Filed 2–12–07; 8:45 am]

BILLING CODE 6750–01–C

Federal Register

Tuesday,
February 13, 2007

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 12, 22, 31, 32, and 52

Federal Acquisition Regulation; Technical Amendments; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 22, 31, 32, and 52

[FAC 2005–15 Addendum; Docket FAR–2007–0003; Sequence 1]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes technical amendments to the Federal Acquisition Regulation (FAR) to update references inadvertently omitted from the original issuance of Federal Acquisition Circular 2005–15 published in the **Federal Register** at 71 FR 74656 on December 12 2006.

DATES: *Effective Date:* February 12, 2007.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–15 Addendum, Technical Amendments.

List of Subjects in 48 CFR Parts 12, 22, 31, 32, and 52

Government procurement.

Dated: February 7, 2007.

Ralph De Stefano,

Director, Contract Policy Division.

Federal Acquisition Circular

Number 2005–15 Addendum

Federal Acquisition Circular (FAC) 2005-15 Addendum is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration. This Addendum updates references inadvertently omitted from the original issuance of this FAC 2005-15.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-15 Addendum is effective February 12, 2007.

Dated: February 6, 2007.

Robert R. Jarrett, LTC, USA,

Acting Director, Defense Procurement and Acquisition Policy.

Dated: February 7, 2007.

Roger D. Waldron,

Acting Senior Procurement Executive, General Services Administration.

Dated: February 6, 2007.

Deborah C. O'Neill,

Acting Assistant Administrator for Procurement, National Aeronautics and Space Administration.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 12, 22, 31, 32, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 12, 22, 31, 32, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.207 [Amended]

■ 2. Amend section 12.207 by removing from the end of paragraph (b)(2)(ii) the word ''and''; and by removing the period from the end of paragraph (b)(2)(iii) and adding ''; and'' in its place.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.103–4 [Amended]

■ 3. Amend section 22.103–4 by removing from paragraph (c) ''paragraph (a)(3)'' and adding ''paragraph (a)(8)'' in its place.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.103 [Amended]

■ 4. Amend section 31.103 by removing from paragraph (b)(1)(ii) ''16.601(b)(3)'' and adding ''16.601(c)(3)'' in its place.

PART 32—CONTRACT FINANCING

32.111 [Amended]

■ 5. Amend section 32.111 by removing from paragraph (a)(7)(ii) ''paragraph (a)(2)'' and ''paragraph (f)'' and adding ''paragraph (a)(7)'' and ''paragraph (g)'' in its place, respectively.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.216–31 [Amended]

■ 6. Amend section 52.216–31 by removing from the introductory text ''16.601(e)(1)'' and adding ''16.601(e)(3)'' in its place.

52.232–7 [Amended]

■ 7. Amend section 52.232–7 by—

■ a. Removing from paragraph (a)(7) ''paragraph (f)'' and adding ''paragraph (g)'' in its place;

■ b. Removing from paragraph (f) ''paragraphs (f) and'' and adding ''paragraph'' in its place; and

■ c. Removing from the introductory paragraph of Alternate I ''paragraph (i)'' and adding ''paragraph (j)'' in its place; and by redesignating paragraph ''(i)'' as paragraph ''j''.

[FR Doc. 07–623 Filed 2–12–07; 8:45 am]

BILLING CODE 6820–EP–S

Federal Register

Tuesday,
February 13, 2007

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 91, 119, 121, 135, and 136

National Air Tour Safety Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 91, 119, 121, 135, and 136

[Docket No.: FAA–1998–4521; Amendment Nos. 61–115, 91–295, 121–328, 135–107, 136–1]

RIN 2120—AF07

National Air Tour Safety Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule sets safety and oversight rules for a broad variety of sightseeing and commercial air tour flights. The rule responds to National Transportation Safety Board (NTSB) recommendations, Government Accountability Office (GAO) reports, and Department of Transportation Inspector General Reports that recommend better oversight of the sightseeing and commercial air tour industry. The intended effect of this final rule is to standardize requirements for air tour operators and consolidate air tour safety standards within part 136.

DATES: This final rule is effective March 15, 2007, except for amendments to §§ 119.1(e)(2), 121.1, and 135.1(a)(5) and (a)(8), which are effective September 11, 2007. Also, affected parties do not have to comply with the information collection requirements in §§ 91.146, 91.147, 136.7, and 136.13 until the FAA publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) for this information collection requirement. Publication of the control number notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8166; facsimile: (202) 267–8229; e-mail: *alberta.brown@faa.gov.* For legal information, contact: Bruce Glendening, Operations Law Branch, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8011; facsimile: (202) 267–7971; e-mail: *bruce.glendening@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page, type in the last four digits of the Docket number shown at the beginning of this document (4521). Click on search.

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the item you wish to view.

You can also get an electronic copy using the Internet through the FAA's web page at or the Government Printing Office's Web page at: *http://www.access.gpo.gov/sudocs/aces/acrs140.htm.* You can also get a copy of this final rule by mail by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. You can find out more about SBREFA on the Internet at *http://www.faa.gov/avr/arm/sbrefa.cfm.* All operators affected by this final rule are ''small'' by definition.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. This rule is issued under the authority granted to the Administrator by Congress in 49 U.S.C. section 40103. Under section 40103(b)(1), the Administrator is given the authority to ''develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft * * *'' Section 40103(b)(2) grants the Administrator the authority to ''prescribe air traffic regulations on the flight of aircraft including regulations on safe altitudes for (A) navigating, protecting and identifying aircraft; (B) protecting individuals and property on the ground; (C) using the navigable airspace efficiently; and (D) preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects.''

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I. Background

Air Tour operations are conducted in all parts of the United States over various types of terrain. This terrain includes, but is not limited to, national parks, fairgrounds, and urban, coastal, and mountainous areas that range from unpopulated to densely populated. The operators conducting these flights as a regular part of their business are

commonly known as air tour operators, and their operations are often referred to as commercial air tours.

Commercial air tours vary in many ways, but certain characteristics apply to nearly all: (1) A single pilot typically conducts the flight during daylight hours in a single engine airplane or helicopter; (2) flights are typically conducted in visual meteorological conditions, often without radar coverage or traffic advisories from an air traffic control facility; (3) flights may be conducted near popular scenic areas geographically limited in size and in dense air traffic in which the mix of airplanes and helicopters may have different flight characteristics (e.g., speed and maneuverability). Because of all of these factors and characteristics, a pilot must use heightened vigilance and greater precision in navigation to conduct a commercial air tour successfully and safely.

In addition, terrain is often a major factor considered in a safely conducted flight. Many popular scenic areas are located in remote, rugged terrain where the attraction is the natural beauty of the site. To view the natural beauty, commercial air tours are normally conducted at relatively low altitudes, between 500 and 1,500 feet above ground level (AGL). Flights conducted at these altitudes may be close to obstructions and often are alongside higher terrain. In addition, many air tour operators conduct flights over water. When the terrain factor is added to those discussed above, you have a unique industry needing equally unique regulations to ensure a safe and pleasurable experience for the passenger.

Currently, commercial air tours beyond 25 statute miles of the departure airport, and most commercial air tours over a unit of the national park system, must be conducted by someone certificated under Title 14 of the Code of Federal Regulations (14 CFR) part 119, Certification: Air Carriers and Commercial Operators. These commercial air tours must operate in accordance with either part 121; Operating Requirements: Domestic, Flag, and Supplemental Operations, or part 135; Operating Requirements: Commuter and On Demand Operations and Rules Governing Persons On Board Such Aircraft. Parts 121 and 135 contain operational, safety, and training rules that are not limited to air tour operations.

Part 91, General Operating and Flight Rules, applies to air tour operators that takeoff and land at the same airport and stay within 25 miles of that airport using a ''25-mile exception'' in 14 CFR 119.1(e)(2), 121.1(d), and 135.1(a)(5).

In order to address the unique circumstances surrounding air tour operations, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 22, 2003 (68 FR 60572). The proposed rule was modeled on Special Federal Aviation Regulation (SFAR) 71, which currently governs the commercial air tour industry in Hawaii. In the NPRM, we proposed to improve the overall safety of all commercial air tours by requiring certification under part 119, except for certain charitable, nonprofit, or community events. New safety standards in part 136 were proposed in the NPRM for all air tour operators, and the proposal would have resulted in renaming and expanding the entire part. We proposed removing the 25-mile exception altogether. The proposals presented in the NPRM have been dropped, revised, or adopted as discussed in this final rule.

II. Summary of the Final Rule

A. Applicability

This final rule applies to commercial air tours conducted in airplanes and helicopters only. It does not apply to gliders (powered or unpowered), balloons, parachutes (powered or unpowered), gyroplanes, or airships.[1] In this final rule we address three groups of commercial air tour operations in airplanes and helicopters:

Group 1. Part 119 certificate holders with authority to conduct commercial air tour flights in accordance with either part 121 or part 135;

Group 2. Part 91 operators conducting commercial air tour flights in accordance with the exception contained in section 119.1(e)(2) (also known as the 25-mile exception); and

Group 3. Part 91 operators conducting flights for certain charitable, nonprofit, or community events in accordance with the exception contained in § 119.1(e)(2).

Group 1

This group of commercial air tour operators must be certificated under 14 CFR 119, to operate in accordance with either part 121 or 135. Part 121 and part 135 contain operational, safety, and training rules for these operators. Additionally, this group must comply with the safety provisions in part 136. This first group continues to be subject to the drug and alcohol testing requirements of parts 121 and 135.

Group 2

This group consists of air tour operators that would have been certificated as an air carrier like the first group if it weren't for the 25-mile exception in §§ 119.1(e)(2), 121.1(d), and 135.1(a)(5). Because of the exception, this group is allowed to conduct flights under the operating rules of part 91. The exception will continue, except for flights over the Grand Canyon National Park.[2] Even though flights are not conducted under part 121 or part 135, this second group of operators continues to be subject to drug and alcohol testing requirements. The number of flights allowed is not limited,[3] but private pilots may not be used. Each operator must apply for, and operate in accordance with, a Letter of Authorization (LOA) issued by the FAA. This group must comply with the safety requirements of part 136 subpart A (as mandated in § 91.147).

Group 3

This last group of operators conducts commercial air tours for certain charitable, nonprofit, and community events. The flights of this group will be limited to the 25-mile exception. This final rule establishes a new § 91.146 for charitable, nonprofit, and community event flights allowing them to continue operating in part 91.[4] Section 61.113(d) is revised to delete the word ''airlift,'' and a reference to the new § 91.146 is added to allow private pilots to fly such events, and it allows them to operate without drug and alcohol testing. Private pilots must have at least 500 hours total flight time. Sponsors and their pilots for charitable and nonprofit events are limited to four events each

[1] The National Parks Air Tour Management Act of 2000 (49 U.S.C. 40128) (Act) is only peripherally implicated by this rule in that the existing regulations are moved from part 136, subpart A to part 136, subpart B. The Act applies to all powered aircraft, not just airplanes and helicopters. To the extent an operator covered by this rule flies within an area covered by the Act, it must meet all requirements imposed either directly or by regulations implemented under the Act. If not a helicopter or airplane, the requirements imposed by this rule will not apply.

[2] The exception continues in a limited sense over all other national parks, because the Act allows a total of five commercial air tours per month by someone who does not hold a part 119 certificate. (See SFAR 50–2; part 93, subpart U; and part 136, subpart B).

[3] Other than at most national parks where flights are limited to not more than five per month through § 136.37.

[4] The FAA finds that (1) logging flight time is a form of compensation; (2) most charities are a business holding out to the public through advertising and collection of fees directly through payment of money much like an air carrier, or indirectly through ''donations''; and (3) private pilots normally may not fly for compensation or hire. However, the FAA finds that it is in the public interest to allow some charitable, nonprofit, and community event flights to be conducted under part 91.

calendar year. Sponsors and their pilots for a community event are limited to one event per calendar year. An ''event'' may involve several flights but may not last more than three consecutive days. New § 91.146 defines three kinds of flights that can be operated under part 91, and need not be operated under part 135. The operators of these flights must comply with the safety requirements in part 136 subpart A, but are not required to conduct drug and alcohol testing.

This group was previously allowed to operate without drug and alcohol testing requirements through individual exemptions. The language from those exemptions is incorporated into § 91.146.

B. Changes From the NPRM

The final rule differs substantially from what was proposed in the NPRM in several areas. Most of the changes are directly in response to comments submitted by the public. Most of the significant changes are listed here and the justification for the changes can be found under the discussion of comments and FAA response that follows. The changes include:

—Part 136 is divided into subparts. Subpart A is National Air Tour Safety Standards. Subpart B is National Parks Air Tour Management (previously the only thing in part 136). Subpart C is reserved for SFAR 50–2 and Part 93, subpart U (both addressing Grand Canyon flight operations).

—The proposed elimination of the 25-statute mile exception in § 119.1 will not be adopted. The 25-mile exception remains in §§ 119.1(e)(2), 121.1(d), and 135.1(a)(5).

—Commercial air tour operators in parts 121 or 135 who also conduct commercial air tours in part 91 must have both operations specifications and a Letter of Authorization.

—SFAR 71 for Hawaii is removed and has been incorporated into the final rule language as Appendix A to part 136.

—Section 135.1(c) is removed because certain references to drug and alcohol testing have been rewritten.

—Proposed deviation authority in the NPRM is deleted.

—Proposed changes to minimum altitudes, standoff distances, visibility, and cloud clearance in the NPRM are deleted.

—The final rule section for life preservers for overwater operations (proposed § 136.13, final § 136.9) is modified to greatly reduce the burden for operators for airplanes with floats, and to some degree, the burden for helicopters with floats. ''Life preserver'' and ''shoreline'' are defined in § 136.1.

—Helicopter performance plan (proposed § 136.17) and Helicopter operating limitations (proposed § 136.19) are merged (final § 136.13) and amended.

C. Compliance Dates

This final rule is effective thirty days after publication. Operators must demonstrate compliance with the new requirements 180 days thereafter. The only exception is for helicopter floats. The FAA recognizes that affected operators may need more than six months to equip their helicopters with floats. Accordingly, we are allowing 18 months for operators who need to modify their helicopters to complete those modifications.

D. Before and After this Rule

To further help readers understand the changes to commercial air tour operations in this final rule, we include here a chart that clearly illustrates which existing regulations this final rule affects and what new requirements are included.

Regulatory section	Before this rule	After this rule
	PART 61	
Section 61.113	Paragraph (d) of this section provided for the use of private pilots during charity flights. The section contained certain conditions and limitations on how private pilots could operate for compensation or hire in the interest of charity. Some of those conditions and limitations included who was considered a charity, how a sponsor must notify the FAA of an operation, what kind of airport was acceptable for such operations, the airworthiness of the aircraft in operation, and the number of hours a private pilot must have to operate such flights.	Section 61.113 now directs the reader to 91.146.
	PART 91	
Section 91.146	Did not exist	Many of the conditions and limitations from 61.113 are retained in this new section. They are kept mostly intact with some revisions to the private pilot hour requirement, what information the FAA requests of the sponsor, and the number of events a sponsor and pilot may participate in each year[5]. New requirements in this section include: 1. We define the terms charitable event, non-profit event, and community event. 2. A private pilot operating a flight described in this section must have 500 hours. This is increased from the previous requirement for 200 hours. 3. Operations under this section are limited for sponsors and pilots. No sponsor or pilot may exceed 4 charitable or non-profit events per calendar year, or exceed 1 community event per calendar year. 4. All flights under this section must be non-stop, beginning and ending at the same airport, and flown within a 25-mile radius of the airport. This has always been the case, but not as easy to find.

Regulatory section	Before this rule	After this rule
		5. Operators under this section must conduct operations in airplanes or helicopters with a standard airworthiness certificate. 6. Operators under this section must comply with part 136, subpart A (National Air Tour Safety Standards).
Section 91.147	Did not exist	This section applies to part 91 operations for compensation or hire. 1. Operators under this section must apply for and receive a Letter of Authorization (LOA). This removes the burden of Operations Specifications that come with full air carrier status, yet allows the FAA to build a database of part 91 compensation or hire operators conducting air tour operations. 2. Operators under this section must comply with drug and alcohol requirements. This is not a new requirement, but some operators have misunderstood the requirement. Certain operators have received an exemption from drug and alcohol testing requirements. 3. Operators under this section must comply with part 136, subpart A (National Air Tour Safety Standards). 4. Operators under this section must conduct operations in airplanes or helicopters with a standard airworthiness certificate. Some Antique/Vintage civil and military aircraft operating under this section will continue to need exemptions from this requirement.
		PART 119
Section 119.1	This section prescribes Applicability, and paragraph (e)(2) describes the ''25-mile exception'' cited in the final rule.	Paragraph (e)(2) remains largely the same. The differences in the final rule are: 1. The paragraph used to refer to ''sightseeing flights,'' (undefined) and now refers to ''Commercial Air Tours'' (defined in 119.3 and part 136, subpart A). 2. The paragraph clarifies that operations in this exception are for compensation or hire. 3. Operators using this exception must comply with the LOA issued under 91.147. 4. Operations in this exception must be conducted in airplanes or helicopters with a standard airworthiness certificate.
		PART 121
Section 121.1	This section prescribes Applicability for Part 121. Paragraph (d) addresses sightseeing flights.	Paragraph (d) is amended to replace the term ''sightseeing'' with ''Commercial Air Tours.'' This section also requires compliance with part 136, subpart A (National Air Tour Safety Standards). We make a technical correction in paragraph (d) to include alcohol testing requirements in two sections that were inadvertently removed in a previous rulemaking (121.458 and 121.459).
		PART 135
Section 135.1	This section prescribes Applicability for Part 135. Paragraph (a)(5) addresses sightseeing flights, and paragraphs (c) and (d) defined ''operator'' and drug and alcohol testing requirements.	1. Paragraph (a)(5) is amended to replace the term ''sightseeing'' with ''Commercial Air Tours.'' Also, the paragraph now makes reference to 119.1, and requires compliance with part 136, subpart A (National Air Tour Safety Standards). 2. Paragraph (c) is amended. Previously, paragraph (c) defined an ''Operator'' as it pertains to the requirements for Part 135. We now reference part 119 to provide the drug and alcohol definition for ''Operator'' and replace the testing old paragraph (c) with a new one that is made up of the requirements previously found in paragraph (d). Part 119 did not exist when 135.1(c) was written, so this is a technical amendment.
		PART 136
Subpart A (136.1–136.13).	Did not exist	This Subpart contains the safety standards and definitions applicable to Commercial Air Tours.
Subpart B	Did not exist	We moved the requirements that were previously the whole of part 136 into new sections and this new subpart, but didn't change any of the substance. This subpart contains National Parks Air Tour Management regulations.
Subpart C	Did not exist	We created a Subpart C and reserved the space for the possible movement of the Grand Canyon air traffic rules (SFAR 50–2 and Part 93 Subpart U) so commercial air tour regulations are in one location.
Appendix A	Did not exist	This Appendix holds all of the requirements once found in SFAR 71—Operations in Hawaii. These requirements were previously attached to Part 91, but we moved them into this newly created Appendix to have all Commercial Air Tour regulations in one location: Part 136.

Regulatory section	Before this rule	After this rule
Miscellaneous Requirements		
SFAR 71	Was a separate rule located in front of Part 91.	SFAR 71 has always been attached to Part 91. We have taken all of SFAR 71 and inserted it as Appendix A into Part 136. Now air tour operators in Hawaii will find the same conditions and limitations in SFAR 71 in this new Appendix. We have not changed the text, only the location.
SFAR 50–2 and Part 93, Subpart U.	SFAR 50–2 is a separate SFAR located in front of Part 91, and Part 93, Subpart U is where it is.	These regulations pertaining to air traffic routes and guidance in Grand Canyon National Park remain unchanged. We reserve ''Subpart C'' in Part 136 for whenever we decide to co-locate these regulations with other Commercial Air Tour regulations.

III. Comment Summary

We received more than 2,300 comments to this rule from individual pilots, trade organizations, commercial air tour operators, charity organizations, historic aircraft operators and others. At the request of commenters, the FAA extended the comment period twice, allowing a total of 240 days in which to comment. The FAA also convened two face-to-face public meetings; one in Washington, D.C. on May 11, 2004, and the other in Las Vegas, NV on May 21, 2004. In addition, the FAA conducted a two-week Virtual Public Meeting on the Internet from February 23 to March 5, 2004, that was further extended an additional two weeks to March 19, 2004 due to the many comments received.

