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Presidential Documents

Title 3—

The President

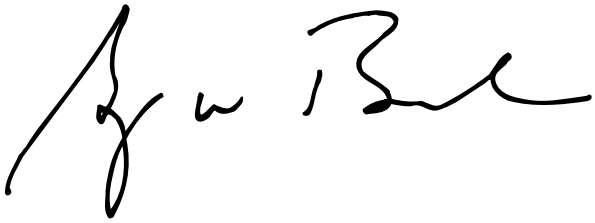
Presidential Determination No. 2006–13 of May 4, 2006

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $28 million be made available from the U.S. Emergency Refugee and Migration Assistance Fund to support unexpected urgent humanitarian needs related to the U.N. High Commissioner for Refugees' new role to protect and assist Internally Displaced Persons; refugee repatriation to Burundi and the Democratic Republic of Congo; refugee feeding operations; and drought relief affecting conflict areas of Somalia. These funds may be used, as appropriate, to provide contributions to international, governmental, and non-governmental organizations, and, as necessary, for administrative expenses of the Bureau of Population, Refugees, and Migration.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority and to arrange for the publication of this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, May 4, 2006.

[FR Doc. 06–4482
Filed 5–10–06; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

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

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

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–53755]

Description of Duties of the General Counsel

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (Commission) is amending its description of the duties of the General Counsel to include preliminary investigations, in which no process is issued or testimony compelled, where it appears that an attorney appearing and practicing before the Commission may have violated Rule 102(e) of the Commission's Rules of Practice. The Office of the General Counsel of the Commission already has the authority to conduct Commission-authorized proceedings and formal investigations under Section 21 of the Securities Exchange Act of 1934 (Exchange Act), including for violations by attorneys of Rule 102(e) of the Commission's Rules of Practice.

An amendment of the description of the duties of the General Counsel to include preliminary investigations makes it clear that the General Counsel may gather evidence in Rule 102(e) cases without compulsory process where witnesses are willing to testify or provide information voluntarily. This amendment would enable the General Counsel to identify, through informal means, those matters that do not warrant full-blown investigation and compulsory process.

DATES: *Effective Date:* May 3, 2006.

FOR FURTHER INFORMATION CONTACT: Laura Walker, 202–551–5031, Office of the General Counsel, Office of Litigation and Administrative Practice.

SUPPLEMENTARY INFORMATION: Section 21(a)(1) of the Exchange Act authorizes the Commission to conduct investigations regarding violations of the Exchange Act or its related rules or regulations. Under 17 CFR 201.102(e), the Commission may discipline attorneys who practice before it who lack integrity or competence, engage in improper professional conduct, or who are determined to have violated the Federal securities laws. Under 17 CFR 200.21(a), the General Counsel is responsible for conducting administrative proceedings relating to the disqualification of lawyers from practice before the Commission.

The Commission is amending its description of the duties of the General Counsel to include preliminary investigations, in which no process is issued or testimony compelled, where it appears that an attorney may have violated Rule 102(e) of the Commission's Rules of Practice.

The Commission finds, in accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(A), that this revision relates solely to agency organization, procedures, or practices. It is therefore not subject to the provision of the APA requiring notice and opportunity for comment. Accordingly, it is effective May 3, 2006.

Text of Amendment

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

■ For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The authority citation for part 200, subpart A, continues to read in part as follows:

Authority: 15 U.S.C. 77s, 77o, 77sss, 78d, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * *

■ 2. Section 200.21 is amended by revising the fourth sentence of paragraph (a) to read as follows:

§ 200.21 The General Counsel.

(a) * * * In addition, he or she is responsible for advising the Commission at its request or at the request of any division director or office head, or on his or her own motion, with respect to interpretations involving questions of law; for the conduct of administrative proceedings relating to the disqualification of lawyers from practice before the Commission; for conducting preliminary investigations, as described in 17 CFR 202.5(a), into potential violations of 17 CFR 201.102(e) by attorneys; for the preparation of the Commission comments to the Congress on pending legislation; and for the drafting, in conjunction with appropriate divisions and offices, of legislative proposals to be sponsored by the Commission. * * *

* * * * *

By the Commission.

Dated: May 3, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. 06–4399 Filed 5–10–06; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 542

RIN 3141–AA27

Minimum Internal Control Standards

AGENCY: National Indian Gaming Commission.

ACTION: Final rule revisions.