While some commenters supported the proposed rule, most notably the National Transportation Safety Board (NTSB), most commenters opposed the NPRM on one or more of the following grounds:

1. FAA is attempting to impose a one-size-fits-all mentality.
2. FAA does not recognize the geographical and environmental differences associated with different operations.
3. Part 91 operators will go out of business if forced into part 135.
4. Millions of Americans would be denied the opportunity to experience flight at a grassroots level. This would ground vintage aircraft, barnstorming, military history, and other areas of aviation promotion and heritage.
5. The existing rules are more than adequate if obeyed by operators and enforced by the FAA against operators who do not obey them.
6. The proposal is not supported by accident data. Since air tour accidents are all in part 135, why does the FAA propose to place all operators in part 135?
7. There is insufficient evidence to ensure that the proposed rules, if adopted, would result in increased safety.
8. Flights operated for ''charity'' would be stopped.
9. Deviation authority should not be in the rule.
10. The proposed rule mixes helicopters and airplanes at one altitude (compression).
11. Compliance with proposed minimum altitudes and standoff distances result in an undesirable tour and thus would result in a loss of business.
12. Many operators have agreements with air traffic to conduct flights a certain way and this proposal conflicts with those specific agreements.

Below we discuss and respond to the many suggestions and arguments presented to us during the comment period. We broke our response to comments into four major categories to make it easier to read. Within those four categories, we have tried to address some general concerns before providing any detailed response. For instance, it became obvious when reading comments that many people did not understand the difference between an ''exemption,'' an ''exception,'' and a ''deviation.'' Therefore, we answer that question before going into specific comments under the ''part 91 operations'' section of comment response. The four categories we've used to organize our response to comments are:

1. General comments on the proposal;
2. Comments on extending part 135 certification for the entire industry;
3. Comments on part 91 operations; and
4. Comments on part 136 operating requirements.

IV. General Comments on the Proposal

The comments addressed here were in opposition to the general nature of the rule. Comments in opposition to specific parts of the proposal are addressed in the sections two, three, and four of this preamble.

A. National Transportation Safety Board (NTSB) Recommendations

The Aircraft Owners and Pilots Association (AOPA) stated that the ''FAA has promulgated this NPRM in response to NTSB recommendations concerning the safety of commercial air tours.'' AOPA argued that FAA had already issued regulations to address most of the NTSB's concerns through SFARs 50–2 (Grand Canyon) and 71 (Hawaii), and therefore, the sole justification for the NPRM was NTSB recommendation A–95–58, which recommended eliminating the 25-mile sightseeing exception in § 119.1(e)(2). AOPA asserted that the FAA's accident data does not support inclusion of sightseeing and charity flights,'' and contended that ''the FAA is NOT compelled to adopt all NTSB recommendations and has the authority and ability to close NTSB recommendations with alternative or no action.'' AOPA cited a few specific examples from the 549 NTSB recommendations it found ''that were closed with no action taken because the FAA either disagreed with the NTSB's recommendation or failed to take action in a timely manner.''

The FAA agrees with AOPA that it is not compelled to adopt NTSB recommendations. The NTSB is charged with issuing recommendations that it believes will improve the safety of aviation without any consideration of the costs of these recommendations. In this case, the recommendations were based on a study of the entire air tour industry; including operations conducted under the 25-mile exception. The FAA decided during the NPRM stage of this rulemaking that the NTSB recommendations had some validity and attempted to meet their intent with proposed rule language.

In view of the comments, we have decided not to eliminate the 25-mile exception as presented in the proposal. The cost associated with placing all air tour operations into part 121 or part 135 far outweighs any potential increase in safety. However, aviation safety requires these commercial air tours comply with

[5] We have imported several conditions for private pilot operations in support of charity, non-profit, and community event flights from approximately 100 existing exemptions.

some additional safety rules. The problems that resulted in the NTSB recommendations are not limited to the Grand Canyon and Hawaii. They are common to most commercial air tour flights conducted throughout the U.S. Thus, many aspects the special aviation safety rules that apply to commercial air tour operations in the Grand Canyon and Hawaii should also apply to the rest of the country.

The NTSB, in its comments submitted to the NPRM, supported the proposed rule and believed implementation of the requirements in the proposal was long overdue. We have analyzed all comments received in response to the NPRM and find that the regulatory action the FAA is taking is an appropriate and responsible response to the NTSB recommendations.

B. SFAR 71 Should Not Be the Model

A number of commenters, including the Experimental Aircraft Association (EAA), the United States Air Tour Association (USATA), the Helicopter Association International (HAI), Blue Hawaiian Helicopters, Air Vegas Airlines, and the National Air Transportation Association (NATA), questioned the FAA's basis for modeling the proposed rules on SFAR 71, which governs the commercial air tour industry operating in Hawaii. Commenters argued that the SFAR 71 rules were not responsible for the improved safety in air tour operations in Hawaii. They stated that air tour operations in Hawaii are safer because of improved technology and operators taking more action to improve safety. Specifically, Papillon Airways Inc., commenting on behalf of the Tour Operators Program of Safety (TOPS), cited two reports that state SFAR 71 had no effect on the accident rate reduction since its enactment. One report posited that the altitude restriction in SFAR 71 has actually made air tours in Hawaii more dangerous by compressing available airspace. The other acknowledged a decrease in accidents but did not credit SFAR 71 with that decrease. Papillon claimed that the reduction in the number of accidents since SFAR 71 is due entirely to replaced engines (resulting in fewer power failures) and the creation of TOPS.

Other commenters, including the NTSB and NorthStar, stated that FAA did not complete a review of the effectiveness of SFAR 71 in this rulemaking process, which they believe is necessary to evaluate whether the SFAR 71 rules actually accomplished their intended goal. They also commented that the majority of existing part 121 and 135 air tour operations are concentrated in unique areas of the nation, primarily Hawaii and the Grand Canyon, and that these environments are not typical of the remainder of the country. They suggested it would not be appropriate to extrapolate regulations that might be working in one specialized area to the entire universe of air tour operations. Additionally, they stated that there are already layers of regulations applicable to Hawaii and the Grand Canyon, and the NPRM would establish complicated rules, making compliance all the more difficult.

The FAA agrees that there may be multiple reasons for accident rate improvement in Hawaii and other parts of the country. However, we also believe that SFAR 71 has had a positive impact. Certainly, improved technology aided in making air tour operations in Hawaii safer, but we do not support the claim that technology and operator action are solely responsible for improved safety. Rather, we believe there is a relationship between the imposition of a minimum, mandatory safety standard and the decrease in accidents. Purely voluntary improvements that significantly increase safety would be unlikely to coincide so neatly with the implementation of SFAR71.

The United States has many areas with rugged terrain, bodies of water, and vertical cliffs that are subject to rapidly changing weather patterns. Although air tours may vary as to what kind of terrain is flown over, the FAA's concerns over flights conducted throughout the United States are the same. For example, flight over water presents a risk to passengers regardless of whether that water is the Pacific Ocean, Lake Mead, or a large reservoir.

C. Withdraw the NPRM and Establish an Advisory Committee

A number of commenters (AOPA, NATA, Antique Airplane Association, Aviation Foundation of America (AFA), The Lightship Group) recommended the FAA withdraw the NPRM on the grounds that, as NATA asserted, ''There is a lack of sufficient data to support the FAA's determination of a need for, and the costs associated with, the proposed regulations.'' AOPA stated, ''Nothing in the original **Federal Register** notice or information that has been made available during the comment period, including the FAA virtual meeting, indicates there is a significant safety issue on sightseeing and charity flights that the FAA must address by advancing this rulemaking initiative.''

The Antique Airplane Association suggested the FAA consider ''the formation of an industry run organization to effect and enhance these type operations.'' AFA and The Lightship Group recommended the FAA establish an Aviation Rulemaking Committee or an Aviation Rulemaking Advisory Committee to assist in drafting a rule taking the aviation community's concerns into account.

We declined to establish a rulemaking committee to develop national air tour standards. The FAA already developed an NPRM for National Air Tour Safety Standards, had a 240-day comment period, and conducted an Internet meeting and two public meetings. We received over 2,300 comments in the docket. We do not believe a rulemaking committee would provide any additional information. Accordingly, we have developed this final rule based on the comments already submitted.

D. Accident Data Does Not Support Change

A number of commenters questioned the accident data used by the FAA to justify the proposed rule changes. Most of these commenters questioned the basis for requiring operation under part 135 since a high number of the cited accidents involved aircraft operating under part 135 at the time of the accident. Collings said, ''Since many of the accidents involve part 135 operators, it should be clear that part 135 is not the answer.'' The Seaplane Pilots Association stated, ''Of the 12 accidents cited as exemplary of the need for this change, 83% were conducted under part 135.'' Similarly, the Tennessee Department of Transportation stated, ''Part 135 air tours resulted in almost twice as many deaths as their part 91 counterparts.''

The Minnesota Department of Transportation (MDOT) raised questions about the statistics cited in the NPRM and asserted that they did ''not bolster the argument that part 135 operations are safer.'' MDOT said that there was no data that would allow the reader to put the cited numbers in context. MDOT asked, ''Did the 75 accidents stem from 1,000 or 10,000 or 100,000 total operations?''

The Professional Airways Systems Specialists (PASS) questioned the FAA's use of the August 24, 1997, crash off Ocean City, MD, as one of the reasons for changing the rules. The NTSB report indicated that the aircraft stalled and crashed because the pilot began an aerobic maneuver at an altitude of approximately 300 feet AGL. PASS asked, ''Since the aircraft was already in violation of a FAR, how is making the pilot meet part 119 and part 135 going to keep this kind of accident from happening?'' The Seaplane Pilots

Association also asserted, ''Many of the accidents profiled resulted from actions that are prohibited under both part 91 and part 135, and part 135 status appeared to have little effect on the safety of the flights profiled in the NPRM.'' TOPS said, ''Safety statistics do not justify special regulations for helicopter tours conducted by commercial operators under part 135 (as differentiated from ''sight-seeing'' flights conducted on an ad hoc basis under part 91).'' It continued, ''TOPS operators during calendar year 2003 experienced 1.13 accidents per 100,000 air tour hours, compared with 998 accidents per 100,000 flying hours for the civil helicopter fleet at large.''

Kenmore Air Harbor questioned the use of accidents in Hawaii (particularly helicopter accidents) to justify the proposed rule. Kenmore stated, ''Needed regulations, which address safety deficiencies in Hawaii should not nor need not apply to other geographical areas.'' HAI, NorthStar Trekking (NorthStar), and other commenters also questioned the use of Hawaii accidents to justify the proposed rule changes. In a similar vein, AFA stated that the accidents cited as justification for the NPRM are mostly helicopter operations over water in Hawaii and do not reflect the ''superb safety record of part 91 fixed wing operators* * *''

The NTSB argued that better reporting requirements could lead to the development of better data. It stated, ''national air tour safety standards should include a provision that is similar to 14 CFR 121.693(e), which requires the certificate holder to include a list of passengers' names on the load manifest or to secure this information by another means.''

The FAA acknowledges that the data on part 91 accidents is less than ideal. Thus, comparing a list of part 135 accidents against a list of part 91 accidents is not productive. Only a few of the total number of part 91 accidents researched were listed in the NPRM. The official NTSB accident reports we researched didn't specify whether the flight was ''sightseeing.'' Some reports said ''sightseeing'' in the narrative, but most only noted the flight as part 91. Because of these limitations in the data, the FAA cannot assume that part 91 flights are, in fact, safer than part 135 flights. An accident during a part 91 operation at a traditional sightseeing spot like the Grand Canyon, Niagara Falls, or at a water fall in Hawaii is normally expected to be a sightseeing flight, but it might not be. An accident report that doesn't say ''sightseeing'' or ''air tour'' is not necessarily a definitive report that sightseeing did not take place, or that the flight would not be considered an air tour. The data on part 135 operations is more robust. A part 135 sightseeing accident is normally listed that way; as a sightseeing accident. The part 135 operators conducting sightseeing flights are well known and their accidents are usually newsworthy. Most part 135 sightseeing operators conduct sightseeing flights all day, every day (although some are seasonal) providing more data points.

In other words, the accident data presented in the NPRM may have given the impression that there were more part 135 accidents than part 91, but that is not necessarily true, particularly as a percentage of total sightseeing operations. As we discussed in the NPRM, we have definitive data between 1993 and 2000 that there were 75 part 91 commercial air tour accidents, and 53 part 135 commercial air tour accidents. While the data is simply not accurate enough for us to conclude an exact number of part 91 flights that include sightseeing and how many of those have had an accident, the captured part 91 flights need new standards for their operation. MDOT makes a good point in its comment that the number of accidents listed is hard to put into perspective unless it is known how many part 91 and part 135 commercial air tour flights took place in that time. The first step in gathering enough information to calculate an accurate accident rate will be the establishment of the database supported by the application and approval of LOAs, as required in § 91.147. Since we are not requiring part 91 operators to report flight hours in this final rule, we still will not be able to calculate an accident rate when this rule is published. However, part of the safety improvements in this rule include increased FAA oversight of these operations. Through the LOA, we will now have geographic oversight of operations on which we previously did not have information. In response to the NTSB comment and recommendation to include a provision similar to 14 CFR § 121.693(e) in the rule, which would have required operators to list passenger names on load manifests, that recommendation is outside the scope of this rulemaking. However, we anticipate that the database based on LOA applications will generate useful data for future analysis.

The FAA does not agree with the commenters who believe rulemaking to improve regulatory safety is not justified unless an actual accident is experienced by a particular operator, group of operators, type of operator, or foundation. Such an approach would result in an impracticable regulatory scheme and would inevitably result in the FAA failing to adequately assure the safety of the flying public. When the NTSB and FAA investigate an accident, the recommendations are applied to the broad category of operators or persons who conduct the same type of operation and who might have the same potential risk of a similar accident. For instance, if particular operators using 30-passenger turboprop airplanes crash on approach due to preventable crew errors, the FAA would not regulate only those particular crew members. The FAA would regulate all operators and crews using the same equipment. In this final rule the FAA is regulating the air tour industry, not just those air tour operators experiencing an accident.

E. Increased Noise and Other Impacts on National Parks

The USATA believed the proposed lower altitudes for multi-engine helicopters provided an incentive to convert to noisier twin-engine helicopters. The commenter believed this was in conflict with the National Parks Air Tour Management Act of 2000, which mandates incentives for quiet technology aircraft. USATA stated, ''This mixed message is confused and shows a lack of policy coherence and initiative. Which way does the FAA want the helicopter air tour industry to go? The FAA should have a well reasoned, coherent and coordinated plan that addresses both public safety and noise abatement for the air tour industry.''

NorthStar commented that the proposed altitude restrictions would be less safe and would result in more noise impact. NorthStar also commented that the FAA had not included any noise data or analysis as a part of this NPRM and had therefore not provided an adequate opportunity for comment on what appears to be the rationale behind the change in minimum altitudes.

The National Park Service (NPS) was particularly concerned about the potential for adverse effects on wildlife resources as a result of the proposed altitude restrictions. The NPS was concerned that the proposed minimum standard of 1,000 feet AGL over ''raw terrain'' may affect sensitive park resources or visitor experience. Of special concern to NPS were the proposed special deviations that would have allowed the FAA to approve a lower minimum altitude of not less than 500 feet AGL for single engine helicopters, and not less than 300 feet AGL for multi-engine helicopters. The NPS commented that the scientific community had studied the effects of

aircraft flight on wildlife for many years and provided details on studies that showed negative impacts to wildlife due to low-level aircraft. NPS concluded, ''The NPS appreciates the concerns of the NTSB and the FAA that minimum flight standards could create a compressed flight environment, particularly over areas of high interest. However, no analysis of alternatives has been presented for the suggested AGL and therefore, without additional information, it is not possible to determine if there is an option that affords greater protection to park resources while also allowing for a safe, high quality air tour.''

NPS also stated that it was a cooperating agency and cosignatory with the FAA and they together are responsible for implementation of the National Parks Air Tour Management Act of 2000. Accordingly, the NPS had some concern regarding the potential impact this rulemaking process will have on the National Environmental Policy Act (NEPA) analyses and resultant air tour management plans (ATMPs). NPS stated that the National Parks Air Tour Management Act also outlines appropriate alternative actions that may be considered in an ATMP. These actions, NPS commented, may include the prohibition of air tours over a national park, in whole or in part, and may establish conditions for the conduct of commercial air tours. The operations may include commercial air tour routes, maximum or minimum altitudes, time of day restrictions and maximum number of flights per a unit of time. NPS stated that two of these actions, commercial air tour routes and maximum or minimum altitudes, are identical to the type of actions identified in the proposed rule.

We did not propose any commercial air tour routes, time of day restrictions, or maximum number of flights per unit of time in the NPRM, because this rule is limited to addressing the safety of air tours, not their impact on the environment. As noted by NPS, those concerns are more appropriately handled as part of the ATMPs. In regard to altitudes, we did not adopt any of the proposed altitude changes, and the long-standing altitude restrictions continue unchanged. Accordingly, the FAA does not believe that this rule changes the ATMP analysis in this regard.

The FAA does not agree that this rule will circumvent the goal of the Act and its promotion of quieter aircraft. The FAA anticipates ATMPs will address NPS's concerns for the national parks by establishing tour routes, altitude limits, incentives for quiet aircraft technology, and other requirements where necessary. Since many of the air tour operators fly inside and outside national parks, the conversion to quiet technology will have a broader benefit than just inside national parks. In any event, this final rule does not change any of the altitude minimums already in place. Those altitudes are safety-driven. Any future ATMP final rule that changes altitude minimums must meet established safety standards.

With regard to the NPS's specific concern about allowing airplanes to descend to 1,000 feet AGL and helicopters to 500 feet AGL or 300 feet AGL, the FAA notes that current part 135 Visual Flight Rule (VFR) minimum altitudes are established in § 135.203 at 500 feet above the surface during daytime for airplanes, and 300 feet above the surface for helicopters operating over congested areas. There is no listed minimum for helicopters over other-than-congested areas. In other-than-congested areas, helicopters may go below 300 feet AGL. FAA Advisory Circular 91–36D, Visual Flight Rules (VFR) Flight Near Noise-Sensitive Areas (as amended, September 17, 2004), recommends a 2,000 feet AGL limit over ''noise sensitive areas.'' This is a voluntary limit that is based on general environmental concerns and not the safety concerns that are the identified purpose of this final rule.

The FAA has more restrictive altitude standards for air tours in Grand Canyon National Park and Hawaii because of the large number of commercial air tour flights in a relatively small amount of airspace and the demonstrated hazards. In view of many of the comments and our reassessment of the relative safety risks, the FAA decided not to change minimum altitudes in other portions of the country. For the same reasons, we decided not to adopt the proposed visibility, cloud clearance, and standoff distance restrictions for other portions of the country. Any ATMP supplements this final rule.

V. Comments on Part 135 Certification

A. Against Part 135 Certification

Some commenters stated that the requirement to be certificated under part 119 and obtain approval to operate under part 135 would be difficult or impossible for certain types of aircraft and operations. Sopwith Ltd., used as an example the Ford TriMotor aircraft it operates, and stated, ''While the Ford is a type-certificated design and holds a standard airworthiness certificate, the Ford cannot be operated under part 135, because it cannot meet all the requirements of part 135.'' Similarly, AFA commented that many vintage ex-military aircraft and foreign type-certificated aircraft do not hold standard airworthiness certificates and cannot qualify under part 135. EB Air asked how operators of such aircraft would address and conform to the many part 135 requirements regarding time life items such as engine and propeller total times, engine accessory service life, and replacement of parts.