SUMMARY: In response to the inherent risks of gaming enterprises and the resulting need for effective internal controls in Tribal gaming operations, the National Indian Gaming Commission (Commission or NIGC) first developed Minimum Internal Control Standards (MICS) for Indian gaming in 1999, which have subsequently been revised several times. The Commission recognized from the outset that periodic technical adjustments and revisions would be necessary in order to keep the MICS effective in protecting Tribal gaming assets, the interests of Tribal stakeholders and the gaming public. To that end, the following final rule revisions contain certain corrections

and revisions, which are necessary to clarify, improve, and update the Commission's existing MICS. The purpose of these final MICS revisions is to address apparent shortcomings in the MICS and various changes in Tribal gaming technology and methods. Public comments on these final MICS revisions were received by the Commission for a period of 45 days after their publication in the **Federal Register** as a proposed rule on November 15, 2005. After consideration of all received comments, the Commission has made whatever changes to the proposed revisions that it deemed appropriate, and is now promulgating and publishing the final revisions to the Commission's MICS Rule, 25 CFR part 542.

EFFECTIVE DATES: May 11, 2006.

Compliance Date: On or before July 10, 2006, the Tribal gaming regulatory authority (TGRA) shall: (1) In accordance with the Tribal gaming ordinance, establish and implement Tribal internal control standards that shall provide a level of control that equals or exceeds the revised standards set forth herein; and (2) establish a deadline no later than September 8, 2006, by which a gaming operation must come into compliance with the Tribal internal control standards. However, the TGRA may extend the deadline by an additional 60 days if written notice is provided to the Commission no later than September 8, 2006. Such notification must cite the specific revisions to which the extension pertains.

FOR FURTHER INFORMATION CONTACT: Chief of Staff, Joseph Valandra (202) 632–7003 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 5, 1999 (64 FR 590, Jan. 5, 1999), the Commission first published its Minimum Internal Control Standards (MICS) as a final rule. As gaming Tribes and the Commission gained practical experience applying the MICS, it became apparent that some of the standards required clarification or modification to be effective, operate as the Commission had intended, and accommodate changes and advances in gaming technology and methods. Consequently, the Commission, working with an Advisory Committee composed of the Commission, NIGS staff and nominated Tribal representatives, published a new, final revised MICS rule on June 27, 2002.

Based on the practical experiences of the Commission and Tribes working with the revised MICS, it has again become apparent that additional corrections, clarifications and modifications are needed to ensure that the MICS continue to be effective and operate as the Commission intended. To identify which of the current MICS need correction, clarification or modification, the Commission initially solicited input and guidance from NIGC employees, who have extensive gaming regulatory expertise and experience, and work closely with Tribal gaming regulators in monitoring the implementations, operation and effect of the MICS in Tribal gaming operations. The resulting input from NIGC staff convinced the Commission that the MICS require continuing review and revision to keep them effective and up-to-date. To address this need, the Commission established a Standing MICS Advisory Committee to assist it in both identifying and developing necessary MICS revisions on an ongoing basis.

In recognition of its government-to-government relationship with Tribes, and its related commitment to meaningful Tribal consultation, the Commission asked gaming Tribes in January of 2004 for nominations of Tribal representatives to serve on its Standing MICS Advisory Commission. From the twenty-seven (27) Tribal nominations that it received, the Commission selected nine (9) Tribal representatives in March 2004 to serve on the Committee. The Commission's Tribal Committee member selections were based on several factors, including the regulatory experience and background of the individuals nominated; the size(s) of their affiliated Tribal gaming operation(s); the types of games played at their affiliated Tribal gaming operation(s); and the areas of the country in which their affiliated gaming operation(s) are located. The selection process was very difficult because numerous highly qualified Tribal representatives were nominated to serve on this important Committee.

As expected, the benefits of including Tribal representatives on the Committee, who work daily with the MICS, have been invaluable. The Tribal representatives selected to serve on the Commission's Standing MICS Advisory Committee are: Tracy Burris, Gaming Commissioner, Chickasaw Nation Gaming Commission, Chickasaw Nation of Oklahoma; Jack Crawford, Chairman, Umatilla Gaming Commission, Confederated Tribes of the Umatilla Indian Reservation; Patrick Darden, Executive Director, Chitimacha Gaming Commission, Chitimacha Indian Tribe of Louisiana; Mark N. Fox, former Compliance Director, Four Bears Casino, Three Affiliated Tribes of the Fort Berthold Reservation; Sherrilyn Kie, Senior Internal Auditor, Pueblo of Laguna Gaming Authority, Pueblo of Laguna; Patrick Lambert, Executive Director, Eastern Band of Cherokee Gaming Commission, Eastern Band of Cherokee Indians; John Meskill, Director, Mohegan Tribal Gaming Commission, Mohegan Indian Tribe; Jerome Schultze, Executive Director, Morongo Gaming Agency, Morongo Band of Mission Indians; and Lorna Skenandore, Assistant Gaming Manager, Support Services, Oneida Bingo and Casino, formerly Gaming Compliance Manager, Oneida Gaming Commission, Oneida Tribe of Indians of Wisconsin. The Advisory Committee also includes the following Commission representatives: Philip N. Hogen, Chairman; Cloyce V. Choney, Associate Commissioner; Joe H. Smith, Acting Director of Audits; Ken Billingsley, Region III Director; Nicole Peveler, Field Auditor; Ron Ray, Field Investigator; and Katherine Zebell, Staff Attorney, Office of General Counsel. Nelson Westrin, former Vice-Chairman of the Commission, was part of the Standing MICS Advisory Committee from its inception through December of 2005.