Bar Harbor Aviation commented that the additional paperwork, bookkeeping, manual writing, equipment, time, and money required to become a part 135 operation would not make the operation any safer, just more complex and expensive to operate. Waldo Wright's Flying Service commented that, ''Because of the increased regulatory standards and certification costs of a multi-pilot part 135 certificate, I would have no choice but to split my company up and apply for a one aircraft-one operator part 135 certificate for each aircraft.'' Waldo Wright also commented on the difficulty and expense of obtaining insurance for operations conducted under part 135, compared to part 91. USATA believed a ''one-size-fits-all'' approach was not the most prudent way to approach the issue. USATA stated that the FAA failed to take into consideration the uniqueness of full-time commercial air tour operations and the considerable experience of current part 135 and 121 commercial air tour operators in publishing the NPRM, and would impose additional new requirements with too broad a regulatory brush. USATA stated, ''Evidence of that is clear since nearly every operational regulatory provision contained in this NPRM also contains a way in which the FAA Administrator may grant exceptions. If nearly all of these proposed requirements are 'exceptionable,' then the justification for imposing them in the first place must be suspect.'' AFA stated that there is no statistical data that can lead one to conclude that the affected operations would be any safer if required to become certificated and operated under part 135.

AOPA stated that ''It is important to note that the primary reason for eliminating the part 91 exemption under the National Parks Air Tour Management final rule was not because of safety, but was a regulatory means to control these operations for purposes of conducting air tours over national parks.'' Similar comments were made during public face-to-face meetings and the Internet meeting.

In the National Park Air Tour Management final rule, certification under part 119 was required for all

operators with limited exceptions. The FAA issued the final rule for the National Parks requiring certification for many reasons, including improved safety and oversight, and to meet requirements contained in legislation.

Many of these part 91 operators compete with part 135 commercial air tour operators, and have chosen to operate under the exception provided in § 119.1(e)(2). In making this choice, the operator does not have the flexibility provided to an air carrier but can significantly lower operational costs while receiving compensation for the flight. The FAA recognizes that many of the commenters *could* meet the requirements to operate under part 135, but only at a significant increase in overall cost of operation.

Aircraft with an airworthiness certificate that is other than ''standard'' (e.g., ''Restricted Category,'' ''Limited Category,'' or ''Experimental Category'') cannot be used to carry people for compensation or hire.[6] (14 CFR 91.313, 91.315, 91.317, and 91.319.) An ''Experimental Category'' certificate does not allow carrying passengers at all. Most, if not all, of the military and many vintage airplanes have restricted airworthiness certificates. Thus, the operators of such aircraft can only carry persons for compensation or hire if they have an exemption. Many of the commenters said they do not fit into part 135, but it is evident that some of those same commenters also may not fit into part 91 when carrying passengers for compensation or hire. The FAA recognizes that some of the aircraft with other than standard airworthiness certificates could meet standard airworthiness certificate requirements. Operators of these aircraft could apply for a standard airworthiness certificate, which would relieve them of any obligations to operate under an exemption.

In response to many of these comments, the FAA will allow operators currently conducting air tours under part 91 to remain in part 91. The 25-mile exception in § 119.1(e)(2) will not be eliminated as proposed. Since these operations tend to be similar to commercial air tour operations (i.e., day-time VFR, low-level, single pilot, short-term, non-stop flights over varying types of terrain), we will require these flights to comply with the safety provisions of part 136 subpart A.

The 25-mile exception is for passenger-carrying compensation or hire flights in airplanes (of a certain size) and helicopters (of a certain size) operating within 25-statute miles of the departure airport, and the flight must return to that same airport. As has always been the case, the exception does not apply to point-to-point transportation landing at a second airport. Passenger-carrying flights operated for compensation or hire outside the exception must be conducted in accordance with the operating provisions of parts 121 or 135 as appropriate, or under an exemption.

We added the requirement to § 91.147, Passenger carrying flights for compensation or hire (Not otherwise covered by § 91.146), for operators to apply for and operate in accordance with a Letter of Authorization (LOA). LOAs are legal documents required by rule to be in writing and under which the operator must provide certain information concerning how it conducts its business. This provision addresses the concerns voiced in NTSB Recommendation A–95–58, where the NTSB expressed concern that the FAA did not have any way of overseeing these operators, because FAA didn't know who they were and where they operated. This LOA requirement provides us with basic information on the operator and its business that is less extensive than the information and numerous other requirements needed to become an air carrier, but greater than what we have under the existing regulations. The LOA merely adds some data elements to the registration requirements already applicable to these operators under the FAA's drug and alcohol testing regulations. We have determined that the LOA is significantly less burdensome than obtaining a part 119 certificate for operations under 135. Because the LOA requirement provides a relationship between the FAA and the § 91.147 operator, as well as the information the FAA needs for tracking the operator, we believe it satisfies the substance of the NTSB's recommendation.

B. ''Sightseeing'' vs. ''Commercial Air Tours''

EAA maintained there should be a regulatory distinction between ''air tour operators'' and ''sightseeing'' flight operations. EAA saw air tour operators as being fairly substantial commercial ventures operating a fleet of aircraft in continuous (perhaps seasonal) service over recognized public attractions such as national parks and monuments. However, EAA believed operators conducting more casual ''sightseeing'' flights using a single aircraft and more random general interest routing should not be held to the same standards as ''air tour operators.'' In this regard, EAA believed the existing exception for ''sightseeing flights'' from parts 119 and 135 is appropriate. EAA provided suggested rule language to clarify the definition of ''commercial air tour'' and to make other changes.

PASS stated that the FAA's proposed response to the NTSB's recommendation number A–95–58 is flawed and unworkable because it failed to recognize the differences between operators providing public air transportation in the full sense of the word (i.e. a certificated air carrier), and those providing a lesser service. PASS stated that Congress intended the FAA to provide only a sensible ''minimum level of safety standard'' for other air commerce operations when they enacted the FAA Act of 1958, and again when they re-codified the law at 49 U.S.C. 44701. In the FAA's set of proposals, PASS stated, the FAA did not adequately consider the differences between public transportation of an air carrier, and the unique type of ''sightseeing event'' this segment of air commerce provides to the public.

The General Aviation Manufacturers Association (GAMA) commented that ''The air tour industry is rich in its diversity with companies ranging from individuals that offer rides in single airplanes to organizations specializing in vintage flying to helicopter and fixed wing operators with large fleets operating in the nation's national parks.'' According to GAMA, the NPRM did not properly accommodate the range of operations performed by these different entities.

HAI also commented that a distinction should be drawn and recognized by the FAA between commercial air tours and sightseeing operations. According to HAI, commercial air tours, for the most part, are conducted under part 135 where the operator realizes a major part of its income is from air tours and advertises, either seasonally or annually, for air tours over specific and recognizable scenic features. Sightseeing, on the other hand, tends to fall under part 91, where less specific, more generalized flights are conducted over different and varying routes. HAI commented that there are significant numbers of operators who safely conduct thousands of sightseeing flights under part 91. HAI stated the FAA did not produce any compelling evidence indicating that the relatively small percentage of passengers choose to sightsee via part 91 operations do so at an increased risk.

Similarly, Sopwith, Ltd., stated that the FAA had lost sight of what is, and what is not, a ''commercial air tour.'' The problem, according to Sopwith, is confusion over the word ''sightseeing.''

[6] See 14 CFR 91.313, 91.315, 91.317, and 91.319.

Sopwith believes local flights flown as introductory rides or as barnstorming rides in vintage aircraft may be characterized as ''sightseeing'', but they are not a ''commercial air tour'' activity. Sundance Helicopters, Columbia Seaplane Pilots Association, Papillon Airways, Inc., U.S. Parachute Association, and the Collings Foundation made similar comments.

Offering a different view, NATA believed ''there is sufficient cause to maintain local sightseeing in part 91,'' and ''FAA could take steps to identify the population and implement any necessary safety standards within part 91, should they be necessary.''

We have listened to the comments and decided not to force any part 91 operators to move into part 135 as long as they adhere to the conditions of the 25-mile exception. Many operators in part 91 now operate a business similar to an air carrier that is limited to conducting commercial air tours. They advertise for hire and carry more passengers than many air carriers. Their Websites are replete with advertising, and many operate every day and move from airport to airport seasonally.

HAI commented that there are thousands of part 91 flights conducted in a single aircraft, with a single pilot. We know there are many operators who conduct flights under part 91 (single pilot, compensation or hire flights in an on-demand environment), under the existing 25-mile exception. Some of these operators go to a different airport each weekend and conduct flights under the 25-mile exception at that new airport. These operators have been conducting flights with little oversight by the FAA since they have no fixed base of operation and no assigned Flight Standards District Office (FSDO). This rule captures these part 91 operations by requiring the operators to report to the local FSDO or through an LOA stored in an FAA database.

One purpose of this rule is to raise the existing level of safety specifically for current part 91 air tour operators. In view of several comments, we believe that if we eliminated the 25-mile exception, many operators who now operate under that exception would go out of business. The FAA believes there are other alternatives to achieve satisfactory safety goals, minimize impact on the industry, and still increase the level of safety, rather than eliminating the 25-mile exception. We are imposing the safety requirements found in part 136 subpart A on all commercial air tour operators, including those operating under the 25-mile exception. We set forth our justification for the part 136 subpart A safety requirements further in the document. In addition, we are adopting the data collection provisions that would have been included had these operators been required to comply with part 135 (see new § 91.147). The data that we collect will assist the FAA in monitoring these operations, which will result in greater oversight of the industry and the ability to measure the safety benefits of the rule.

Before this final rule, § 119.1(e)(2) applied to certain ''sightseeing'' flights for compensation or hire conducted within 25 miles of the takeoff airport and return to the same airport (not point-to-point transportation). In this final rule, we have deleted the word ''sightseeing'' from the 25-mile exception and inserted the phrase ''commercial air tour'' in its place. (See new § 119.1(e)(2)) It is important to note that commercial air tours are defined as flights of which one purpose is sightseeing. Sightseeing is one of the several factors the FAA considers when assessing whether or not a flight is an air tour operation. (See ''commercial air tour'' definition new sections 136.1 and 119.3).

C. Antique/Vintage Civil and Military Aircraft

Many commenters addressed the applicability of the proposals to classic and vintage military aircraft used for ''barnstorming'' rides. The AFA stated that the result of implementing the NPRM ''would be the elimination of 'barnstorming' as we know it. In the process tens of thousands of people will be deprived each year of the opportunity to experience golden age, classic and vintage military aircraft by riding in such aircraft at air shows, county fairs or just for the fun of going to a local airport where such rides are offered.'' GAMA did not believe that the air tour rules should address ''barnstorming,'' stating, ''there is no accident record indicating that this type of operation is at risk. These airplanes are maintained by enthusiasts who are highly safety conscious and well equipped at properly managing the risk of that type of flight operation.''

AFA also commented that virtually no historic or vintage aircraft can meet part 135 regulations, and the burden on the owner/operator of such aircraft to write manuals, become certified, keep records, and operate under part 135 rules would impose a severe economic burden that few would chose to meet even if the aircraft qualified under part 135. NATA commented that many businesses are built around the concept of ''seeing the sights'' in an antique or vintage aircraft. NATA conducted a survey on the NPRM and found that those who reported sightseeing rides were their primary business also reported that they did not believe their aircraft could meet part 135 requirements.

Commenters stated that the main obstacle to part 135-certification would be meeting the airworthiness requirements. Waldo Wright's Flying Service listed some types of aircraft used for barnstorming, such as the Travel Air 4000, the New Standard D–25, the Brunner Winkel Bird, the Boeing Stearman, the Waco UPF and YKS models, and stated, ''While some of the above aircraft manufactured in the 1940's may have Pilot Operating Handbooks, Maintenance and Parts Manuals, the aircraft vintage 1929–1939 have no such luxury; they are operated in accordance with markings, placards and operations limitations. To bring aircraft like these into conformity with FAR Part 135 would be very costly to small operators, if not impossible.'' They suggest that, instead of requiring certification under part 119, part 91 operators be required to submit a Written Statement of Operation that states who will do what flights, where, when, and in what equipment. This statement could be renewed annually along with the submission of a flight hour summary and completion of a survey. The FAA could then monitor the industry and collect reliable and accurate data that could then be used for future comparison and study.

Alaska Seaplanes suggested that part 91 operators be registered with their local FSDO, which would help the FAA develop statistics and enforce the current rules. Alaska Seaplanes also suggested leaving part 91 as it is but with the addition of §§ 135.117 (briefing), 135.183 (over water), and §§ 135.203 and 135.205 (altitude and visibility) for these compensation and hire flights.

Various commenters suggested ways to limit the applicability of the proposed rule. Waldo Wright's Flying Service suggested the FAA impose the floats requirement or restrict overwater flights in helicopters, but leave other operators alone. Sopwith Ltd. suggested adding barnstorming flights and introductory rides to the list of excluded operations in proposed § 119.1. Similarly, Belle Air Tours suggested that vintage aircraft be added to the list of aircraft excluded from these rules, such as balloons, gliders, warbirds, and aerobatic and air combat simulation flights. The Collings Foundation suggested excluding non-profit organizations, currently operating safely under exemption letters, from this rule. EB Air commented that this

segment of aviation is most often operated by small one or two plane operations constrained by the high cost of aircraft ownership, maintenance, rising fuel costs, and seasonal weather. PartAir, Inc., stated that the NPRM is ''an ill-considered and misplaced effort at improving 'safety' through elimination-by-regulation of a significant area of aviation.''

Barnstorming Adventures, Ltd., commented that sightseeing and air tour operations could be made safer; however it strongly recommended to the FAA that a layer of regulation is not the answer. This commenter provided an extensive summary of its sightseeing operations and the economics of the industry. Barnstorming Adventures, Ltd. suggested that some oversight of the industry would be acceptable compared to the proposed certification as a part 135 air carrier. The commenter suggested that certification, as proposed in the NPRM, would be costly and unjustified.

There are many terms for the types of aircraft considered in these comments. The terms include: barnstorming, vintage, military, warbirds, antique, and classic. The FAA recognizes that this type of operation is often a ''business'' traveling from airport to airport offering rides for a fee, much like those aircraft operators traveling from farm to farm offering airplane rides in the early part of the 20th century. Today, ''barnstormers'' travel from airport to airport and offer rides in antique and vintage airplanes, thus recreating the experience of the past by using the same airplanes used during that era. There is no way to know which flights are only ''introductory'' flights. The FAA also recognizes that in order for these businesses to exist and collect money, a means to allow compensation or hire flights must be provided in the regulations.

Prior to the FAA proposal, the only exception provided from certification under part 119 that effectively fit these flights was the 25-mile sightseeing exception in aircraft with standard airworthiness certificates. Although commenters have stated that sightseeing is not always a purpose of the flight, the FAA considers the overall character of the flight to be sightseeing, even if a primary purpose may be the experience of flight in an historic aircraft. There are hundreds of part 135 small one or two-plane operations that are also constrained by high cost, aircraft ownership, maintenance, rising fuel cost and seasonal weather. In response, we have decided to retain this 25-mile exception with some minor revisions.

- ''Barnstorming'' operators using aircraft with standard airworthiness certificates may continue to operate under part 91, but if they desire to continue to use the 25-mile exception, they must comply with the process provided by FAA in this final rule to allow an operator to apply for and receive an LOA. The LOA, obtained through the operator's FSDO, will include information such as the operator's name, address, management, maintenance responsibility, aircraft information, and the operator's drug and alcohol prevention program. Sufficient time is provided in the rule for operators to apply for and receive the approved LOA from the FAA. Once received, operators must comply with the provisions of the LOA when operating under new § 91.147. The operator must keep the information in the LOA current. This will develop a database as NTSB and Alaska Seaplanes recommended.
- ''Barnstorming'' operators should realize that the new § 91.147, which allows them to operate under part 91 rather than part 135, continues to require each aircraft have a standard airworthiness certificate (not Limited, Restricted, or Experimental Categories). We know that many of the aircraft used in these types of experience flights can never have standard airworthiness certificates and operate under an exemption today.[7] These operators will continue to need an exemption from the standard airworthiness requirement for all compensation or hire aircraft operations.

VI. Comments on Part 91 Operations

A. Charity, Nonprofit, and Community Events

Before discussing the specific comments about part 91 operations, we believe it is beneficial to the reader and those affected by this rule to explain some of our terms up front. It became apparent, especially during the Internet meeting, that many affected by this final rule were confused about certain terms we use.

1. What is the difference between an exception, an exemption, and a deviation?

Many comments indicated confusion with the terms ''exception'' and ''exemption.'' An exemption is permission the FAA grants pursuant to 14 CFR part 11 to a specific party to allow that party to operate outside the regulations. The party requesting the exemption must show unique circumstances why a particular regulation, or portions of that regulation, should not apply to it. The party must also demonstrate that granting an exemption will not adversely impact safety. Grants of exemption generally have conditions and limitations specific to the request made by the petitioner. The exemption applies only to the person(s) or company it is issued to, and has a specific exemption number assigned to it. Exemptions are designed to address unique circumstances not contemplated by existing regulations and are not applicable to a significant portion of the regulated entities. A familiar type of exemption granted by the FAA are those to sponsors and pilots conducting certain flights for charitable organizations that allow them to operate without drug and alcohol testing.

An exception is written into the regulation with the word ''except'' and is available to everyone. An operator does not have to apply for an exception. If an operator meets the conditions for the exception, the general rule no longer applies for the operator. For example, a rule might read: ''Except in the cases described in paragraphs (d) through (g) of this section, all aircraft must be painted red before takeoff.'' The exceptions to red paint would be found in paragraphs (d), (e), (f), and (g).

A deviation is provided in regulatory language when the FAA foresees circumstances under which the general rule language shall not apply. A deviation is different from an exception in that a deviation requires specific approval from the Administrator. However, unlike an exemption (which also requires Administrator approval), deviations can be approved at the local level whenever good cause is shown. It is not necessary to demonstrate unique circumstances. For example, proposed § 136.7, Visibility, had a two statute mile visibility requirement during the day in paragraph (a), but paragraph (b) allowed for authorization by the Administrator to operate a helicopter during the day in visibility of at least one statute mile in accordance with the deviation procedures of § 136.21. The proposed Visibility and Deviation authority have been deleted in this final rule in response to public comments.

By reading the thousands of comments, the FAA found that many different types of operators use the ''25-mile exception.'' This exception relieves the operator from holding a part 119 air carrier certificate and permits it to operate under part 91. Some operators

[7] Today, the FAA issues exemptions for World War II era airplanes with Experimental and Restricted Category airworthiness certificates that include extensive maintenance and operational requirements.

don't know they use the 25-mile exception, but they would need to hold a part 119 air carrier certificate for their operations without it. Many of these commenters said they are not offering ''sightseeing'' flights, and that they just let the passengers ''experience'' something—e.g., aviation history, military history, or freedom. What some commenters misunderstood is that the general rule requires that someone carrying people or property for compensation or hire must comply with air carrier rules. While there are exceptions to this general rule (such as those found in 119.1(e)), there is no exception for ''experience'' flights. We believe many of these operators not only give the passengers an ''experience,'' but also do some form of sightseeing and thus fall within the 25-mile exception. The same set of safety standards will apply to these flights regardless of how the operator chooses to describe them. In § 136.1, we define a commercial air tour and list what we will consider in determining what kind of operation is considered a commercial air tour. Sightseeing is described in the definition. Therefore, if you are offering sightseeing as part of one of these ''experience'' flights, you might fall within the 25-mile exception, but you would be subject to the safety provisions of part 136 subpart A.

In addition, many pilots appear not to know the conditions and limitations of the exemption they operate under. During the FAA's Internet meeting, one private pilot said that he had already conducted certain flights for a couple of years and didn't have 200 hours yet. The sponsor for whom this pilot flew clearly requires 200 hours of total time for private pilots.[8] Either the sponsor holding the exemption did not brief that particular pilot, or the pilot did not know he was operating under an exemption at all. The conditions and limitations of an exemption are specific and require the sponsor (to whom the exemption was issued) to brief the pilots about the exemption prior to each event. This discussion continues under the private pilot hour requirement heading below.

Also during the FAA's Internet meeting, it became clear some pilots don't know the FAA's drug and alcohol testing requirements apply to them. Some commenters openly admit they advertise for customers, charge for flights, pay their workers, and otherwise operate as a business. They are clearly not flying for charity, and are not operating under any exemption. These operations are for compensation or hire and are subject to the drug and alcohol testing requirements.

In this final rule, the FAA gives relief for drug and alcohol testing for the limited operations in § 91.146 in the interest of charity. Section 91.147 may be used by those not willing to be limited to a certain number of events in a calendar year. Section 91.147 requires drug and alcohol testing compliance.