In the past, the MICS were comprehensively revised on a broad, wholesale basis. Such large-scale revisions proved to be difficult for Tribes to implement in a timely manner and were often unnecessarily disruptive to Tribal gaming operations. The purpose of the Commission's Standing Committee is to conduct a continuing review of the operation and effectiveness of the existing MICS. The primary purpose of the review is to promptly identify and develop needed revisions of the MICS on a manageable, incremental basis, in order to keep the MICS practical and effective. By making more manageable, incremental changes to the MICS on an ongoing basis, the Commission hopes to be more prompt in developing needed revisions, while, at the same time, avoiding larger-scale MICS revisions that take longer to implement and can be unnecessarily disruptive to Tribal gaming operations.

In accordance with the above-described approach, the Commission has developed the following set of final MICS rule revisions with the assistance of its Standing MICS Advisory Committee. In doing so, the Commission is carrying out its statutory mandate under the Indian Gaming Regulatory Act (Act or IGRA), 25 U.S.C. 2706(b)(10), to promulgate necessary and appropriate regulations to implement the provisions of the Act. In particular, the following final MICS rule revisions are intended to address Congress' purpose and concerns, stated in Section 2702(2) of

the Act, that it ''provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operations, and to assure that the gaming is conducted fairly and honestly by both the operator and the players.'' The Commission, with the Committee's assistance, identified three specific objectives for the following final MICS rule revisions: (1) To ensure that the MICS are reasonably comparable to the internal control standards of established gaming jurisdiction; (2) to ensure that the interests of the Tribal stakeholders are adequately safeguarded; and (3) to ensure that the interests of the gaming public are adequately protected.

It should be noted that the NIGC's authority to issue and enforce MICS for Class III gaming was recently challenged in Federal district court in *Colorado River Indian Tribes* v. *NIGC (CRIT)*, 383 F. Supp. 2d 123 (D.D.C. 2005); 2005 U.S. Dist. LEXIS 17722. The case arose after the Colorado River Indian Tribes objected to an NIGC audit of its Class III gaming operation, which led to the audit's discontinuation. The NIGC subsequently cited the Tribe for an access violation and imposed a fine. the Court ruled that the NIGC's notice of violation and imposition of a civil fine were improper, finding that, under IGRA, the NIGC lacked the authority to issue or enforce MICS for Class III gaming. While the Court held that the NIGC could not penalize the Colorado River Indian Tribes for resisting the NIGC's attempt to conduct an audit of its Class III gaming, it did not enjoin the NIGC from applying its MICS to other Class III operations, nor did the Court prohibit the NIGC from conducting audits to monitor compliance with those MICS. The CRIT decision applies only to the Colorado River Indian Tribes. The decision is currently on appeal.

In order to uphold the integrity of Indian gaming, it is important to maintain the continuity of the system of regulation that has been in place since 1999. This system has helped ensure adequate regulation and has facilitated growth and prosperity in the industry. Thus, with the exception of the gaming operations of the Colorado River Indian Tribes, the NIGC will continue to monitor Tribal compliance with the MICS with respect to Class II and III gaming, pending the results of our appeal in the CRIT case or further judicial or legislative direction.

The Advisory Committee met in person on January 25, 2005, May 10, 2005, and September 26, 2005, and by teleconference on March 13, 2006, to discuss the changes set forth in the following final MICS rule revisions. The input received from Committee members has been invaluable to the Commission in its development of the revisions. In accordance with the Commission's established government-to-government Tribal consultation policy, before formulation of the final rule revisions contained herein, the Commission provided a preliminary working draft of the revisions to gaming Tribes on August 26, 2005, for a thirty (30)-day informal review and public comment period. Furthermore, on November 15, 2005, the Commission published the proposed rule revisions in the **Federal Register** for public comment. Responses were received for a period of 45 days following publication. In response to its requests for comments, the Commission received 18 comments from Tribal Advisory Committee members, individual Tribes and Tribal gaming commissions, and other interested parties regarding the proposed revisions. A summary of these comments is presented below in the discussion of each final revision to which they relate.

General Comments to Final MICS Revisions

For the reasons stated above in this preamble, the NIGC is revising the following specific sections of its MICS rules, 25 CFR part 542. The following discussion addresses each of the final rule revisions and includes the Commission's response to public comments concerning the MICS.

Comments Questioning MIGC Authority To Promulgate MICS for Class III Gaming

Many of the comments to the preliminary working draft of the MICS revisions pertained to the Commission's authority to promulgate rules governing the conduct of Class III gaming. Positions were expressed asserting that Congress intended the NIGC's Class III gaming regulatory authority to be limited exclusively to the approval of Tribal gaming ordinances and management contracts. Similar comments were received concerning the first proposed MICS back in 1999. The Commission, at that time, determined, in its publication of the original MICS in 1999, that it possessed the statutory authority to promulgate Class III MICS. As stated in the preamble to those MICS: ''The Commission believes that it does have the authority to promulgate this final rule. * * * [T]he Commission's promulgation of the MICS is consistent with its responsibilities as the Federal regulator of Indian gaming.'' 64 FR 590, Jan. 5, 1999).

The current Commission reaffirms that determination. IGRA, which established the regulatory structure for all classes of Indian gaming, expressly provides that the Commission ''shall promulgate such regulations as it deems appropriate to implement the provisions of (the Act).'' 25 U.S.C. 2706(b)(10). Pursuant to this clearly stated statutory duty and authority under the Act, the Commission has determined that minimum internal control standards are necessary and appropriate to implement and enforce the regulatory provisions of the Act governing the conduct of both Class II and Class III gaming and to accomplish the purposes of the Act. The Commission believes that the importance of internal control systems in the casino operating environment cannot be overemphasized. While this is true of any industry, it is particularly true and relevant to the revenue-generation processes of a gaming enterprise, which, because of the physical and technical aspects of the games and their operation, and the randomness of game outcomes, makes exacting internal controls mandatory. The internal control systems and standards are the primary management procedures used to protect the operational integrity of gambling games; account for and protect gaming assets and revenues; and assure the reliability of the financial statements for Class II and III gaming operations. Consequently, internal control systems are a vitally important part of properly regulated gaming. Internal control systems establish a regulatory framework for the gaming enterprise's governing board, management and other personnel who are responsible for providing reasonable assurances regarding achievement of the enterprise's objectives. These objectives typically include operational integrity, effectiveness and efficiency; reliable financial statement reporting; and compliance with applicable laws and regulations.

The Commission believes that strict regulations, such as the MICS, are not only appropriate, but necessary, for it to fulfill its responsibilities under IGRA to establish necessary baseline, or minimum, Federal internal control standards for all Tribal gaming operations on Indian lands. 25 U.S.C. 2702(3). Although the Commission recognizes that many Tribes had sophisticated internal control standards in place prior to the Commission's original promulgation of its MICS, many Tribes did not. This absence of minimum Federal internal control

standards in all Tribal casinos adversely affected the adequacy of Indian gaming regulation nationwide, and threatened gaming as a means of providing the expected Tribal benefits intended by IGRA. The Commission continues to strongly believe that the promulgation and revisions of IGRA, and is within the Commission's clearly expressed statutory power and duty under Section 2706(b)(10) of the Act.

Comments Recommending Voluntary Tribal Compliance With MICS

Comments were also received suggesting that the NIGC should reissue the MICS as a bulletin or guideline for Tribes to use voluntarily, at their discretion, in developing and implementing their own Tribal gaming ordinances and internal control standards. The Commission disagrees. Minimum internal control standards are common in established gaming jurisdictions. To be effective in establishing a minimum baseline for the internal operating procedures of Tribal gaming enterprises, the rules must be concise, explicit and uniform for all Tribal gaming operations to which they apply. Furthermore, to nurture and promote public confidence in the integrity and regulation of Indian gaming, and to ensure its adequate regulation to protect Tribal gaming assets and the interests of Tribal stakeholders and the public, the Commission's MICS regulations must be reasonably uniform in their implementation and application, as well as regularly monitored and enforced by Tribal regulators and the NIGC to ensure Tribal compliance.

Final New or Revised Definitions in Section 542.2 of the MICS

The Commission has added or revised definitions of the following five terms in § 542.2. A discussion of each new or revised definition follows in alphabetical order.

''Account Access Card''

The Commission has revised the existing MICS definition to more accurately define the applicability of the term. Committee members recommended that the definition of ''account access card'' be revised to include the reference that account access cards are not ''smart cards.''

No comments were received concerning this final rule revision.

''Counter Game''

This is a new definition. Several Committee members recommended that a definition of the term ''counter game'' be added to the current MICS definitions. In conjunction with the proposal to add accounting standards to the MICS, which include the term, the NIGC has determined that, to ensure that such revisions and existing rules are clear and unambiguous, insertion of the definition is worthwhile. One comment was received questioning the need for the definition, since the MICS already addresses each of the relevant games. As noted, the term is pertinent to its use in the minimum internal control standards for accounting, which are added in conjunction with this final rule at § 542.19.