2. What are charitable, nonprofit, and community events?

For the purposes of our rule, we have categorized organizations and operations that operate for ''free'' or solely for the benefit of others in three different ways. These events are either sponsored by a ''charitable'' or ''nonprofit'' organization, or qualify as a ''community event.''

A charitable event is an event that raises funds for a charitable organization recognized as such by the U.S. Department of the Treasury under 26 U.S.C. section 170 (Internal Revenue Code). Sponsoring pilots and donors may deduct contributions that raise funds for the benefit of a charitable organization. An example of a charitable organization event is a pancake breakfast at which passengers make a contribution to an organization, such as the American Cancer Society, in exchange for breakfast and a flight over their town. A nonprofit event is an event that raises funds for a nonprofit entity organized under State or Federal law, with one of the entity's purposes being the promotion of aviation safety. The sponsor or the pilot(s) of nonprofit event flights would not deduct contributions under section 170 of the Internal Revenue Code. For example, aviation museums conduct flights to raise funds to keep the museum in operation and preserve the aircraft in their possession. A community event is a flight flown for a good or worthy cause and occurs only once in a calendar year, January 1–December 31. The sponsor or pilot of community event flights would not deduct contributions under section 170 of the Internal Revenue Code. An example of a community event is flights to raise money to assist a family whose home was destroyed by fire. Another example is a raffle for a free flight; the money raised from the raffle goes to purchase new computers at the youth center.

The operating limitations and regulations for charitable, nonprofit, and community events are found in this rule under §§ 91.146 and 91.147. Those sections provide the total duration (three days) allowed under each designation (charitable, nonprofit, community event) and describe who is eligible to conduct such events. Part 91 operators who want to continue in part 91 and operate charity flights may do so under § 91.146. Part 91 operators who are uncomfortable with the limitations in § 91.146 and wish to continue flights benefiting charities, nonprofit organizations, and individuals or organizations supporting a community event may use § 91.147. Charities or nonprofits also have the option of becoming a part 135 operator.

While the FAA has clarified the regulatory language in the final rule, the comments to the NPRM disclosed several misconceptions about the differences between charitable, nonprofit, and community events.

One major misconception relates to the difference between a flight that is ''free'' and one flown for compensation or hire. Several charities receive compensation through ''donations.'' Some passengers donate money to a charity and expect a flight in return for donating money. Another popular ''free'' flight is one given at an event that charges a fee for attendance and each person paying the fee receives a ''free'' aircraft ride during the event. The FAA considers these flights to be operated for compensation or hire.

It is often hard to determine whether a pilot is working for ''free,'' or is being compensated in some manner. In the interest of charity, the FAA has allowed certain forms of compensation or hire, such as the ability to log pilot time and the ability to accept payment for aircraft fuel and oil. Some pilots own or borrow the aircraft used and aren't paid for their pilot time. Some pilots rent an aircraft and are reimbursed by the sponsor. Some pilots are reimbursed for aircraft rental but provide their time for free. Some pilots who own the aircraft they fly are able to ''write-off'' some ownership expenses. Some pilots are paid to fly.

A pilot who flies his or her own aircraft every weekend of the year and receives compensation each weekend is not working for ''charity'' when a portion of the proceeds is given to the airport manager the last day of the event. At best, that is a gift to the airport manager and is often given to guarantee an invitation to the next event. Other pilots and mechanics are retired or wealthy and really do work for free, a true gift to charity.

Some charities have full-time pilots and mechanics on their payroll and maintain expensive aircraft and facilities. These organizations need money for employees of the organization and for maintaining their

[8] The operation was subject to EAA's Exemption No. 7830 for ''Young Eagles'' and is discussed in more detail later in this preamble.

facilities, but that does not exclude them from the list of charity, nonprofit, or community event operators. The aircraft used for charity, nonprofit, and community event flights must be maintained and that money must come from somewhere. All of the flights by these museums and charities involve ''compensation,'' but in the interest of public good and charity, the FAA has allowed them to operate outside of part 135 requirements. In this final rule, operators of these kinds of flights will continue to be allowed to operate outside of part 135 requirements, even though the FAA considers the operations to be for compensation or hire. However, there are certain new requirements they must abide by, and those are found in §§ 91.146 and 91.147.

3. The Four-Event Limit for Charitable and Non-Profit Organizations and the One-Event Limit for Community Events

AFA and Sopwith Ltd. objected to the proposed condition in § 119.1(e)(11) limiting charitable rides conducted under part 91 to four events per organization per year with each event lasting no longer than 3 days. The commenters thought the proposed restriction is not justified and is unnecessary.

The Collings Foundation went further by commenting that many of the proposed restrictions, including the requirements for a standard airworthiness certificate and a limit of four or fewer events per calendar year per organization or pilot without a clearly defined exemption, would totally eliminate the capability of nonprofit organizations to fly historic aircraft. Organizations such as the EAA, Commemorative Air Force, Collings Foundation, National Warplane Museum, and Yankee Air Force, fly historic aircraft at many locations around the country. Collings argued that these organizations would no longer be able to function. Also, many nonprofit aviation organizations could not survive without donations associated with a flight experience or special donations to keep certain aircraft flying. The Collings Foundation cited estimates that more than one-half of all B–17s and all of the B–24s and B–29s flying today would be grounded by the proposed rule.

EAA stated that its organization and its network of nearly 1,000 chapters is one of the largest sponsors of charitable and community flight operations in the world. EAA stated that its success rate and safety record are unparalleled and are supported by strenuous training and oversight programs sponsored by the association. EAA stated that it and several other organizations also conduct aircraft demonstration flights all over North America, giving the public an unmatched opportunity to experience firsthand the history of aviation in such aircraft as the Ford Tri-Motor, a Boeing B–17 bomber, and a replica of the famous Spirit of St. Louis. EAA opposed inclusion of additional requirements on these operations in the strongest terms.

The Owls Head Transportation Museum commented that the proposed rules would affect not only the Museum, but also many other nonprofit organizations in the mid-coast Maine area. The museum stated that it has high standards placed on its aircraft, maintenance, and pilots. The museum also boasted that, although it has given more than 3,000 rides, it has maintained a perfect safety record, incurring neither accident nor incident. The Museum also donates a number of rides to other nonprofit organizations so that they may raffle the rides to raise funds. The Owls Head Transportation Museum stated that these are the groups that will suffer the most in mid-coast Maine if the 25-mile exception is eliminated in the final rule.

AFA objected to the proposal that restricts charitable flights to only four events per calendar year, per organization, lasting no longer than 3 days each. AFA suggests that this restriction is nonsensical and that by adopting this limit, the FAA is convinced that these flights are too dangerous to be flown often. AFA commented that by the FAA's logic, these flights should be completely eliminated. AFA asks if it is safe to operate charitable flights in four events per year, why is it not safe to operate them 365 days each year?

In summary, commenters believed that the rule, if adopted as it was proposed, would result in an end to charity and community event flights for various foundations. They also believed the rule is not justified based on safety, nor is needed to improve safety. Some commenters stated they are against any limitations on charity and community events while others are against the elimination of the 25-mile exception.

Determining that certain comments have merit, we made some revisions to the final rule. The intent of the proposal is maintained in this final rule. All flights on behalf of charitable or non-profit organizations, as defined in the rule, may continue in part 91, and a limited number are allowed without meeting the drug and alcohol rules that would otherwise apply. Flights sponsored by charitable and non-profit organizations are limited to four events per year. Local chapters of national charities or non-profit organizations are considered separately for this rule, with each chapter entitled to four events per year. The AFA comment with regard to the four-event limitation has merit, but suggests the commenter does not understand why this limit should be imposed. As stated above, charitable, nonprofit, and community event flights are events for compensation or hire. However, we recognize these events are a tremendous benefit to the public and deserve some exceptions from the normal regulations necessary for part 91 compensation or hire flights. Therefore, we created a rule (§ 91.146) that allows sponsors of charitable, nonprofit, and community event flights to employ pilots, often as volunteers, to give rides to the public without meeting drug and alcohol requirements normally imposed on a part 91 compensation or hire flight, and without having a certificate under part 119.

The four-event limit is the current limit imposed through exemptions.[9] This limit is not new; nor is it based on safety concerns. Rather, the concern is with the nature of these flights. To maintain the charitable nature of these flights, it is necessary to place some restrictions on them. If the interest of charity were taken out of the equation and all else were equal, operations of this kind would be required to be part 135, and thus be subject to more stringent regulation and oversight. The regulatory standards applied to part 135 flights would likely turn charitable organizations away from their practice, which is not the FAA's intent with this rulemaking. The FAA has historically chosen four events per year as a reasonable balance that separates a charitable event from an event run by an air carrier. The one event per year limitation on community events recognizes that the primary interest of the operator is more likely to be business-oriented than a charitable or non-profit organization. If an operator is unhappy with the limit, it may fly more than four events per calendar year, but it must comply with the requirements in § 91.147. Those requirements include implementing a drug and alcohol testing program in accordance with 14 CFR part 121, appendices I and J. An operator complying with § 91.147 would also not be able to use private pilots. The operator has a choice of which regulation to follow, and operators currently conducting flights under an exemption should not find the four-

[9] Exemption No. 7112, held by AOPA, contains this event limitation. That exemption, along with others, is the basis for the event limitation in this final rule.

event limitation to be new or unexpected.

Many of the commenters who operate antique aircraft seem to believe that if they operate in accordance with an exemption, the FAA will cancel the exemption once this final rule is published. Because the rule encapsulates current exemptions to charitable or non-profit organizations from drug and alcohol testing, as long as participation is limited to four events per year, charitable or non-profit organizations will no longer need these exemptions. Any exemptions issued because a commercial air tour operator does not have a standard airworthiness certificate for its airplane will need to continue. When the expiration date on the exemption arrives, the petitioner may re-apply for renewal. At that point, the FAA may grant, deny, or change the exemptions. This rule does not change that policy.

The FAA has determined that the conditions and limitations included in the exemptions should also be included in this final rule. Since commenters failed to provide any rational basis to not include certain proposed limitations for ''charitable, nonprofit, or community events,'' the FAA has incorporated those limits in new § 91.146. In creating the new § 91.146 for charitable, nonprofit, and community events, we have attempted to strike a careful balance between the recognition of the public benefits of such fundraising activities and the need to set aviation safety standards. Community events are limited to only one per sponsor in a calendar year, as proposed in the NPRM. This limit is not specifically derived from community event exemptions, but was proposed so that a community event sponsor would not have to go through the extra effort of applying for and receiving an IRS classification.

This final rule will continue current FAA policy. Current exemptions allow for a pilot to fly only four events per year for a charity, nonprofit, or community event. As stated above, this limit is not new, and has been included in exemptions issued for years. For example, Exemption 7112C,[10] issued to AOPA on May 20, 2004 states in condition and limitation #11:

> The event sponsor may conduct no more than four events in a calendar year. Each person operating under this exemption must provide AOPA with a statement on behalf of the event sponsor, indicating that neither the event sponsor nor any participating pilot has participated in more than four similar events in a calendar year.

The event limitations were also explained in the NPRM.

For operators choosing to exceed the four-event minimum, we have incorporated a new § 91.147 in this final rule to provide relief from the need to certify as an air carrier. It does not provide exclusion from the existing ''drug and alcohol'' testing requirements. The new § 91.147 does not place any limitation on the number of events as long as the operator registers with the FAA as required in the rule. For example, Owls Head Transportation Museum may continue its operations in accordance with § 91.146, if its raffle flights are grouped to fit into the requirement of no more than four events per year. If that doesn't work, they may operate in accordance with § 91.147. If their aircraft do not have standard airworthiness certificates, the museum will continue to need an exemption.

There may be cases where a sponsor could qualify for all three categories. A sponsor with separate chapters is allowed four events for each chapter. So, the 1,000 chapters of EAA may each sponsor four, three-day events each year. Each pilot is limited to a maximum of 12 calendar days of flying per year (four events, three days per event). Each event (charitable, nonprofit, or community) may be up to three days in duration. Each situation counts as one event for that pilot. In this final rule we do not limit the number of flights conducted during each event, although a normally prudent pilot and event sponsor would consider pilot fatigue.

In the NPRM, we proposed limiting both the sponsor and the pilot to four events per calendar year. We have kept that limitation in the final rule. Commenters questioned the source and reasoning for the limit. The source is existing exemptions, and its reasons are the public policy considerations separating charitable, nonprofit, and community events from events run solely for profit or business. Operators who do not wish to comply with the limitations of § 91.146 may operate in accordance with § 91.147. Operators of either part may also become air carriers in accordance with parts 119 and 135.

4. Private Pilots and the 500-Flight Hour Requirement

Most of the commenters on the issue of private pilots objected to the proposed increase in pilot flight time from 200 to 500 hours. AOPA, NATA, AFA, PASS, and EAA commented that the FAA did not provide any safety data or statistics to support this change. EAA believed it is irresponsible for the FAA to create additional regulatory burdens on the general public when no information has been presented to indicate that there is currently a safety concern, or that any significant increase in safety would result from the change.

AFA stated that the proposal would shrink the pool of pilots able to help local charities and will drive hundreds of small sightseeing operations out of business. AFA also asked what the logic was behind the 500-hour limit. AFA also suggested there should be a cutoff date for when the 500 hours was accumulated so that most of it was not done too far in the past, such as 50 years. AOPA cited its own study, which found that 22 percent of pilots surveyed provide charity sightseeing flights and would no longer be eligible if the higher hour requirement were implemented. AOPA also stated that charities predict annual losses of nearly $200,000 if the 500-hour requirement is imposed. AOPA stated that organizations benefiting from these flights include Vietnam Veterans of America, Visiting Nurses Association, Wings of Mercy (medical flights), Volunteer Fire Departments, and local technical schools.

We discussed the 500-hour requirement for private pilots flying charitable, nonprofit, and community events at length during the public meetings (including the Internet meeting). Over the years, we have issued exemptions with the 500-hour private pilot requirement with breakdowns of what the 500 hours must include. The hourly breakdown required for Exemption No. 7830, issued to EAA, is found below. Although it is required in the exemption, we did not propose, nor do we adopt, a specific breakdown of the required hours necessary to conduct a flight described in § 91.146. The 500-hour requirement for private pilots who wish to fly in a charitable, nonprofit, or community event is not a new requirement for many; it has simply never been written into regulation.

Commenters stated that many flights would be grounded by the 500-hour flight time requirement proposed for private pilots. It is likely some of these commenters were operating under a 500-hour condition and limitation for private pilots in an exemption today. For example, Exemption No. 7830 was issued to EAA for ''Young Eagles'' flights. In that exemption, we stated that:

> ''A higher safety standard of 500 hours of flight time for private pilots is proposed for

[10] Exemption No. 7112 was originally issued to AOPA on February 3, 2000.

charitable and community events because these events typically involve a larger number of passengers, are held over a period of one to three days, and are generally a pleasure activity for the passenger.''

The conditions and limitations in Exemption No. 7830 are more restrictive than the proposal or this final rule. Below is condition and limitation #2 from Exemption No. 7830:

2. Each pilot who conducts flights under this exemption must—

a. Hold at least a private pilot certificate with the appropriate category, class, and type rating, if necessary, for the aircraft to be used under this exemption in accordance with § 61.31(a), (d), (e), (f), (h), (i), and part 61, subpart E.

b. Have a minimum of 500 hours total flight time.

c. Have a minimum of 200 hours in the category of aircraft to be flown.

d. Have a minimum of 50 hours in the class of aircraft to be flown.

e. Meet the currency requirements in § 61.56 for a flight review and § 61.57 for takeoffs and landings.

f. Hold a current third-class medical certificate in accordance with § 61.23(a)(3).

g. Meet the requirements of § 61.113(d).

h. Have a logbook entry for each event in which he or she participates.

Exemption No. 7830 was extended in 2004 and applies to all private pilots flying ''Young Eagles'' flights. Therefore, we are surprised to receive comments from EAA regarding the 500-hour minimum for private pilots conducting charitable flights. EAA is the holder of Exemption No. 7830, which clearly states a 500-hour minimum for private pilots as discussed above. We received some comments from pilots conducting operations under this exemption who are completely unaware of the limitation. During the Internet public meeting in 2004, we received one comment from a private pilot who stated:

''I've flown a dozen or so Cub Scouts and Boy Scouts, and have flown 4 'Young Eagles' since earning my Private Pilot's license in 2000. Why does the FAA suddenly feel I am unqualified simply because I only have 150 hours in my logbook? I'm either qualified to fly or I am not.''

The commenter was obviously unaware of the 500-hour requirement in the exemption under which he was operating, as well as the 200-hour requirement in § 61.113. Some exemptions issued in the past have required private pilots to have only 200 hours to fly these charitable, nonprofit, or community events. We have decided to adopt the more stringent criteria set forth in Exemption No. 7830, which requires 500 hours. We are not amending exemptions with this final rule, but we are amending § 61.113(d).

While AOPA commented in opposition to the 500-hour private pilot requirement, its own findings indicate that pilots with 500 hours of total time are involved in fewer accidents than those with fewer hours. Safety support for setting 500 hours as a minimum requirement is found in the 2005 AOPA Air Safety Foundation's Nall Report (page 9 of 19). The report shows that pilots with fewer than 500 hours of total time accounted for 34% of all accidents (28% of all fatal). The report states specifically that ''The first 500 hours of a pilot's flying career are the most critical, with 34.4 percent of the total and 28.7 percent of fatal accidents occurring then.''

The 500-hour requirement is also consistent with the part 135 rules regarding single pilot-in-command flying visual flight rules. We believe 500 hours is a more appropriate limit, because each event that can last up to three days and can carry numerous passengers on what is essentially a pleasure ride for hire. The existing § 135.243, Pilot in Command Qualifications, requires a minimum pilot qualification to conduct part 135 operations. It involves the most non-complex part 135 flight: single engine, day, VFR, single pilot. § 135.243 includes the requirements that a pilot:

—Hold at least a commercial pilot certificate with appropriate category, class, and type ratings
—Have at least 500 hours time as a pilot, including:
  —At least 100 hours cross-country;
  —At least 25 hours at night; and
  —An instrument rating.
  —At least a 2nd class pilot medical certificate
—Pass oral and practical examinations at least once a year.

Lastly, the Antique Airplane Association commented that § 61.129 requires only 250 hours flying experience to hold a commercial pilot's certificate, yet the proposed rule would not allow commercial pilots to conduct flights for charity until they meet the 500 hour requirement. The 500-hour requirement is only for private pilots. A Commercial or Airline Transport Pilot is not limited to any number of flight hours and is eligible to fly in a charitable, nonprofit, or community event by virtue of holding the certificate. Some might wonder why this is the case.

It may seem incongruous that the FAA would require more of private pilots than of commercial pilots. However, the FAA has substantially more oversight over the quality and type of hours required for a commercial certificate. In order to advance to the commercial certificate, a pilot's training demands 100 hours in powered aircraft, 100 hours as pilot-in-command, and at least 50 hours in cross-country flight, among other more detailed requirements. A private pilot can have 200 hours of flight time that includes none of this experience. In other words, because of approved curriculum, we know a commercial pilot with 200 hours will have the experience we demand to conduct an air tour flight. We have no such assurances for a private pilot, but have determined that the additional hours should be sufficient to adequately protect the flying public.

5. Reporting Requirements

EAA strongly opposed the proposed § 91.147(a)(2), which requires that event sponsors track and document the participation of pilots and operators in all prior events, including those not under the purview of the current event sponsor. According to EAA, it is unreasonable for it to track and document pilots flying charitable flights for other sponsors throughout the year. If anything, it should only be required to track and document flights that it sponsors. EAA stated that this provision creates a significant increase in time spent on needless paperwork and unnecessarily burdens the FAA's field inspector workforce. EAA's exemption (Exemption No. 7111 as amended) currently requires the sponsor to provide the FAA with an annual report of all persons who have conducted operations under the exemption. The report must include the date of the event, the event sponsor, the pilot's name and certificate number, and the charitable or community event for which funds are being raised. That exemption is the origin for the requirement we proposed; however, we inadvertently exceeded the exemption's reporting requirement.

The proposal (§ 91.147(a)(2)) mandated documentation of ''all prior events participated in by the sponsor(s), pilot(s) or operator(s).'' We agree with EAA that it is unnecessarily burdensome to require documentation beyond the current calendar year. We never intended to have a sponsor report all previous activity. We have revised the final rule language (§ 91.146(e) (1) and (3)) so that the sponsor reports prior events in which the sponsor participated for only the current calendar year. Additionally, the pilot must certify his or her own statement of

prior events in which he or she participated for the current calendar year. EAA is not responsible for keeping track of the flying their pilots do for other sponsors. Rather, their pilots are responsible for giving EAA a signed statement of prior events participated in during the current calendar year regardless of which sponsor they flew for. EAA must include that statement when reporting to the FSDO in accordance with § 91.146(e). The 1,000 chapters of EAA may each qualify as a sponsor.[11]

6. Life Flights, Angel Flights, and ''Emergency or Medical Service''

We proposed amending § 61.113(d)(1) through (d)(7) in the NPRM to create two new sections numbered § 61.113(d)(1) and § 61.113(d)(2). These sections were specific in that paragraph (d)(1) referred to emergency or medical services and did not refer to nonstop flights being conducted from the same airport (the 25-mile exception). Paragraph (d)(2) was developed for the 25-mile exception. The purpose of the amended language was to eliminate confusion with the term ''passenger-carrying airlift'' in § 61.113(d) that applied only to private pilots. The unintended result was confusion of a different kind. As discussed above, this final rule has been rewritten to continue private pilot flights for charitable activities and to define the three kinds of charities (§ 61.113 and § 91.146).

In addition, the FAA erred when writing the NPRM. In the NPRM, we presented § 61.113 and proposed allowing private pilots to fly point-to-point and beyond 25 miles from the departure airport (in proposed § 61.113(d)(1)), carrying passengers for compensation or hire.

Flights previously conducted under the provisions of § 61.113(d) always were restricted to nonstop flights originating and landing at the same airport, never going beyond 25 miles from that airport. The use of the term ''airlift'' in the current regulation is unfortunate because it is misleading. The purpose for the ''airlift'' exception in § 61.113, as interpreted, has always been to raise money for an IRS-recognized charity. The ''airlift'' exception was never intended to authorize point-to-point transportation for compensation or hire of sick or injured people, or their families. Moreover, even if such transportation was done under the auspices of a charitable organization, if any compensation was given to that organization to transport sick or injured people, or their families, the FAA has required that operation to be done by a certificated air carrier. The FAA believes, in general, that the operations should be conducted by certificated on-demand air carriers, including air ambulances. In the past, some charitable organizations have tried to persuade the FAA that when a third-party pays the organization to transport a sick or injured person (or family member) in point-to-point service, that transportation should not be recognized as compensation or hire. The FAA has consistently rejected those arguments. If an aircraft operator is paid by a passenger or a third party to transport the sick or injured person, or family member, from point A to B, the operator must be certificated.

It is worthwhile to give some examples of what has been permitted under the rules and what will continue to be permitted under the regulations, as amended in this final rule. Some organizations such as Angel Flights make arrangements with corporate aircraft operators to take sick or injured people, or family members, from point-to-point without the corporate aircraft operator being compensated by the passenger or by Angel Flights. Such flights are permitted. Additionally, nothing in the old rules and nothing in this new rule prohibits a private pilot from taking a sick or injured person from point to point as long as it is not for compensation or hire. By longstanding enforcement policy, the FAA has allowed aircraft operators who take a charitable tax deduction to transport a sick or injured person without that operator having an air carrier certificate. No other form of compensation may be received.

If an organization has used § 61.113 to operate flights from point-to-point with private pilots, that organization is put on notice that operations like that are not covered by § 61.113. We have dropped the term ''airlift'' to reduce any further confusion. Additionally, the term ''emergency or medical service'' has not been adopted because it was confusing. We are adopting the requirement for 500 hours, as proposed in the NPRM and discussed earlier in this document.

It is unlikely that the ''transportation needs of persons with medical and financial need'' would have ever complied with the 25-mile exception. Returning such passengers to the departure airport would serve no purpose. If organizations have used § 61.113 for ''life flights'' or ''angel flights,'' (carrying sick or injured passengers, or a family member) for compensation or hire, they have been doing so against FAA policy. They will need to comply with this final rule, or apply for and receive a grant of exemption to conduct any future flights of this kind. Section 61.113 now refers private pilots to § 91.146 and clearly states that all operations must be nonstop, takeoff and land from the same airport, and be flown within a 25-mile radius of that airport.

B. Other Flights for Compensation or Hire

During the Internet meeting, we explored the possibility of part 91 commercial air tour operators remaining in part 91 and not requiring them to comply with air carrier rules (part 121 or 135). Air carrier certificate holders operating under parts 121 or 135 automatically need Operations Specifications. In this final rule, the FAA does not require certain part 91 commercial air tour operators to become air carriers, but we will create an FAA database with information similar to Operations Specifications. We adopted § 91.147 to require such part 91 operators to send us the appropriate information in an LOA.

1. What's the difference between an Operations Specification and a Letter of Authorization?

Operations Specifications (OpSpecs) are a set of documents required by regulations that, among other things, set forth how a certificated operator will conduct all its operations. An OpSpec specific to air tour operations is appropriate for those operators conducting operations in accordance with part 121 or 135. If all commercial air tour operators had been moved into part 135 (or 121), all air tour operators would have been required to have an OpSpec specific to air tour operations included in its set of OpSpecs.

A Letter of Authorization (LOA) is an authorizing document required by regulation for a specific kind of operation conducted under part 91. One intended outcome of this rulemaking is to be able to identify all air tour operations in a national database. The seven items listed in section 91.147(c) are considered to be the minimum amount of information needed in the national database for the issuance of the air tour LOA to the part 91 operator to conduct air tour operations.

All standard OpSpec and LOA templates are developed at FAA Headquarters and are maintained in the same document management system. FAA Headquarters, FAA FSDOs, and the operators may have electronic access to the OpSpec and the LOA templates. Part 91 operators may have LOAs

[11] It is possible for a pilot to be a sponsor.

issued, including but not limited to, an LOA authorizing special airspace operations.

2. Where are the FAA's drug and alcohol testing requirements and who has to comply with them?

The FAA's drug and alcohol testing requirements are set forth in 14 CFR part 121, appendices I and J. The drug and alcohol testing regulations provide a comprehensive listing of specific drug and alcohol testing provisions contained in 14 CFR parts 61, 63, 65, 67, 91, 121, and 135.

Commercial air tour operators under part 121 or 135 must comply with drug and alcohol testing requirements. Flights conducted in accordance with § 91.147 (Passenger carrying flights for compensation or hire (Not otherwise covered by § 91.146)) formerly referred to as 135.1(c) operations, will continue to be required to comply with the drug and alcohol testing requirements. Flights conducted in accordance with § 91.146 (Passenger carrying flights for the benefit of a charitable, nonprofit, or community event) do not need to comply with drug and alcohol testing requirements.

In this final rule, if a charity or community event operator goes beyond the limits established in § 91.146 (e.g., four charity events, one community event, use of private pilots, etc.), then that operator is conducting operations for compensation or hire and will operate under § 91.147. These operations must comply with those drug and alcohol testing requirements that apply to all compensation or hire operations.

These drug and alcohol requirements are not new for charity events. Prior to this final rule, previously granted exemptions had similar conditions and limitations and relieved the charity flights from drug and alcohol testing requirements. This new rule language includes appropriate conditions and limitations in § 91.146 so that exemptions are not needed.

VII. Comments on Part 136 Operating Requirements

This final rule removes the proposed Minimum Altitudes (136.3), Standoff Distance (136.5), Visibility (136.7), and Cloud Clearance (136.9), based on comments. Several commenters stated that the proposal would promote compression (mixing of airplanes and helicopters at the same altitudes) and perhaps increase noise. We attempted to have one national standard for these items, but it became too difficult with so many variables present. There were always disadvantages for a particular type of operator. The result of this final rule deletion is that the operators will continue to use the standards they used prior to this rule. For example, a part 91 operator who used § 91.119 for minimum altitudes and standoff distances will continue to do so. A part 135 operator who used § 135.203 or Operation Specifications for minimum altitudes and standoff distances will continue to do so. We needed to retain the minimums for Hawaii listed in SFAR 71, but move those Hawaii air tour rules into part 136. SFAR 71, Section 6 entitled, Minimum Flight Altitudes, is accordingly incorporated into the final rule as § 136.5, ''Additional Requirements for Hawaii.''

We have removed the separate section for Helicopter operating limits (proposed § 136.19). We maintain the intent of the section by including the language, ''Except for the approach to and transition from a hover for the purpose of takeoff and landing, or during takeoff and landing, the pilot in command must make a reasonable plan to operate the helicopter outside of the caution/warning/avoid area of the limiting height/velocity or height/speed diagram'' to the rule language of Helicopter performance plan and operations (final rule § 136.13).

We completely eliminated the proposal in the NPRM for Deviation Procedures (proposed § 136.21) since we are not adopting the standoff, altitude and cloud clearance minima proposed in the NPRM.

In summary, four sections (§§ 136.3–136.9) were deleted; section (§ 136.3) has been added; section (§ 136.5) has been added for operations in Hawaii only; the section for helicopter performance plan (§ 136.17) and helicopter operating limitations (§ 136.19) have been merged into one section (§ 136.13); and one section for deviations (§ 136.21) has been deleted. We also added a new paragraph (e) to § 136.1 to permit pilot deviation from part 136, subpart A in the event of an in-flight emergency.

A. Applicability and Definitions (§ 136.1)

EAA objected to the proposed mandate for part 91 flights for charity or community events be conducted in accordance with the operational rules for commercial air tour flights in part 136, subpart A. EAA stated, ''The FAA has presented no data that would suggest a need to place charitable and community fundraising operations under the provisions of the proposed part 136. EAA maintains that the FAA is required to at least identify and substantiate the existence of a safety concern before drafting regulations that would impose additional restrictions on an activity that has been safely conducted for at least 50 years under the existing regulations.'' EAA asserted that a ''charity or community event is not an 'air tour.' ''

Section 91.146 in this final rule addresses passenger carrying flights for charitable, nonprofit, and community events. The section does not indicate that such flights are air tours. It does, however, require such flights be conducted in accordance with the safety provisions of part 136, subpart A. Section 91.205(b)(12) requires, for aircraft operated for hire over water and beyond power-off gliding distance from shore, approved floatation gear readily available to each occupant and, unless the aircraft is operating under part 121, at least one pyrotechnic signaling device. In general, part 91 doesn't require the pilot to brief the passengers on how to use a life preserver or how to exit the aircraft after a water ditching. However, § 91.509, Survival Equipment For Overwater Operations, applies to flights more than 50 nautical miles beyond the shoreline because subpart F, Large and Turbine Powered Multiengine Airplanes and Fractional Ownership Program Aircraft, recognizes that special requirements are appropriate for larger airplanes that may not make sense for the entire general aviation community. The same rationale applies here. Because charitable, nonprofit, and community event flights involve passengers who may be unfamiliar with the risks of flight over water, these new requirements assure an appropriate level of safety when flying over water. The requirement obviously does not apply to those flights not conducted over water. Hence, when EAA sponsors flights conducted in small airplanes not over water and not in Hawaii, the passenger-briefing requirement (§ 136.7) is the only safety provision applicable.

The Lightship Group stated that, as an operator of airships, it is concerned its industry will be included in the final rule without regard to its clean safety record, which is better than hot air balloon and glider operations. The Lightship Group commented that, since the airship industry is very small due to high operating costs, new regulations requiring additional infrastructure would pose a serious financial strain on current operators. This commenter works with the FAA on the Aviation Rulemaking Committee (ARC) Airship Work Group for the purpose of clarifying regulations governing the operation of airships, and suggests that other issues be addressed within that workgroup. The U.S. Parachute

Association was also concerned about the rule's applicability to its operation.

The U.S. Parachute Association was concerned with language proposed in § 136.1, when a flight for compensation or hire has another purpose in addition to sightseeing, that the flight is subject to subpart A. Although this commenter believes the FAA's intent was to ensure that part 136 applied to operators attempting to mask sightseeing flights behind other supposed purposes, it was concerned the proposed language may allow the converse. That is, it may allow the FAA to ''see'' a sightseeing flight when, in fact, the flight is truly made for another purpose. The U.S. Parachute Association recommended the language be revised to make it clear that part 136 only applies to flights where the primary purpose is sightseeing.

On the other hand, the Antique Airplane Association questioned the justification for excluding gliders and hot air balloons.

Part 136 subpart A rules do not apply to operations conducted under part 105 (parachutes), part 101 (balloons), nor do they apply to operations conducted in gliders (powered or unpowered). Gliders and hot air balloons were not considered when we published the NPRM because they did not fit into the NTSB recommendations that inspired the proposal. Since they were not part of the proposal, we are not including them within the scope of this final rule.

Some commenters (Coastal Helicopters, Inc., and Venture Travel, LLC) questioned the need for part 136 at all. The Tennessee Department of Transportation agreed that requiring flotation devices for overwater flights and mandatory passenger briefings should be standard practice, but suggested that those requirements be within the existing regulatory framework rather than the proposed new part 136.

A goal of establishing part 136 is to have one location for all air tour rules. For the operators staying in part 91, life preservers are not otherwise required until an aircraft goes beyond 50 nautical miles from shore, and part 91 doesn't address passenger briefings on exiting the aircraft after a water ditching at all. To put a new life preserver mandate in part 91 would be more confusing than the approach adopted here.

Part 136 was created in 2003 with the codification of the National Park Air Tour Management Act into FAA rules. The FAA envisioned at that time that part 136 would become the regulatory part specific to air tour regulation. Currently, air tour regulation is spread throughout the FAA rules, with some SFARs being attached to part 91, others attached to part 121, and a set of rules covered under part 93. This only adds to confusion among operators who are trying to locate rules applicable to their operations.

B. Letters of Authorization (§ 136.3)

Since the proposal would have moved many commercial air tour operators from part 91 into part 121 or 135, the operators would have needed Operations Specifications had we adopted the final rule as proposed. Now that the final rule allows these same part 91 operators to remain in part 91, Operations Specifications will not be issued to these commercial air tour operators. The air carriers have Operations Specifications while part 91 operators do not. The part 91 operators will apply for, receive, and comply with an LOA. This new section does not impose new requirements, but modifies the proposals in the NPRM.

As discussed above, one of the tasks of this rulemaking is to develop a database of air tour operators. We discussed the need for a database during our public meeting on the Internet. During the meeting we explained items that Operations Specifications include and an air carrier participant explained how Management Specifications work in part 91 subpart K, Fractional Ownership Operations. No participant expressed objection to a database.

The Hawaii air tour operators using SFAR 71 always have included part 91 operators. Those part 91 operators have LOAs instead of Operations Specifications. The LOAs are maintained in the same electronic database as Operations Specifications but contain much less data. Operations Specifications may be amended or reconsidered through § 119.51. Section 136.3 now allows amendment and reconsideration of LOAs through § 119.51 as well.

C. Minimum Altitudes, Standoff Distances, Visibility, and Cloud Clearance (§ 136.3–136.9 in the NPRM)

In this final rule, the four sections proposed in the NPRM are eliminated and a new § 136.5 addresses only minimum altitudes and standoff distances in the State of Hawaii taken from the regulation formerly known as SFAR 71. This approach allows us to delete SFAR 71.

Commentators objected to many aspects of the proposed rule, stating that: (1) There was no FAA consideration of geographic differences throughout the country; (2) they opposed minimum altitudes; (3) helicopters and airplanes should not be lumped together; (4) there was no FAA consideration of differences between single and multiengine aircraft; (5) standoff distances for air tour operators should not be more restrictive than for any other operator; (6) visibility requirements were too restrictive; and (6) cloud clearance distances were impractical.

We find many of the comments have merit. Developing safety standards for all commercial air tour operators generic enough for use by operators in part 91, including those using private pilots, as well as commercial air tour operators in 121 or 135, required consideration of many disparate regulations found in parts 1, 91, 93, 121, 135, 136, SFAR 50–2, SFAR 71, park manuals, procedures documents, exemptions, Operations Specifications, and LOAs. In response to commentators, we have chosen to return to the regulatory regime that existed before the NPRM.

The FAA recognizes that our various offices, including Air Traffic and Flight Standards, have established procedures with operators necessary to resolve certain local airspace safety issues. These procedures may be established by rule, on aviation charts, or by some form of agreement with the operators.

We have eliminated the proposed deviation authority based on comments. We integrated what might have been deviation approvals into rule language as much as possible. Most commenters supported the idea of standardized language so they don't have to apply for and justify a deviation. As discussed below, we have moved the substance of SFAR 71 into new Appendix A to part 136. Those rules continue to have more restrictive altitude and standoff requirements than other operations, and we retain a deviation provision in Appendix A.

D. Effect of Final Rule on Grand Canyon and Hawaiian Operations

This final rule does not replace SFAR 50–2 (Operations in Grand Canyon). However, since the FAA envisions its future location in a subpart of part 136, we reserved a place for it and for part 93 subpart U (Special Flight Rules in the Vicinity of Grand Canyon National Park, AZ). The actual move does not occur in this final rule. Accordingly, SFAR 50–2 and part 93 subpart U will remain in their present locations, but may be moved in the future.

However, SFAR 71 has been moved into part 136 as Appendix A. Placement of SFAR 71 into part 136 is not a substantive change. Accordingly, commercial air tour operators in Hawaii may continue to operate in accordance with their FAA-approved training

programs, procedures documents, Operations Specifications, and LOAs.

More specifically, this final rule does not change the established routes or altitudes for the Grand Canyon Special Flight Rules Area. The Grand Canyon manual and route/map or allocations structure approved by FAA Headquarters and the Las Vegas FSDO are not canceled by this rule. Grand Canyon operators may continue to operate commercial air tours in accordance with FAA-approved training programs; the provisions and limitations of their manual; [12] the FAA-developed Grand Canyon Route Map; and FAA-issued Operations Specifications. Grand Canyon commercial air tour operators will continue to use the altitudes and standoff distances approved for them by the FAA and contained in their manual maintained at the Las Vegas FSDO. The effect on Grand Canyon air tour operations will be felt through the safety rules in subpart A of part 136. Specifically, commercial air tour operators operating at the Grand Canyon will now have a more detailed helicopter performance plan, and be required to either outfit their aircraft with helicopter floats, or have passengers don life preservers while traveling over water (Lake Mead the most likely), dependent upon the ability to glide to beyond the shoreline in the event of engine failure. The safety rules in subpart A of part 136 are applicable to Grand Canyon air tour operations.

E. Passenger Briefings (§ 136.7)

Coastal Helicopters and Air Vegas Airlines commented that the passenger briefing should be addressed in part 135 and should not be required for operations not flying over water. Air Vegas Airlines commented that briefing passengers on water ditching procedures is unnecessary for operations covered by SFAR 50–2 because the duration of flight over water is so short and chances of landing in water are minimal. GAMA believed the NTSB recommendation on passenger briefings is appropriate and justified because of specific accidents where passenger briefings were perceived by the NTSB to constitute a problem.

In the NPRM, we proposed to move certain part 91 operators into part 135, forcing these air tour operators to meet the passenger-briefing requirements in part 135. Because we are keeping the 25-mile exception, those operators will not be covered by the passenger briefing requirements of part 135. However, as proposed, we are requiring all commercial air tour operators (including those allowed to continue to operate under part 91, including SFAR 50–2) to complete passenger safety briefings. That requirement is now found in part 136 subpart A. Overwater briefings are required for flights traveling over water beyond the shoreline only. Those not traveling over water do not need to abide by the overwater equipment or overwater briefing requirements in this rule. Our additional passenger briefing requirement in part 136 specifies overwater operations and the need for operators to brief passengers before takeoff on procedures for water ditching, use of required life preservers, and emergency exit procedures in the event of a water landing. We understand Air Vegas Airlines is concerned about having to brief passengers on overwater procedures even though these passengers travel only briefly over Lake Mead. Although it may be unlikely that Air Vegas Airlines will have to attempt a landing on the water, it is possible and passengers should be briefed for that possibility. Thus, if the operator is flying over Lake Mead or the Colorado River at any point during the flight, they need to brief passengers on overwater procedures before takeoff.