''Statistical Drop''

This is a new definition. Based on a comment received, the definition is being added to the current MICS definitions. In conjunction with other final rule revisions to the MICS, which include the term, the NIGC has determined that, to ensure that the rules are clear and unambiguous, insertion of the definition in the MICS is worthwhile.

''Statistical Win''

This is a new definition. Based on a comment received, the definition is being added to the current MICS definitions. In conjunction with other final rule revisions to the MICS, which include the term, the NIGC has determined that, to ensure that the rules are clear and unambiguous, insertion of the definition in the MICS is worthwhile.

Final Addition to Sections 542.7(g)(1) and 542.8(h)(1) Electronic Equipment

The Commission is revising the current standards to clarify the intent of the existing regulation. The amendment is to explicitly state that bingo electronic systems and pull-tab electronic systems utilizing patron account access cards will be required to comply with the applicable standards contained within the MICS. One comment was received concerning this final revision. The commenter put forth the position that it is confusing to apply Class III requirements to Class II games. The Commission disagrees, and notes that the MICS are not game-classification specific; instead, the regulations are pertinent to a game or activity without regard to the class distinction of the game or the relevancy of an activity to the game.

Additionally, the commenter noted that the regulation fails to explicitly identify the specific elements of § 542.13(o) that would be applicable to bingo and pull-tab games utilizing account access cards. It was recommended that the account access card standards, which are pertinent to bingo and pull-tabs, be added to the respective regulations. The Commission disagrees. The standards incorporated by reference from the gaming machine section represent minimum controls for games relying on a back-of-the-house server, in which the patrons place front money and use a magnetic card to gain access to their account. Because of the variations that exist in the industry, to amend the bingo and pull-tab sections would simply involve a reprint of the rules referenced in the gaming machine section. With regard to the revision referring to the account access controls that are relevant (''as applicable''), the Commission disagrees that management would be challenged to identify which rules pertain to their gaming facility. Other MICS use qualifying terms, and, from a compliance perspective, it has not proven to be problematic.

Final Addition and Revisions to Section 542.13(o)(4) Customer Account Generation Standards

The Commission is revising the noted regulation to clarify the intent of the existing rule. The amendment will explicitly represent that a patron's identification must be verified and that an account must identify a patron's name. The Commission believes this standard is not inconsistent with Section 103.36 of the Bank Secrecy Act and the regulations of other gaming jurisdictions, which also require that patron identification information be recorded and verified at the time an account is established. The intent of the clarification is to ensure that management is well aware that establishing cash accounts, which are identified only by a number or a fictitious identifier, such as Mickey Mouse, is explicitly prohibited by the MICS. The revision to the standards governing the obtaining of a new personal identification number (PIN) is intended to clarify that the Gaming Machine Information Center is a clerk who has access to the customer's file for the purpose of changing the PIN. A commenter noted that the revision fails to address a situation in which the system is utilized by casino personnel to track buy-in when a customer is approaching the $10,000 cash-reporting threshold of the Internal Revenue Service.

As a point of clarification, the Commission notes that, although it is not uncommon for the MICS to echo Bank Secrecy Act regulations, it is the intent of the NIGC rule to establish a minimum baseline for casino internal control systems. The Declaration of Policy Section of IGRA provides

guidance to the NIGC in the formulation of its regulations. The specific intent of the MICS is to ensure that the investment of a Tribe is appropriately safeguarded for the benefit of Tribal stakeholders and that the interests of the gaming public are adequately protected. The revisions in question possess the rather narrow objective of assuring that there is an exact accounting of the funds advanced by patrons for the purpose of wagering. The Bank Secrecy Act is motivated by other objectives, not least of which is the deterrence of money-laundering activities. Although patron-account records may be utilized by the gaming operation to identify and track in/out cash transactions, it is not the intent of the Commission to satisfy any specific rule contained within the Bank Secrecy Act, which, nonetheless, is still an obligation of casino management. Notwithstanding the overall objectives of the MICS, Tribal gaming regulators and operators should be well aware that 542.3(C)(2) requires Tribal internal controls standards for currency-transaction reporting that comply with 31 CFR part 103. The Commission stresses that Tribal gaming enterprises must fully comply with the Bank Secrecy Act.

One commenter questioned the applicability of the revision to player club accounts. To clarify, the rule is pertinent to patron accounts established by patrons via the deposit of monies for the purpose of performing wagering transactions. The rule is not applicable to player-tracking systems that reward patrons for their patronage based on their level of wagering activity. The commission refers the commenter to § 542.13(j) for standards governing player-tracking systems.

Comments were received recommending that the revision not require that the alternative identification be photographic. The basis for the recommendation is founded upon the premise that the requirement is inconsistent with industry practice and generally accepted gaming regulatory standards. The Commission agrees and has amended the final revision.