We added three requirements for passenger briefings proposed in the NPRM under the assumption that a part 91 operator would have complied with part 135. Since part 91 operators are not moving to part 135, we need to include some requirements for passenger briefings in part 136. Required briefings now include:

(1) Procedures for fastening and unfastening seatbelts;

(2) Prohibition on smoking; and

(3) Procedures for opening exits and exiting the aircraft.

Part 135 operators already have briefing rules and the above three briefing requirements are no more stringent than those existing rules. All operators need to consider that some passengers may not understand English. This final rule does not discuss seat pocket cards, videos, recordings, pictures, or personally ''showing'' a passenger how to comply. Rather, it establishes a performance standard that an operator may meet through various means.

F. Overwater Operations

Under this final rule, if you do not operate a commercial air tour over water beyond the shoreline, you do not need to brief for overwater evacuation procedures or have overwater life preservers or helicopter floats. If you do operate a commercial air tour over water, this final rule requires a passenger briefing before takeoff. This final rule also specifies when life preservers for each occupant are required to be available on the aircraft, and when those life preservers are required to be worn by all occupants. Life preservers discussed in this rule apply to both airplanes and helicopters. Floats discussed in this rule apply only to helicopters. Each helicopter required to have floats is also required to have life preservers. If you fly an airplane or helicopter over water beyond the shoreline, you must brief the passengers and comply with the life preserver requirements, regardless of whether you have floats.

1. Passenger Briefings for Overwater (§ 136.7)

If you intend a flight over water beyond the shoreline, passenger briefings are mandatory. Passengers on a commercial air tour who travel over water must be briefed before takeoff on the appropriate requirement for life preservers. If the life preserver is required to be worn during the flight, the operator must brief passengers on when to inflate it in the event of an emergency evacuation. Properly instructing passengers to don life preservers when already in an emergency situation is difficult since the aircraft may be unstable and taking on water and panic sets in. Since most of these ditched flights are flown by a single pilot, the pilot must concentrate on managing the emergency, not on individual passengers. Thus, it is important that, prior to flight overwater, passengers understand how to don life preservers or be required to wear them. They must also know how to open exits and exit the aircraft. Each of these steps is covered in the passenger briefing before takeoff.

The Department of Transportation's Office of Inspector General completed an audit report entitled Oversight of the Air Tour Industry, May 28, 1999 (Control # AV–1999–099). ''Crashes into water'' are described on page 8 of that report. One accident in Hawaii resulted in three fatalities after all seven people aboard a helicopter survived ditching, since the occupants were unable to use life preservers ''still located in their containers beneath each seat.'' The report may be found at *http://www.oig.dot.gov/item_details.php?item=235.*

2. Life Preservers (§ 136.9)

In this final rule, we define ''Life Preserver'' and ''shoreline'' in § 136.1 for the purposes of part 136 subpart A. We prefer commercial air tour operators

[12] The ''manual'' is FAA Order 1380.2A, Las Vegas FSDO Grand Canyon National Park Special Flight Rules Area Procedures Manual.

outfit their aircraft with the pouch type inflatable life preserver, but we do not require that specific type. When donned by the passenger, an inflatable life preserver must stay in an uninflated state until after exiting the aircraft in an emergency. It is easier for occupants to keep the life preserver on from before takeoff until after landing if they are wearing the pouch type life preserver. These life preservers could be issued and re-collected while on the ground with less wear on the preserver and fewer passengers keeping them as a souvenir. The pouch type life preservers are not bulky or uncomfortably hot when flying in high temperatures, so they may be more suitable for commercial air tours in hot climates. During the development of this rule, we considered mandating the pouch type of life preserver. As long as individuals can safely exit the aircraft, there is no need to mandate a pouch, or even an inflatable design. Because of comfort, wear, and replacement concerns, we expect most operators will use the pouch type preserver. Accordingly, our definition also permits life preservers that are not inflatable, provided the commercial air tour operator demonstrates to the FAA that such a preserver can be used during an evacuation and will allow all passengers to exit the aircraft without blocking the exit.

Scenic Airlines and Sundance Helicopters stated that the FAA has exceeded the NTSB's recommendation in this area by proposing that occupants must wear life preservers for the entire flight (even over land) in twin-engine airplanes and twin-engine helicopters, even if they can reach the shoreline in the event of a single engine failure. Air Vegas Airlines, Papillon, Seaplane Pilots Association, and NATA agreed that the proposal went beyond the NTSB recommendations with respect to power-off glide to land. Belle Air Tours and Waldo Wright's Flying Service believed that the overwater requirements should apply only when a flight is being operated outside gliding distance to shore. Commenters specifically argued that the proposal was contradictory to NTSB Recommendation A–99–57, which provided an exception if the airplane or single-engine helicopter ''is operated at an altitude that allows it to reach a suitable landing area in the case of an engine failure.'' Consistent with our authority, we proposed a requirement that exceeded the NTSB recommendation. Based on comments, we have rewritten § 136.9 to consider aircraft with floats and aircraft operating within power-off gliding distance of the shoreline. This change does not, however, relieve operators from the requirement to have life preservers readily available and accessible to all occupants, or to brief occupants on the use of those life preservers. All affected aircraft, including those with floats, must have life preservers.

Coastal Helicopters and Bar Harbor Aviation stated that wearing life preservers could actually make the operation less safe. Coastal stated that excited passengers who inflate the preserver before exiting the aircraft will be buoyed to the top and not be able to exit the aircraft. Bar Harbor feared that in the cramped quarters of small aircraft, life preservers can get entangled in the aircraft controls as passengers attempt to exit.

Seaplane Pilots Association stated that life preservers worn continuously in commercial service will be subject to wear and tear far in excess of that experienced by traditional one-time-use life preservers, which would significantly increase operating costs and may render the life preserver inoperative when it is actually needed. Seaplane also cited case studies showing that it was the lack of instruction on the use of life preservers, not the location of the life preservers, that had the most significant impact on survivability. Kenmore commented that passengers asked to wear life preservers and passengers observing others wearing them prior to boarding would feel a sense of anxiety about the impending flight. Kenmore claimed training for pilots and a thorough passenger briefing can improve chances for underwater egress. It recommended allowing operators to choose between the use of inflatable life jackets and accessible floatation cushions.

Merely briefing passengers on emergency exit procedures does not adequately assure the safety of occupants. Likewise, the risk of a life preserver inflating inside the aircraft, or some lines getting tangled in cramped quarters, does not outweigh the need to have occupants wear the life preservers or know where they are and how to use them. Life preservers worn every flight do indeed wear out faster than life preservers tucked away in sealed heavy plastic, and we leave it up to operators to find the best way to maintain them. As discussed below, the life preserver requirement also provides an alternative in which the life preserver must only be available and accessible to each occupant and not physically worn for the duration of each flight. Thus, we will permit the life preservers to be stored in containers as long as passengers can easily open them. The FAA does not find a floating cushion to be acceptable as a life preserver for the purposes of part 136 subpart A. Unlike life preservers, seat cushions have no follow-on inspection requirement. Floating cushions do not replace life preservers.

Sundance Helicopters recommended that the FAA should significantly modify the proposed requirement to address only the specific geographic locations and operators to whom these requirements should apply. Sundance Helicopters commented that the proposed rules are based on SFAR–71, which imposed certain requirements for life preservers and floatation devices on helicopters, because many of the Hawaiian operations were conducted over large bodies of water. It stated that, ''* * *to impose those same requirements in a national rule on commercial air tour companies which typically fly over deserts or frozen tundra is ludicrous and shows just how little thought the FAA has put into these proposed regulations.'' Echoing this sentiment, Kenmore Air Harbor argued against the life preserver proposal because water conditions in Hawaii are rough, unlike the conditions in other parts of the country where air tours are conducted. Kenmore recommended applying the rule on a regional basis only.

The NTSB recommended that we establish one set of standards for all air tour operations (NTSB Rec. A–95–58). With respect to life preserver requirements, we created one set of standards for all commercial air tours. However, we disagree with comments to follow the NTSB recommendation (A–95–59) that suggested we accommodate localized airspace restrictions. That recommendation (A–95–59) is not suitable for this safety provision, because the risk of drowning is present any time an aircraft goes down over water.

In the life preserver requirements, you will see that we have provided relief in some instances from the requirement that each occupant must wear a life preserver. Occupants onboard certain aircraft only need to have the life preservers readily available and accessible. If the airplane is float-equipped or can power-off glide to the shoreline, a life preserver must only be available and accessible to each occupant and need not be worn by each occupant. If a helicopter is float-equipped, life preservers must only be available and accessible to each occupant but need not be worn by each occupant.

It is important for those required to wear life preservers to do so even if the flight is operated within power-off gliding distance of the shoreline. In an emergency, the pilot might not maneuver to get to an acceptable landing area beyond the shoreline. Also, the pilot might know the power-off glide distance, but might err in estimating the actual distance to shore. In other words, pilots of both helicopters and airplanes may overestimate gliding capability.

3. Helicopter Floats (§ 136.11)

The FAA inadvertently proposed in the NPRM that all helicopters be equipped with floats even if they are not operated over water. This was not the FAA's intention. Under this rule, helicopter floats for commercial air tours only apply if a portion of the flight is over water, except if that portion is during takeoff or landing only.

We have rewritten the ''Helicopter Floats'' section in this final rule (§ 136.11) to address the ability of a helicopter to power-off glide to beyond the shoreline. If the helicopter operator knows the performance [13] of the helicopter (as published by the manufacturer) would allow the helicopter to glide (autorotate) beyond the water to a landing spot, the operator may not need helicopter floats. Operators must make sure that the ability to glide (autorotate) to land when the engine fails will include the ability to put the aircraft down safely in an area beyond the shoreline. We define shoreline in part 136 subpart A, and it excludes areas that are intermittently under water at the time of the flight, or areas that are otherwise unsuitable for landing such as a vertical cliff. The burden is on the operator to know the power-off gliding distance for existing conditions at the time of flight. Thus, the operator must determine how far over the water they may go.

A helicopter need not be equipped with floats if each occupant is wearing a life preserver while the helicopter is within power-off gliding distance of the shoreline. The life preserver must be worn from before take-off until the flight is no longer over water. If the helicopter goes beyond power-off gliding distance, floats are required for all single-engine helicopters and multi-engine helicopters described in § 136.11(a)(2). The multi-engine helicopters described in that section don't have the performance to operate on one engine and must comply with the same requirements as a single engine helicopter. We have allowed operators 18 months to equip their helicopters with floats, which is consistent with the proposal.

Papillon Airways commented that adding helicopter floats for its operations would not increase the safety of operators, but rather decrease it, when these operations are compared to conducting all operations within gliding distance of the shore. Papillon also provided details on the expected costs of installing floats, including purchase costs, maintenance costs, and added weight that it asserted would reduce the passenger load by one person per trip. Papillon estimated that the cost of floats alone could amount to over $1 million a year when the costs of added flight hours, reduced passenger loads, and all other factors are considered. In addition, USATA obtained several equipment cost estimates from its members. These estimates mostly reflected three major cost elements: (1) The cost of obtaining the new equipment; (2) The cost of installing and maintaining the new equipment; and (3) lost revenue, because the added weight of the new equipment would cause a reduction of one passenger per flight.

The float requirement is relaxed in this final rule to allow for power-off glide to land beyond the shoreline. Therefore the burden on operators is reduced from what was initially proposed in the NPRM. A full evaluation of the costs associated with adding floats to the affected helicopters can be found in the final regulatory evaluation that accompanies this rule.

We received several comments regarding Grand Canyon operations that traverse Lake Mead. We recognize the burden of requiring overwater equipment for operators who fly over hot desert most of the time. However, we also realize that Lake Mead is a large, deep body of water that is too big to go around readily. While we have not had an incident of a Grand Canyon tour operator ditching in Lake Mead, that doesn't mean there couldn't be an incident in the future.

If operations into the Grand Canyon are in helicopters described in § 136.11(a), then floats will be required if the helicopters operate over Lake Mead and beyond the power off glide distance to shore. For operations within the power off glide distance for the entire time the helicopter flies over water, floats are not required if passengers are wearing life preservers.

Lake Mead is outside Grand Canyon National Park and outside the airspace of SFAR 50–2. The FAA has worked with the Grand Canyon operators for nearly 20 years and the Las Vegas FSDO has oversight. The operators have manuals, an FAA issued map, and FAA issued routes that apply inside the SFAR.

The Hawaii operators' history of helicopter floats is well established, and they hardly commented about the issue. We believe there will be no reduction in safety because the helicopter float final rule language requires the available shoreline to be suitable for landing once the glide is completed. Although this section includes power-off gliding distance, which SFAR 71 did not, it still requires the landing to be done at a location beyond the shoreline. While there is a great deal of land that may be within power-off gliding distance in Hawaii, the terrain is often dangerous and a landing would be nearly impossible on such terrain.

This final rule does not provide an exception for Alaska, because the safety risks associated with a water ditching in Alaska are at least as grave as safety risks associated with a water ditching elsewhere.

G. Helicopter Performance Plan and Operations (§ 136.13)

The Helicopter performance plan (proposed § 136.17) and Helicopter Operating Limitations (proposed § 136.19) are combined in the final rule in § 136.13, Helicopter performance plan and operations.

Various terms are used to describe helicopter performance. One of these terms is the height/velocity diagram. However, the FAA has used similar terms in other parts of the regulations. For example, 14 CFR part 27 (§ 27.79) uses the term ''height-speed envelope.'' 14 CFR part 29 uses the terms ''height-velocity envelope'' (§ 29.87), and ''height-speed envelope'' (§ 29.1517). For the purposes of this rule, both terms are synonymous and are presented as the height/velocity diagram (H/V diagram) used in Rotorcraft Flight Manuals (RFM). The terms ''curve'', ''chart,'' and ''diagram,'' when used in describing the H/V diagram, should be considered the same in this rule. The ''avoid'' area, ''warning'' area, and ''caution'' area of the height/velocity diagram are also used synonymously. For the purposes of this discussion, this area is called the ''avoid area.'' The H/V diagram typically shows combinations of airspeeds and heights above the surface in which safe one-engine inoperative (autorotation in the case of single-engine helicopter) landings have not been demonstrated during certification.

The final rule language in § 136.13 uses the term ''height/velocity information.'' This information includes

[13] Knowledge of performance applies to each make and model helicopter and under conditions of each flight to include density, altitude, and handling characteristics.

not on the ''H/V diagram,'' but also a consideration of gross weight and density altitude and their effect on the diagram. (See Rotorcraft Flying Handbook, FAA–H–8083–21, published in 2000).

Papillon Airways commented that requiring a plan before each flight is not practical since tour flights occur on a regularly specified route throughout the day. The operators take into consideration weight and balance, gross weight, duration of flight, fuel and route of flight in ever-changing meteorological condition's, according to Papillon. Since these conditions change, often after departure, the pilot must maintain the flexibility of making decisions in flight as climatic conditions change. Operators in Hawaii made a similar comment during the Internet Public Meeting. Liberty Helicopters stated that all of its New York City operations, except for takeoff and landings, are outside the height/velocity envelope and that it currently monitors the gross weight and center of gravity of all flights. Liberty Helicopters commented that the requirement to produce a performance plan for each flight, however, would impose an onerous amount of paperwork for each 11-minute flight and jeopardize its ability to continue operations.

HAI and several helicopter air tour operators (Coastal Helicopter, Papillon, Sundance Helicopters, and NorthStar) strongly opposed proposed § 136.19 regarding the height/velocity diagram. HAI stated that our proposal was inconsistent with previously published FAA guidance on the use of the height/velocity diagram. Papillon agreed and stated that the proposal would prohibit it from operating at its current facility. Similarly, Sundance Helicopters stated, ''This section is probably the most problematic and troubling part of this new rule. If adopted it would make present helicopter tour operations nearly obsolete in any but airport operations.''

Sundance Helicopters asked if the goal is to provide a high level of safety, why this proposal would not be imposed on all helicopter passenger operations, such as for offshore workers, fire fighters, and air ambulance patients, not just sightseeing passenger flights? NorthStar Trekking made a similar comment.

Commenters noted that the height/velocity diagram is used to advise a helicopter operator and is not meant to be a limitation. As long as the flight plan supports avoiding the caution/warning/avoid area of the height/velocity diagram, commenters believed there should be no violation of the rule.

Commercial air tour operators in Hawaii under Section 5 of SFAR 71 have been required to operate helicopters at a combination of height and forward speed (including hover) that would permit a safe landing in the event of an engine power loss, in accordance with the height/speed envelope for that helicopter under current weight and aircraft altitude. This requirement is retained under section five of Appendix A to part 136. Thus, in Hawaii, it would be a violation of the safety rules if the helicopter operator merely planned, but failed, to operate the aircraft in the manner described above (except when necessary for approach to and transition from a hover, or where necessary for safety of flight). The FAA did not propose to reduce any of the requirements or restrictions for commercial air tour operations in Hawaii.

As to commercial air tours in the rest of the country, the FAA can and has placed limitations on the operation of certain aircraft in the operating limitations of the RFM, as well as other places. Commenters' arguments that the only place the Agency could put an additional limitation would be in the operating limitations in the RFM, and that the Agency should not require helicopter operators to operate in accordance with the height/velocity diagram are in error. As outlined above, SFAR 71 had a longstanding requirement that helicopter operators actually operate the aircraft in a manner consistent with the height/velocity diagram. In § 136.17 of the NPRM, we proposed that operators develop a plan and operate within that plan. In § 136.19 of the NPRM, we proposed that all operators remain outside of the caution/warning/avoid area of the height/velocity diagram, except for takeoff and landing. In § 136.13(b) of this final rule, we require operators to make a reasonable plan to operate the aircraft outside the caution/warning/avoid area of the height/velocity diagram. In § 136.13(c), we require operators to operate the helicopter in accordance with the plan, except when issues of flight safety arise.

For the commercial air tour industry, the FAA believes aviation safety requires the operator to operate in accordance with the plan. Unlike many other commercial uses of helicopters where the operator has a financial incentive to get from point A to B as efficiently as possible, part of the business plan of a commercial air tour operator is to give the passengers opportunities to see certain sites on the surface by flying lower, slower, and incorporating in-flight delays at certain scenic areas. Commercial air tour operation business plans may result in operations within the ''avoid'' portion of the height/velocity diagram as a routine operating environment. Extended operation within the ''avoid'' portion of the height/velocity diagram increases the exposure to the risk of not being able to execute successfully an autorotation landing in the event of an engine failure, or in the case of multiengine helicopters, a safe one-engine-inoperative landing. Therefore, aviation safety requires that commercial air tour operators not only plan, but also operate in accordance with the plan. It is likely that with each new tour, the passenger weights will be different, temperature will be different, and altitude will vary. Those differences can have a significant impact on the performance plan required in § 136.13. However, operators can develop performance plans in advance, which identify maximum weights, highest temperatures and lowest altitudes for planned tours and load the aircraft accordingly to comply with this requirement. Paragraph (c) of the Helicopter performance plan and operations requires the pilot in command to comply with the plan, and any operation within the caution/warning/avoid area should be limited to maneuvering necessary only for takeoff and landing, or safety of flight.

Liberty commented that the requirement to produce a performance plan for each flight would jeopardize its ability to continue operations. The performance plans may be pre-developed by the operator for standard conditions. The pilot in command would add any adjustments for actual conditions. This is no different than the current practice of using pre-developed flight plans. The operator develops the flight plans and the pilot in command adds any differences at the time of the flight if necessary. From the descriptions the commenters have made they are already doing performance plans without any documentation.

In conclusion, regarding the requirements for a performance plan, the FAA believes it is not onerous or unusual for the pilots-in-command to be aware of the gross weight, power requirements, and center of gravity limits of their aircraft, and that the planned operation will be conducted safely within those limits. Much of this data can be preplanned through the use of tabular performance data, computation of potential maximum loading, expected ''worst case'' weather conditions, etc.

The FAA, in response to commenters, acknowledges that the height/velocity diagram is not a limitation per se. The

rule language was amended from the NPRM proposal. Now the operator must be aware of and familiar with the H/V diagram, and consider that information during the operation. Because accidents have occurred while the aircraft remained in the caution/warning/avoid area of the H/V diagram, it is essential to highlight the significance and potential hazard of these operations for the commercial air tour operators.

The FAA does not see the considerations of the elements of performance plans or the knowledge of the H/V diagram as additional requirements, but merely considerations in preflight planning and essential operational knowledge of the aircraft being flown in commercial, passenger-carrying operations.

VIII. Regulatory Notices and Analyses

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, FAA has determined this rule has benefits that justify its costs, and is a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 because it raises novel policy issues contemplated under that executive order, the proposal of which generated significant public comment. Accordingly, this rule has been reviewed by OMB. The rule is also ''significant'' as defined in DOT's Regulatory Policies and Procedures. The rule will have a significant economic impact on a substantial number of small entities, but it will not reduce barriers to international trade and does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the final regulatory evaluation supporting today's rule, are summarized below.

Final Regulatory Evaluation Summary of Cost and Benefits

The quantified potential benefits are estimated in this final regulatory evaluation at $54.1 million or $38 million, present value, and the costs are estimated at $29 million or $20.7 million, present value. The potential benefits are based on avoiding 17 fatalities and eight serious injuries, and damage or destruction of the aircraft involved over the next 10 years, discounted at 7 percent. Part 135 commercial air tour operators will incur 82 percent of the costs of the rule while part 91 operators will incur 18 percent of the costs. Ninety-nine percent of costs to part 135 operators are associated with equipping their helicopters with float systems and preparing helicopter performance plans before each flight. The cost-benefit ratio is greater than 1.0 for each major cost center as well as by type of operation. However, the substantial number of part 91 and part 135 helicopter operators that have to equip their helicopters with floats to operate over water beyond the shoreline will experience a significant economic impact.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify, and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required review of this final rule and determined that it will have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to Section 603 of the Regulatory Flexibility Act, the Federal Aviation Administration has prepared the following final regulatory flexibility analysis.

Reasons Why Agency Action Is Being Taken

The FAA is adopting these national safety standards to govern commercial air tours as a result of accidents and incidents involving commercial air tour operators directly linked to the major provisions of the rule and NTSB recommendations made in response to air tour and sightseeing accidents and incidents. The rationale for each of the major provisions of the final rule are summarized below:

Briefing provision. A basic tenet of aviation safety is that passengers know procedures for opening exits and exiting the aircraft and, for flight segments over water beyond the shoreline, procedures for water ditching and use of life preservers. The FAA believes that passenger briefings will improve the chances of survival in the event of an accident.

Safety provisions addressing the risks of overwater operations. Based on an analysis of the risks of overwater operations and NTSB recommendations, the FAA concludes that the benefits of these provisions justify the costs and potential inconvenience to passengers. Airplane occupants will also benefit from the requirement for life preservers when air tours are conducted over water. Based on survivors' testimony, life preservers alone are insufficient in preventing loss of life in helicopter accidents over water. Without floats, helicopters sink quickly upon impact, giving occupants little time to exit the aircraft. The FAA believes that helicopter floats, in conjunction with life preservers, will significantly improve the chances of survival. Therefore, this final rule will require life

preservers for both airplanes and helicopters and floats for helicopters that operate overwater beyond the shoreline without gliding capability.

Statement of Objectives and Legal Basis

The objective of this proposal is to provide a higher and uniform level of safety for all commercial air tours.

Under the United States Code, the FAA Administrator is required to consider the following matter, among others, as being in the public interest: assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce [see 49 U.S.C. § 40101(d)(1)]. Additionally, it is the FAA Administrator's statutory duty to carry out her responsibilities ''in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation.'' [see 49 U.S.C. § 44701(c)]. Accordingly, this notice proposes to amend Title 14 of the Code of Federal Regulations to provide definitions for commercial air tours, and establish new safety requirements for such operations.

Description of Small Entities Affected

The FAA concludes that virtually all of the entities affected by the proposed amendments are small according to thresholds established by the Small Business Administration.

An estimated 645 part 91 operators will be affected by the rule. This rule will impose annualized costs per Section 91.147 operator of: (1) $115 to provide passenger briefings and paperwork; (2) an additional $45 to operators of airplanes whose occupants must wear life preservers for a total of $160; (3) $3,290 to helicopter operators to complete performance plans and provide briefings; and (4) $9,300 to helicopter operators who have to provide life preservers and equip their aircraft with floats in addition to completing performance plans and providing briefings for a total cost of $12,600. An estimated 90 part 121/135 operators will be affected by the rule. This rule will impose annualized costs per part 135 operator conducting commercial air tours of: (1) $110 to provide passenger briefings and paperwork; (2) an additional $205 to operators of airplanes whose occupants must wear life preservers for a total of $315; (3) $27,800 to helicopter operators to complete performance plans and provide briefings; and (4) $88,400 to helicopter operators whose occupants must wear life preservers and equip their aircraft with floats in addition to completing performance plans and providing briefings, at a cost of $27,800, for a total cost of $116,200.

Projected Reporting, Recordkeeping and Other Compliance Requirements

Pilots flying for charitable, non-profit, or community events must provide a signed statement that the pilot has not flown more than three previous events covered by section 91.146 during the current calendar year at a cost of $7 per statement. Operators conducting flights under section 91.147 must apply for and receive a Letter of Authorization from the FAA at a cost of approximately $24 per operator. Section 136.13 requires each operator to complete a performance plan before each helicopter flight by a commercial air tour operator or a flight operated under Sections 91.146 or 91.147. The pilot must review for accuracy at a cost of approximately $2 per flight.

Overlapping, Duplicative, or Conflicting Federal Rules

The final rule will not overlap, duplicate, or conflict with existing Federal Rules. The Small Business Administration commented that the requirements of the proposed rule are duplicative with the National Parks Air Tour Management requirements. The FAA does not agree with this comment since this final rule addresses how commercial air tour flights are to be conducted, rather than where such flights may be conducted. This is a safety rule. Under the National Parks Air Tour Management requirements, each park will determine specific park rules as they see fit. Each park may be different.

Analysis of Alternatives

Alternative 1: Lengthen the compliance period: The final rule will require full compliance within six months from the date of issuance with complete phase-in of the helicopter floats within 18 months of the effective date. The FAA issued the NPRM in October 2003 alerting the public to the proposal. In view of the more than 2,000 comments received and the holding of public and Internet meetings, the FAA believes that the compliance times provided are adequate. Lengthening the compliance period to 10 years, for example, would save some compliance costs on aircraft due to be removed from service within the 10-year period. The FAA believes, however, that the sightseeing/air tour accident history justifies FAA action in the near term. Between 1996 and 2005, there were 17 fatalities and eight serious injuries involving part 91 sightseeing flights and part 135 air tours. The FAA believes, therefore, that the higher standards should be implemented expeditiously and has chosen not to adopt this alternative.

Alternative 2: Require helicopter floats for all operations beyond the shoreline: The NPRM required each helicopter to be equipped with a floatation system for a flight over water except if the overwater portion of the flight was only necessary for take-off or landing. The final rule will only require floats if the overwater operations are beyond the helicopter's power-off gliding distance of the shoreline. This change from the NPRM reduces the scope of this provision and reduces the associated costs.

The FAA believes that the safety objectives will be met through this alternative. The FAA believes that helicopter floats alone are insufficient to prevent loss of life. The rule requires helicopters with floats to have life preservers for all occupants. Based on survivors' descriptions, the FAA believes that life preservers alone are insufficient in preventing loss of life in helicopter accidents over water. Helicopter floats, in conjunction with life preservers, would significantly improve the chances of survival. For this reason, the FAA has chosen to adopt this alternative.

Alternative 3: Grandfather part 91 operators: The final rule continues to allow flights for compensation or hire to operate under part 91, with certain provisions. The NPRM would have required part 91 sightseeing operators to obtain part 135 certification. Adoption of this alternative reduces the cost of the rule to part 91 operators from about $150 million over 10 years, to $5.8 million over the same period.

Affordability Analysis

The FAA lacks specific revenue and profit data for most of the entities affected by this rule. The United States Census Bureau data for 2002 provides annual receipt information for Scenic and Sightseeing Transportation, Other (NAICS 4879) which includes airplane and helicopter operators.[14] The receipt information is grouped into five categories. The FAA has reviewed this information and found that the 20 largest firms had average revenues of $5.6 million and includes some firms with receipts that exceed the SBA threshold. The average annual receipts excluding the 20 largest firms was $333,357; the average annual receipts excluding the 50 largest firms was $181,230. The FAA believes it is appropriate to assess the impact of the final rule's costs on Section 91.147 operators using the $181,230 average

[14] See Appendix Table 1.

and the $333,357 amount for most part 135 operators.

The FAA determines the $160 annualized cost to part 91 airplane operators is not a significant cost to the operator with average revenues of $181,230. The annualized cost to 33 helicopter operators to complete performance plans and provide briefings is a significant cost as it accounts for approximately 1.8 percent of annual receipts. Requiring helicopter occupants to wear life preservers and installing floats increases the annualized costs of 17 operators to approximately 6.9 percent of annual receipts.

The FAA determines the $315 annualized cost to airplane operators is not a significant cost to the part 135 operator with average revenues of $333,357. The annualized cost to 38 helicopter operators to complete performance plans and provide briefings is a significant cost as it accounts for approximately 8.3 percent of annual receipts. Requiring helicopter occupants to wear life preservers and installing floats increases the annualized costs of 15 operators to approximately 35 percent of annual receipts. The FAA believes, however, that the helicopter float costs will apply to the larger, more financially viable part 135 entities with receipts exceeding the average revenues used. As noted above the Census data indicates that the 20 largest firms had average revenues of $5.6 million; using this average revenue lowers the annualized cost to 2.1 percent.

While there are significant costs to helicopter operators, there are a number of options the operators may exercise to avoid or minimize these costs. If air tours do not constitute a significant share of an operator's net revenues, an operator may elect not to continue to provide air tours. Other operators may alter the air tour route to avoid the compliance costs, but this may adversely affect tour revenues. Some operators, depending on the volume of their commercial air tour operations, may elect to only equip part of their fleet to ensure the affordability to their business. The FAA concludes these operators will be able to afford to comply with the final rule and remain in business.

Business Closure Analysis

The FAA will allow operators conducting flights for compensation or hire under part 91 to remain under part 91. This change will allow the part 91 operators currently providing sightseeing flights to continue to provide their service. The requirement for helicopter floats will impose significant costs on operators who opt to continue flying over water beyond the shoreline. These operators have 18 months to determine whether to equip all their helicopters, formulate financial plans to meet the initial capital float cost, or devise alternate routing to avoid the expense. The FAA concludes that these operators would remain in business, although we have added operator relief for ability to glide to beyond the shoreline.

Disproportionality Analysis

Almost all entities in the commercial air tour/sightseeing market are small (annual receipts of $6 million or less). Accordingly, the costs imposed by this rule will be borne almost entirely by small businesses. Helicopter operators will incur much higher costs than airplane operators due to the requirement to equip their aircraft with floats if they conduct operations overwater and the requirement to prepare helicopter performance plans. The FAA believes that the only way to accomplish the commercial air tour safety needs for helicopter operations is to impose these higher standards on these entities.

Key Assumptions Analysis

The FAA has made several conservative assumptions in this analysis, which may have resulted in an overestimate of the costs of the final rule. For example, the FAA assumes that all helicopters in commercial air tour service in areas that require floats will equip all their helicopters with floats. It is highly possible that the number will be lower because some operators already have floats to comply with 14 CFR 135.183 and SFAR 71 for Hawaii, some operators do not use all the helicopters in their fleet for commercial air tours, and others who currently operate marginally over water may change their flight plans to remain over land. Also, the helicopter life preserver costs may be overestimated since there is a voluntary industry standard that requires occupants to wear a life preserver provided by the tour operator. To the extent this is a current practice for some operators, it is not a cost of this rule. We have estimated that the pilot may complete the helicopter performance plans although the rule permits the plan to be calculated by a lower paid employee as long as the pilot reviews it for accuracy.

International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires Federal agencies to consider international standards and, where appropriate, use the foreign standards as the basis for U.S. standards. In accordance with the above statute, the FAA has assessed the potential effect of this final rule and determined that it would have only a domestic impact and therefore no affect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

This final rule contains the following new information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Organizations and individuals desiring to submit comments on the information, billing, and collection requirements should direct them to the U.S. Department of Transportation Dockets at the address listed in the **ADDRESSES** section of this document. The FAA can only roughly estimate the effect of this final rule on air tour operators because accurate and complete data on the number of operators, tours, and aircraft is not yet available. One purpose of this rule is to establish a definition of Commercial Air Tour that may be used to subsequently collect data on the air tour industry.

Section 91.146(d) will require each pilot to certify in a signed statement that the pilot has not flown more than three previous events covered by this section during the current calendar year. Pilots currently must provide sponsors with

their pilot and medical certificates and log book under Section 61.113(d)(1). Some sponsors have also had to submit the latter information because of the exemptions they hold and would simply add the certification statement For the first year, this will require 2,200 pilot × 10 minutes each × $41.66 hourly = 366.7 hours and $15,277.

Initial hours = 366.7
Initial cost = $15,277
Recurring hours = 3,300
Recurring cost = $137,493
Total Hours = 3,667,7
Total Cost = $152,770

Section 91.147 requires that operators apply for, receive and comply with a Letter of Authorization from the FAA to conduct nonstop passenger-carrying flights for compensation or hire. These operators are already subject to the FAA's drug and alcohol requirements (and thus not a part of this rule) and most of the information that must be submitted under this section is the same general business information (addresses, names of personnel) provided for those programs, plus aircraft information. Initially, 645 operators will apply and thereafter, 16 new operators will register each year. The application will take each operator 20 minutes to complete the process. Initial hours and cost = 645 operators × 20 minutes each × $73.77 hourly = 215 hours and $15,860.

Initial hours = 215
Initial cost = $15,860
Recurring hours = 48
Recurring cost = $3,510
Total Hours = 263
Total Cost = $19,370

Section 136.7 requires air tour operators to provide passenger briefings. There are numerous options for presenting the required information given the current state of electronics. Nation-wide charitable and non-profit organizations could produce videos and distribute to local chapters at very little cost. Commercial air tour operators are also likely to use videos as some already do. Some 935 videos (200 by charitable and non-profit groups, 645 by Section 91.147 operators and 90 by part 135 operators) are estimated to be produced at an initial cost of $500 each and be replaced over a 10-year period. Presenting the information by video is less costly than oral briefings because the cost of producing the video can be amortized over 10 years which results in lower per briefing cost. While the automated methods are available to individuals providing local community flights, it is more likely the pilot will orally transmit this information to passengers because videos would not be cost-effective. Pilot briefings are estimated to take 3 minutes at a cost of $2.08 per briefing.

Initial videos will take 5 hours to produce at a cost of $100 per hour or a total of 4,675 hours and a cost of $467,500. Initial oral briefings are estimated to take 3 minutes each at a cost of $2.08 per briefing and given before 1,000 flights.

Initial hours = 4,725 (4,675 for video productions + 50 hours for oral briefings)
Initial cost = $469,580 ($467,500 for videos + $2,080 for oral briefings)
Recurring hours = 4,657.5 (4,207.5 for video productions + 450 hours for oral briefings)
Recurring cost = $439,470 ($420,750 for videos + $18,720 for oral briefings)
Total Hours = 9,382.5 (8,882.5 for video productions + 500 hours for oral briefings)
Total Cost = $909,050 ($888,250 for videos + $20,800 for oral briefings)

Section 136.13 will require each operator to complete a performance plan before each helicopter flight by a commercial air tour operator. These estimates include all of the helicopters in the operator's fleet although the entire fleet may not be used for commercial air tours. Pilots will take 3 minutes to review the performance plan before each flight at a cost of $2.08 per review. The total number of charity and non-profit helicopter flights per year are estimated at 9,600. The number of Section 91.147 flights is based on 42 helicopters conducting 400 air tour flight hours per year and performing 3 tours per flight hour (42 × 400 × 3 = 50,400). The number of part 135 commercial air tour flights are a combination of two categories of operations: (1) Air tour hours for operations of 134 AS 350 helicopters at 1,253 hours per year per aircraft and (2) that the average flight takes 45 minutes (134 × 1253 × (60/45) = 223,869). Commercial air tours by 169 other helicopters used by part 135 operators are based on 556 air tour hours per aircraft and performing 3 tours per flight hour (169 × 556 × 3 = 281,892). The total number of affected part 135 helicopter flights is about 505,800.

Initial hours = 28,290 (9,600 + 50,400 + 505,800 = 565,800 flight × 3 minutes per flight = 1,697,400 minutes / 60 minutes per hour = 28,290 hours)
Initial cost = $1,176,864 (565,800 flights × $2.08 per flight)
Recurring hours = 2,636,010
Recurring cost = $10,591,776
Total Hours = 282,900
Total Cost = $11,768,640

SUMMARY OF INITIAL AND TOTAL PAPERWORK HOURS AND COSTS

Category	Initial hours	Initial cost	Ten year hours	Ten year costs
Pilot certification	366.7	$15,277	3,667.7	$152,770
Letter of Authorization	215	15,860	263	19,370
Passenger briefings	4,725	469,580	9,382.5	909,050
Performance plans	28,290	1,176,864	282,900	11,768,640
Total	33,596.7	1,677,581	296,213.2	12,849,830

Note: Section 136.5, Minimums for Hawaii, contains paperwork items that have already been addressed in the paperwork package for SFAR 71. Section 136.7, Passenger Briefings is partially covered in paperwork packages for part 91 and for part 135.

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. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the new information collection requirements(s) in this final rule to OMB for its review. OMB is still reviewing the submission and will provide an OMB Control Number when the review is complete. That Control Number will then be published separately in the **Federal Register**.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the

maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, and therefore would not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. We received comments that specifically related to intrastate aviation in Alaska and the section we received comments about (minimum altitudes in part 136) has been deleted in the final rule. The comments by NorthStar are addressed in the preamble above.

Environmental Analysis

In accordance with FAA Order 1050.1E, the FAA has determined that this amendment is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act. In 1994 the original SFAR 71 established procedural, operational, and equipment safety requirements for air tour aircraft in the state of Hawaii. This final rule maintains those requirements. Neither SFAR 71 nor this final rule involves any significant impacts to the human environment and the FAA has determined that there are no extraordinary circumstances. This rule does not change the existing environment and is not likely to effect listed, endangered or threatened species. Comments requesting that the FAA ban overflights from critical habitat are beyond the scope of this rule. The National Park Service commented about our proposed minimum altitude changes but they have not been adopted in this final rule. A more detailed response to those issues is included in the discussion of comments above.

Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 61

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 91

Aircraft, Airmen, Air traffic control, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 119

Administrative practice and procedures, Air carriers, Aircraft, Aviation safety, Charter flights, Commuter operations, On demand operations, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety.

14 CFR Part 135

Aircraft, Alcohol abuse, Aviation safety, drug abuse, drug testing, Reporting and recordkeeping requirements.

14 CFR Part 136

Air transportation, Aircraft, Airplanes, Air tours, Air safety, Aviation safety, Commercial air tours, Helicopters, National Parks, Recreation and recreation areas, Reporting and recordkeeping requirements.

The Amendment

■ For the reasons set forth above, the Federal Aviation Administration is amending Title 14 of the Code of Federal Regulations parts 61, 91, 119, 121, 135 and 136 as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 2. Amend § 61.113 by revising paragraph (d) to read as follows:

§ 61.113 Private pilot privileges and limitations: Pilot in command.

* * * * *

(d) A private pilot may act as pilot in command of a charitable, nonprofit, or community event flight described in § 91.146, if the sponsor and pilot comply with the requirements of § 91.146.

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 3. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat.1180).

Special Federal Aviation Regulation No. 71—Special Operating Rules for Air Tour Operators in the State of Hawaii

■ 4. Remove SFAR No. 71 from part 91.

■ 5. Add § 91.146 to read as follows:

§ 91.146 Passenger-carrying flights for the benefit of a charitable, nonprofit, or community event.

(a) *Definitions.* For purposes of this section, the following definitions apply:

Charitable event means an event that raises funds for the benefit of a charitable organization recognized by the Department of the Treasury whose donors may deduct contributions under section 170 of the Internal Revenue Code (26 U.S.C. Section 170).

Community event means an event that raises funds for the benefit of any local or community cause that is not a charitable event or non-profit event.