One commenter recommended that the revision address what factors should be considered when evaluating the validity of an identification document. The Commission disagrees, since reliance upon casino personnel to exercise due professional care in examining the identifying documents should be sufficient. However, the most obvious criteria would be whether a document matched the individual proffering the document. Other factors to consider would be whether the document appears to have been altered or whether data on multiple documents is inconsistent.

One commenter recommended that the revision require that gaming operations obtain a patron's social security number, which is a requirement of the Bank Secrecy Act. Although the Commission recognizes that casinos are required to obtain the information when establishing patron accounts, as previously noted, the NIGC's objective is to ensure that internal control systems are developed which are sufficient to safeguard the Tribal stakeholder and protect the public. Therefore, the Commission disagrees with the recommendation.

Final Removal of Section 542.16(f)(vi); Document Storage of Original Documents Until Audited

The Commission is removing the noted regulation, since it is in conflict with the final revision adding § 542.19 which pertains to accounting standards, specifically the maintenance and preservation of books, records and documents. No comments were received concerning this final revision.

Final Addition of Section 542.19; What Are the Minimum Internal Control Standards for Accounting?

The Commission is adding this new regulation to establish the basic tenets required of a casino accounting function. The standards are common to established gaming jurisdictions. Over the past few years, the Commission has become increasingly concerned about the number of financial statements received in which the independent accountant has been unable to render a ''clean'' opinion. Furthermore, since the MICS were initially adopted, many questions have arisen regarding the relationship of Section 571.7, *Maintenance and preservation of papers and records,* to part 542, *Minimum Internal Control Standards.* The final revision is also intended to clarify and define the scope of the five (5)-year record retention requirement as it relates to casino records.

One commenter requested that the part of the provision that reads ''any other records specifically required to be maintained'' identify who or what is establishing the retention requirement. The Commission disagrees, and considers the representation to be clear in that it pertains to other records required by the MICS.

One commenter recommended that the requirement that general accounting records be prepared according to GAAP on a double-entry system of accounting, maintaining detailed supporting and subsidiary records, not apply to records required by theTribal internal control standards. The basis for this recommendation is founded upon the premise that the regulation will allow the NIGC to audit the gaming operation for compliance with the Tribe's internal control standards as well as with the Federal rule. The Commission disagrees with the recommendation because, as warranted, the NIGC reserves the right to utilize the Tribe's internal control standards, particularly those adopted as gaming regulations of the regulatory entity, in the course of an audit, and expand the scope of the audit when justified. For example, under § 542.3(c)(3), a Tribe is required to develop internal controls for games not addressed in the MICS. With regard to such games, the Commission could rely on the Tribal internal controls to test for compliance. Although it has been the practice of the Commission to report those Tribal internal control compliance exceptions that do not represent a MICS' exception as merely an advisory comment, should a finding pose a material risk to operational integrity, follow-up by the Commission to verify the effectiveness of remedial action would be likely.

One commenter recommended that the standards addressing the maintenance and preservation of internal audit documentation and reports should be addressed in §§ 542.22, 542.32 and 542.42, *What are the minimum internal controls for internal audit?* The Commission appreciates the recommendation, but believes that the MICS would be better served to centralize the retention of all documents and records at one location.

One commenter questioned the need to have a regulation that addresses the process of calculating gross gaming revenue for individual games, since the result is relevant only to the determination of tier. The Commission disagrees. As previously noted, the identification of minimum internal controls for accounting is a common element of the regulations of established gaming jurisdictions. Furthermore, past experience has demonstrated a lack of consistency in the calculation of gross gaming revenue, which has often resulted in miscalculations of NIGC fees. The determination of gross revenue by game can be a complex process. The final rule is intended to provide additional guidance; however, the Commission also recognizes that more issues remain, such as when it is permissible to adjust handle for promotional items. It is anticipated that, at a minimum, bulletins are likely to follow which specifically address the

type of transaction noted. For informational purposes, the Commission has taken the position that items such as free-play coupons are acceptable adjustments, if there is a direct audit trail to the drop/count and there is appropriate accounting for, and controls over, the coupons.

One commenter noted that in jurisdicitions which require unredeemed property to be turned over to the state, the standards specific to the reversal of a cash-out ticket payout entry for items not redeemed could, or would, be in conflict with state law or regulation. State law or regulation only applies if made applicable by a Tribal-State compact. If there is a conflict between the Tribal-State compact and the revision in § 542.19(h), then § 542.4, which discusses how these regulations affect minimum internal control standards established in a Tribal-State compact, controls.

One commenter questioned the need to have regulations governing the calculation of gross gaming revenue since it is already addressed by FASB and GAAP pronouncements. The Commission disagrees. Although the referenced professional pronouncements do provide conceptual guidance relevant to the determination of casino revenues, they do not provide the specificity necessary to ensure uniformity in the Tribal gaming industry. Therefore, it is the position of the Commission that the final rule is warranted.