Non-profit event means an event that raises funds for the benefit of a non-profit organization recognized under State or Federal law, as long as one of the organization's purposes is the promotion of aviation safety.

(b) Passenger carrying flights for the benefit of a charitable, nonprofit, or community event identified in paragraph (c) of this section are not subject to the certification requirements of part 119 or the drug and alcohol testing requirements in part 121, appendices I and J, of this chapter, provided the following conditions are satisfied and the limitations in paragraphs (c) and (d) are not exceeded:

(1) The flight is nonstop and begins and ends at the same airport and is conducted within a 25-statute mile radius of that airport;

(2) The flight is conducted from a public airport that is adequate for the airplane or helicopter used, or from another location the FAA approves for the operation;

(3) The airplane or helicopter has a maximum of 30 seats, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds;

(4) The flight is not an aerobatic or a formation flight;

(5) Each airplane or helicopter holds a standard airworthiness certificate, is airworthy, and is operated in compliance with the applicable requirements of subpart E of this part;

(6) Each flight is made during day VFR conditions;

(7) Reimbursement of the operator of the airplane or helicopter is limited to that portion of the passenger payment for the flight that does not exceed the pro rata cost of owning, operating, and maintaining the aircraft for that flight, which may include fuel, oil, airport expenditures, and rental fees;

(8) The beneficiary of the funds raised is not in the business of transportation by air;

(9) A private pilot acting as pilot in command has at least 500 hours of flight time;

(10) Each flight is conducted in accordance with the safety provisions of part 136, subpart A of this chapter; and

(11) Flights are not conducted over a national park, unit of a national park, or abutting tribal lands, unless the operator has secured a letter of agreement from the FAA, as specified under subpart B of part 136 of this chapter, and is operating in accordance with that agreement during the flights.

(c) (1) Passenger-carrying flights or series of flights are limited to a total of four charitable events or non-profit events per year, with no event lasting more than three consecutive days.

(2) Passenger-carrying flights or series of flights are limited to one community event per year, with no event lasting more than three consecutive days.

(d) Pilots and sponsors of events described in this section are limited to no more than 4 events per calendar year.

(e) At least seven days before the event, each sponsor of an event described in this section must furnish to the FAA Flight Standards District Office with jurisdiction over the geographical area where the event is scheduled:

(1) A signed letter detailing the name of the sponsor, the purpose of the event, the date and time of the event, the location of the event, all prior events under this section participated in by the sponsor in the current calendar year;

(2) A photocopy of each pilot in command's pilot certificate, medical certificate, and logbook entries that show the pilot is current in accordance with §§ 61.56 and 61.57 of this chapter and that any private pilot has at least 500 hours of flight time; and

(3) A signed statement from each pilot that lists all prior events under this section in which the pilot has participated during the current calendar year.

■ 6. Add § 91.147 to read as follows:

§ 91.147 Passenger carrying flights for compensation or hire.

Each Operator conducting passenger-carrying flights for compensation or hire must meet the following requirements unless all flights are conducted under § 91.146.

(a) For the purposes of this section and for drug and alcohol testing, *Operator* means any person conducting nonstop passenger-carrying flights in an airplane or helicopter for compensation or hire in accordance with §§ 119.1(e)(2), 135.1(a)(5), or 121.1(d), of this chapter that begin and end at the same airport and are conducted within a 25-statute mile radius of that airport.

(b) An Operator must comply with the safety provisions of part 136, subpart A of this chapter, and apply for and receive a Letter of Authorization from the Flight Standards District Office nearest to its principal place of business by September 11, 2007.

(c) Each application for a Letter of Authorization must include the following information:

(1) Name of Operator, agent, and any d/b/a (doing-business-as) under which that Operator does business;

(2) Principal business address and mailing address;

(3) Principal place of business (if different from business address);

(4) Name of person responsible for management of the business;

(5) Name of person responsible for aircraft maintenance;

(6) Type of aircraft, registration number(s), and make/model/series; and

(7) An Antidrug and Alcohol Misuse Prevention Program registration.

(d) The Operator must register and implement its drug and alcohol testing programs in accordance with part 121, appendices I and J, of this chapter.

(e) The Operator must comply with the provisions of the Letter of Authorization received.

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 7. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

■ 8. Effective September 11, 2007, amend § 119.1 by revising paragraph (e)(2) to read as follows:

§ 119.1 Applicability.

* * * * *

(e) * * *

(2) Nonstop Commercial Air Tours conducted after September 11, 2007, in an airplane or helicopter having a standard airworthiness certificate and passenger-seat configuration of 30 seats or fewer and a maximum payload capacity of 7,500 pounds or less that begin and end at the same airport, and are conducted within a 25-statute mile radius of that airport, in compliance with the Letter of Authorization issued under § 91.147 of this chapter. For nonstop Commercial Air Tours conducted in accordance with part 136, subpart B of this chapter, National Parks Air Tour Management, the requirements of part 119 of this chapter apply unless excepted in § 136.37(g)(2). For Nonstop Commercial Air Tours conducted in the vicinity of the Grand Canyon National Park, Arizona, the requirements of SFAR 50–2, part 93, subpart U, and part 119 of this chapter, as applicable, apply.

* * * * *

■ 9. Amend § 119.3 by adding the following definition:

§ 119.3 Definitions.

* * * * *

Commercial air tour means a flight conducted for compensation or hire in an airplane or helicopter where a purpose of the flight is sightseeing. The FAA may consider the following factors in determining whether a flight is a commercial air tour:

(1) Whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire;

(2) Whether the person offering the flight provided a narrative that referred to areas or points of interest on the surface below the route of the flight;

(3) The area of operation;

(4) How often the person offering the flight conducts such flights;

(5) The route of flight;

(6) The inclusion of sightseeing flights as part of any travel arrangement package;

(7) Whether the flight in question would have been canceled based on poor visibility of the surface below the route of the flight; and

(8) Any other factors that the FAA considers appropriate.

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 10. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105.

■ 11. Effective September 11, 2007, amend § 121.1 by revising paragraph (d) introductory text to read as follows:

§ 121.1 Applicability.

* * * * *

(d) Nonstop Commercial Air Tours conducted for compensation or hire in accordance with § 119.1(e)(2) of this chapter must comply with drug and alcohol requirements in §§ 121.455, 121.457, 121.458 and 121.459, and with the provisions of part 136, subpart A of this chapter by September 11, 2007. An operator who does not hold an air carrier certificate or an operating certificate is permitted to use a person who is otherwise authorized to perform aircraft maintenance or preventive maintenance duties and who is not subject to anti-drug and alcohol misuse prevention programs to perform—

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

■ 12. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

■ 13. Effective September 11, 2007, amend § 135.1 by revising paragraph (a)(5) and adding a new paragraph (a)(8) to read as follows:

§ 135.1 Applicability.

(a) * * *

(5) Nonstop Commercial Air Tour flights conducted for compensation or hire in accordance with § 119.1(e)(2) of this chapter that begin and end at the same airport and are conducted within a 25-statute-mile radius of that airport; provided further that these operations must comply only with the drug and alcohol testing requirements in §§ 135.249, 135.251, 135.253, 135.255, and 135.353; and with the provisions of part 136, subpart A, and § 91.147 of this chapter by September 11, 2007.

* * * * *

(8) Commercial Air tours conducted by holders of operations specifications issued under this part must comply with the provisions of part 136, Subpart A of this chapter by September 11, 2007.

* * * * *

■ 14. Amend § 135.1 by removing paragraph (c), redesignating paragraph (d) as paragraph (c), and revising new paragraph (c) introductory text to read as follows:

§ 135.1 Applicability.

* * * * *

(c) An operator who does not hold a part 119 certificate and who operates under the provisions of § 91.147 of this chapter is permitted to use a person who is otherwise authorized to perform aircraft maintenance or preventive maintenance duties and who is not subject to anti-drug and alcohol misuse prevent programs to perform—

* * * * *

PART 136—COMMERCIAL AIR TOURS AND NATIONAL PARKS AIR TOUR MANAGEMENT

■ 15. The authority citation for part 136 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

■ 16. Revise the heading of part 136 to read as set forth above.

■ 17. Redesignate existing §§ 136.1, 136.3, 136.5, 136.7, 136.9, and 136.11 as new subpart B consisting of §§ 136.31, 136.33, 136.35, 136.37, 136.39, and 136.41, respectively, and reserve §§ 136.43 through 136.49.

■ 18. Add a heading for new subpart B of part 136 consisting of newly designated §§ 136.31, 136.33, 136.35, 136.37, 136.39, and 136.41 to read as follows:

Subpart B—National Parks Air Tour Management

■ 19. In new subpart B of part 136, remove the words ''this part'' and replace with the words ''this subpart'' in the following paragraphs: 136.31(a), 136.31(b), 136.31(b)(2), 136.31(c), introductory text in 136.33, 136.33(d)(2), 136.37(d), and 136.37(e).

Subpart C [Added]

■ 20. Add new Subpart C, titled ''Grand Canyon National Park,'' and reserve sections 136.51 through 136.69.

■ 21. Add new subpart A to read as follows:

Subpart A—National Air Tour Safety Standards

Sec.
136.1 Applicability and definitions.
136.3 Letters of Authorization.
136.5 Additional requirements for Hawaii.
136.7 Passenger briefings.
136.9 Life preservers for over water.
136.11 Helicopter floats for over water.
136.13 Helicopter performance plan and operations.
136.15–136.29 [Reserved]

§ 136.1 Applicability and definitions.

(a) This subpart applies to each person operating or intending to operate a commercial air tour in an airplane or helicopter and, when applicable, to all occupants of the airplane or helicopter engaged in a commercial air tour. When any requirement of this subpart is more stringent than any other requirement of this chapter, the person operating the commercial air tour must comply with the requirement in this subpart.

(b) As of September 11, 2007, this subpart is applicable to:

(1) Part 121 or 135 operators conducting a commercial air tour and holding a part 119 certificate;

(2) Part 91 operators conducting flights as described in § 119.1(e)(2); and

(3) Part 91 operators conducting flights as described in 14 CFR 91.146

(c) This subpart is not applicable to operations conducted in balloons, gliders (powered or un-powered), parachutes (powered or un-powered), gyroplanes, or airships.

(d) For the purposes of this subpart the following definitions apply:

Commercial Air Tour means a flight conducted for compensation or hire in an airplane or helicopter where a purpose of the flight is sightseeing. The FAA may consider the following factors in determining whether a flight is a commercial air tour for purposes of this subpart:

(1) Whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire;

(2) Whether the person offering the flight provided a narrative that referred to areas or points of interest on the surface below the route of the flight;

(3) The area of operation;

(4) How often the person offering the flight conducts such flights;

(5) The route of the flight;

(6) The inclusion of sightseeing flights as part of any travel arrangement package;

(7) Whether the flight in question would have been canceled based on

poor visibility of the surface below the route of the flight; and

(8) Any other factors that the FAA considers appropriate.

Commercial Air Tour operator means any person who conducts a commercial air tour.

Life preserver means a flotation device used by an aircraft occupant if the aircraft ditches in water. If an inflatable device, it must be un-inflated and ready for its intended use once inflated. In evaluating whether a non-inflatable life preserver is acceptable to the FAA, the operator must demonstrate to the FAA that such a preserver can be used during an evacuation and will allow all passengers to exit the aircraft without blocking the exit. Each occupant must have the physical capacity to wear and inflate the type of device used once briefed by the commercial air tour operator. Seat cushions do not meet this definition.

Raw terrain means any area on the surface, including water, devoid of any person, structure, vehicle, or vessel.

Shoreline means that area of the land adjacent to the water of an ocean, sea, lake, pond, river or tidal basin that is above the high water mark and excludes land areas unsuitable for landing such as vertical cliffs or land intermittently under water during the particular flight.

Suitable landing area for helicopters means an area that provides the operator reasonable capability to land without damage to equipment or injury to persons. Suitable landing areas must be site-specific, designated by the operator, and accepted by the FAA. These site-specific areas would provide an emergency landing area for a single-engine helicopter or a multiengine helicopter that does not have the capability to reach a safe landing area after an engine power loss.

(e) In an in-flight emergency requiring immediate action, the pilot in command may deviate from any rule of this subpart to the extent required to meet that emergency.

§ 136.3 Letters of Authorization.

Operators subject to this subpart who have Letters of Authorization may use the procedures described in 14 CFR 119.51 to amend or have the FAA reconsider those Letters of Authorization.

§ 136.5 Additional requirements for Hawaii.

No person may conduct a commercial air tour in the State of Hawaii unless they comply with the additional requirements and restrictions in appendix A to part 136.

§ 136.7 Passenger briefings.

(a) Before takeoff each pilot in command shall ensure that each passenger has been briefed on the following:

(1) Procedures for fastening and unfastening seatbelts;

(2) Prohibition on smoking; and

(3) Procedures for opening exits and exiting the aircraft.

(b) For flight segments over water beyond the shoreline, briefings must also include:

(1) Procedures for water ditching;

(2) Use of required life preservers; and

(3) Procedures for emergency exit from the aircraft in the event of a water landing.

§ 136.9 Life preservers for over water.

(a) Except as provided in paragraphs (b) or (c) of this section, the operator and pilot in command of commercial air tours over water beyond the shoreline must ensure that each occupant is wearing a life preserver from before takeoff until flight is no longer over water.

(b) The operator and pilot in command of a commercial air tour over water beyond the shoreline must ensure that a life preserver is readily available for its intended use and easily accessible to each occupant if:

(1) The aircraft is equipped with floats; or

(2)The airplane is within power-off gliding distance to the shoreline for the duration of the time that the flight is over water.

(3)The aircraft is a multi engine that can be operated with the critical engine inoperative at a weight that will allow it to climb, at least 50 feet a minute, at an altitude of 1,000 feet above the surface, as provided in the Airplane Flight Manual or the Rotorcraft Flight Manual, as appropriate.

(c) No life preserver is required if the overwater operation is necessary only for takeoff or landing.

§ 136.11 Helicopter floats for over water.

(a) A helicopter used in commercial air tours over water beyond the shoreline must be equipped with fixed floats or an inflatable flotation system adequate to accomplish a safe emergency ditching, if—

(1) It is a single-engine helicopter; or

(2) It is a multi-engine helicopter that cannot be operated with the critical engine inoperative at a weight that will allow it to climb, at least 50 feet a minute, at an altitude of 1,000 feet above the surface, as provided in the Rotorcraft Flight Manual (RFM).

(b) Each helicopter that is required to be equipped with an inflatable flotation system must have:

(1) The activation switch for the flotation system on one of the primary flight controls, and

(2) The flotation system armed when the helicopter is over water and is flying at a speed that does not exceed the maximum speed prescribed in the Rotorcraft Flight Manual for flying with the flotation system armed.

(c) Fixed floats or an inflatable flotation system is not required for a helicopter under this section if:

(1) The helicopter is over water only during the takeoff or landing portion of the flight, or

(2) The helicopter is operated within power-off gliding distance to the shoreline for the duration of the flight and each occupant is wearing a life preserver from before takeoff until the aircraft is no longer over water.

(d) Air tour operators required to comply with paragraphs (a) and/or (b) of this section must meet these requirements on or before September 5, 2008.

§ 136.13 Helicopter performance plan and operations.

(a) Each operator must complete a performance plan before each helicopter commercial air tour, or flight operated under 14 CFR 91.146 or 91.147. The pilot in command must review for accuracy and comply with the performance plan on the day the flight is flown. The performance plan must be based on the information in the Rotorcraft Flight Manual (RFM) for that helicopter, taking into consideration the maximum density altitude for which the operation is planned, in order to determine:

(1) Maximum gross weight and center of gravity (CG) limitations for hovering in ground effect;

(2) Maximum gross weight and CG limitations for hovering out of ground effect; and

(3) Maximum combination of weight, altitude, and temperature for which height/velocity information in the RFM is valid.

(b) Except for the approach to and transition from a hover for the purpose of takeoff and landing, or during takeoff and landing, the pilot in command must make a reasonable plan to operate the helicopter outside of the caution/warning/avoid area of the limiting height/velocity diagram.

(c) Except for the approach to and transition from a hover for the purpose of takeoff and landing, during takeoff and landing, or when necessary for safety of flight, the pilot in command must operate the helicopter in compliance with the plan described in paragraph (b) of this section.

§§ 136.15–136.29 [Reserved]

■ 22. Add new appendix A to part 136 as follows:

Appendix A to Part 136—Special Operating Rules for Air Tour Operators in the State of Hawaii

Section 1. Applicability. This appendix prescribes operating rules for airplane and helicopter visual flight rules air tour flights conducted in the State of Hawaii under 14 CFR parts 91, 121, and 135. This appendix does not apply to:

(a) Operations conducted under 14 CFR part 121 in airplanes with a passenger seating configuration of more than 30 seats or a payload capacity of more than 7,500 pounds.

(b) Flights conducted in gliders or hot air balloons.

Section 2. Definitions. For the purposes of this appendix:

''Air tour'' means any sightseeing flight conducted under visual flight rules in an airplane or helicopter for compensation or hire.

''Air tour operator'' means any person who conducts an air tour.

Section 3. Helicopter flotation equipment. No person may conduct an air tour in Hawaii in a single-engine helicopter beyond the shore of any island, regardless of whether the helicopter is within gliding distance of the shore, unless:

(a) The helicopter is amphibious or is equipped with floats adequate to accomplish a safe emergency ditching and approved flotation gear is easily accessible for each occupant; or

(b) Each person on board the helicopter is wearing approved flotation gear.

Section 4. Helicopter performance plan. Each operator must complete a performance plan before each helicopter air tour flight. The performance plan must be based on the information in the Rotorcraft Flight Manual (RFM), considering the maximum density altitude for which the operation is planned for the flight to determine the following:

(a) Maximum gross weight and center of gravity (CG) limitations for hovering in ground effect;

(b) Maximum gross weight and CG limitations for hovering out of ground effect; and,

(c) Maximum combination of weight, altitude, and temperature for which height-velocity information in the RFM is valid.

The pilot in command (PIC) must comply with the performance plan.

Section 5. Helicopter Operating Limitations. Except for approach to and transition from a hover, and except for the purpose of takeoff and landing, the PIC shall operate the helicopter at a combination of height and forward speed (including hover) that would permit a safe landing in event of engine power loss, in accordance with the height-speed envelope for that helicopter under current weight and aircraft altitude.

Section 6. Minimum flight altitudes. Except when necessary for takeoff and landing, or operating in compliance with an air traffic control clearance, or as otherwise authorized by the Administrator, no person may conduct an air tour in Hawaii:

(a) Below an altitude of 1,500 feet above the surface over all areas of the State of Hawaii, and,

(b) Closer than 1,500 feet to any person or property; or,

(c) Below any altitude prescribed by federal statute or regulation.

Section 7. Passenger briefing. Before takeoff, each PIC of an air tour flight of Hawaii with a flight segment beyond the ocean shore of any island shall ensure that each passenger has been briefed on the following, in addition to requirements set forth in 14 CFR 91.107, 121.571, or 135.117:

(a) Water ditching procedures;

(b) Use of required flotation equipment; and

(c) Emergency egress from the aircraft in event of a water landing.

Issued in Washington, DC, on December 22, 2006.

Marion C. Blakey,

Administrator.

[FR Doc. 07–580 Filed 2–8–07; 11:42 am]

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Federal Register

Tuesday,
February 13, 2007

Part VI

The President

Memorandum of February 5, 2007—Assignment of Functions Under Section 556 of the John Warner National Defense Authorization Act for Fiscal Year 2007

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Vol. 72, No. 29
Tuesday, February 13, 2007

Presidential Documents

Title 3—

The President

Memorandum of February 5, 2007

Assignment of Functions Under Section 556 of the John Warner National Defense Authorization Act for Fiscal Year 2007

Memorandum for the Secretary of Defense

By the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3, United States Code, I hereby assign to you the functions of the President under section 556 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364).

You are authorized and directed to publish this memorandum in the **Federal Register.**

THE WHITE HOUSE,
Washington, February 5, 2007.

[FR Doc. 07–697
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H.R. 188/P.L. 110–3

To provide a new effective date for the applicability of certain provisions of law to Public Law 105-331. (Feb. 8, 2007; 121 Stat. 6)

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