One commenter requested an explanation of statistical drop and statistical win for table games. Accordingly, the Commission has added definitions of both ''statistical drop'' and ''statistical win'' to § 542.2.

One commenter suggested that the terms ''reasonably ensure'' and ''reasonable intervals'' be defined. The Commission disagrees. The obligation of management to reasonably ensure that assets are safeguarded, financial records are accurate and reliable, and transactions are appropriately authorized, for example, necessitates the exercise of professional judgment by management. From a conceptual perspective, the requirement is pertinent to the users of the data. The information provided to owners, regulators and other interested parties should be sufficiently fair in its representation that a misstatement would not result in a flawed perspective or determination. Materiality to the overal data, such as total assets, risk of misstatement—such as what might be associated with accounts receivable or accounts payable—and past compliance exceptions, would influence the extent of the procedures employed by management to satisfy the obligation to reasonable ensure.

With regard to the obligation that booked assets be compared to actual assets at reasonable intervals, the position of the Commission is the same as expressed above. Essentially, management should confirm the existence of recorded assets with such frequency that confidence can be had in the financial data reported. For example, fixed assets should be tested on an annual basis; however, absolute verifiction is generally not necessary. The data will typically be analyzed from a risk of misstatement and a risk of loss perspective. In other words, management may determine that items particularly vulnerable to misappropriation or devaluation—for example, tools or assets possessing a useful life that is difficult to predict—may warrant verification more frequently than once a year.

One commenter questioned whether the ability to adjust gross revenues for uncollected credit issued pertains to the general ledger account or taxable revenues. To clarify, the standard pertains to the calculation of gross gaming revenues, as determined according to NIGC regulations, which would be relevant to the general ledger. With regard to the NIGC fee calculation, which is based on assessable gaming revenues, the calculation begins with gross gaming revenues and then adjustments are made thereto. When revenue has been included that was derived from the extension of credit to a patron and the patron's debt is deemed to be uncollectible, or is settled for a lesser amount, it is the position of the Commission that the facility should have the latitude of reducing current gross gaming revenue accordingly.

One commenter expressed the position that the reference in the MICS to ''gaming operation'' fails to recognize that gaming enterprises also include ancillary activities such as hotels, restautrants, parking garages and the like, which may, and often do, represent separate, but interrelated, revenue centers. The Commission disagrees with the commenter's interpretation of the term ''gaming operation'' as being too narrow. The term ''gaming operation'' relates to the entity licensed by the Tribe to conduct gaming, which would include all interrelated and dependent activities and revenue centers.

One commenter recommended that the requirement that gaming operations establish administrative and accounting procedures for the purpose of exercising effective control over its fiscal affairs lacks specificity and should include exacting standards. The Commission disagrees. Inherent to the regulation is the obligation of management to exercise professional judgment in accomplishing the well-recognized objective of ensuring the reliability of the financial data reported. An attempt by the Commission to codify specific procedures could result in the regulation being overly intrusive and burdensome for some operations and insufficient for others. The Commission's perspective is founded upon the premise that providing reasonable assurances regarding the reliability of the data reported has a direct correlation to materiality, risk of compromise, and past performance, and will vary from one casino to another, depending on these factors.

Final Revisions to the Following Sections: 542.21(f)(12) (Tier A—Drop and Count) Gaming

Machine Bill—Acceptor Count Standards; 542.31(f)(12) (Tier B—Drop and Count) Gaming

Machine Bill—Acceptor Count Standards; 542.41(f)(12) (Tier C—Drop and Count) Gaming

Machine Bill—Acceptor Count Standards

The referenced standards represent a duplicate control to an identical requirement contained within each of the respective Tier section's Gaming Machine Bill-Acceptor Drop Standards, refer to §§ 542.21(e)(4), 542.31(e)(5), and 542.41(e)(5). Specifically, the standard requires the bill-acceptor canisters to be posted with a number corresponding to that of the machine from which it was extracted. The subject control pertains to a drop function, as opposed to the count process. Therefore, the Commission is deleting the above subsections. No comments were received pertaining to the final revision.

Regulatory Matters

Regulatory Flexibility Act

The Commission certifies that the final revisions to the Minimum Internal Control Standards contained within this regulation will not have a significant economic impact on small entities, 5 U.S.C. 605(b). The factual basis for this certification is as follows:

Of the 330 Indian gaming operations across the country, approximately 93 of the operations have gross revenues of less than $5 million. Of these, approximately 39 operations have gross revenues of under $1 million. Since the final revisions will not apply to gaming operations with gross revenues under $1 million, only 39 small operations may

be affected. While this is a substantial number, the Commission believes that the final revisions will not have a significant economic impact on these operations for several reasons. Even before implementation of the original MICS, Tribes had internal controls because they are essential to gaming operations in order to protect assets. The costs involved in implementing these controls are part of the regular business costs incurred by a gaming operation. The Commission believes that many Indian gaming operation internal control standards are more stringent than those contained in these regulations. Further, these final rule revisions are technical and minor in nature.

Under the final revisions, small gaming operations grossing under $1 million are exempted from MICS compliance. Tier A facilities (those with gross revenues between $1 and $5 million) are subject to the yearly requirement that independent, certified pubic accountant testing occur. The purpose of this testing is to measure the gaming operation's compliance with the Tribe's internal control standards. The cost of compliance with this requirement for small gaming operations is estimated at between $3,000 and $5,000. This cost is relatively minimal and does not create a significant economic effect on gaming operations. What little impact exists is further offset because other regulations require yearly independent financial audits that can be conducted at the same time. For these reasons, the Commission has concluded that the final rule revisions will not have a significant economic impact on those small entities subject to the rule.

Small Business Regulatory Enforcement Fairness Act

The following final revisions do not constitute a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The revisions will not have an annual effect on an economy of $100 million or more. The revisions also will not cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions, and do not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The Commission is an independent regulatory agency, and, as such, is not subject to the Unfunded Mandates Reform Act. Even so, the Commission has determined that the final rule revisions do not impose an unfunded mandate on State, local or Tribal governments, or on the private sector, of expenditures of more than $100 million per year. Thus, this is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

The Commission has, however, determined that the final rule revisions may have a unique effect on Tribal governments, as they apply exclusively to Tribal governments whenever they undertake the ownership, operation, regulation, or licensing of gaming facilities on Indian lands, as defined by IGRA. Thus, in accordance with Section 203 of the Unfunded Mandates Reform Act, the Commission undertook several actions to provide Tribal governments with adequate notice and opportunities for ''meaningful'' consultation, input, sharing of information, advice and education regarding compliance.

These actions included the formation of a Standing MICS Tribal Advisory Committee and the request for input from Tribal leaders. Section 204(b) of the Unfunded Mandates Reform Act exempts from the Federal Advisory Committee Act (5 U.S.C. App.) meetings with Tribal elected officials (or their designees) for the purpose of exchanging views, information, and advice concerning the implementation of intergovernmental responsibilities or administration. In selecting Committee members, consideration was given to the applicant's experience in this area, as well as the size of the Tribe the nominee represented, the geographic location of the gaming operation, and the size and type of gaming being conducted. The Commission attempted to assemble a Committee that incorporates diversity and is representative of Tribal gaming interests. The Commission met with the Advisory Committee and discussed the pubic comments that were received as a result of the publication of the proposed MICS rule revisions, and considered all Tribal and public comments and Committee recommendations before formulating the final rule revisions. The Commission also plans to continue its policy of providing necessary technical assistance, information, and support to enable Tribes to implement and comply with the MICS as revised.

The Commission also provided the proposed revisions to Tribal leaders for comment prior to publication of this final rule and considered these comments in formulating the final rule (70 FR 69293, Nov. 15, 2005).

Takings

In accordance with Executive Order 12630, the Commission has determined that the following final MICS rule revisions do not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the following final MICS rule revisions do not unduly burden the judicial system and meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

The following final MICS rule revisions require information collection under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, as did the rule it revises. There is no change to the paperwork requirements created by these final revisions. The Commission's OMB Control Number for this regulation is 3141–0009.

National Environmental Policy Act

The Commission has determined that the following final MICS rule revisions do not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

List of Subjects in 25 CFR Part 542

Accounting, Auditing, Gambling, Indian-lands, Indian-tribal government, Reporting and recordkeeping requirements.

■ Accordingly, for all of the reasons set forth in the foregoing preamble, the National Indian Gaming Commission amends 25 CFR part 542 as follows:

PART 542—MINIMUM INTERNAL CONTROL STANDARDS

■ 1. The authority citation for part 542 continues to read as follows:

Authority: 25 U.S.C. 2701 *et seq.*

■ 2. Amend § 542.2 to add, in alphabetical order, the definitions for ''Counter Game,'' ''Statistical Drop,'' ''Statistical Win''; by revising the definition for ''Account Access Card'' to read as follows:

§ 542.2 What are the definitions for this part?

* * * * *

Account access card means an instrument used to access customer accounts for wagering at a gaming machine. Account access cards are used

in connection with a computerized account database. Account access cards are not ''smart cards.''

* * * * *

Counter Game means a game in which the gaming operation is a party to wagers and wherein the gaming operation documents all wagering activity. The term includes, but is not limited to, bingo, keno, and pari-mutuel race books. The term does not include table games, card games and gaming machines.

* * * * *

Statistical drop means total amount of money, chips and tokens contained in the drop boxes, plus pit credit issued, minus pit credit payments in cash in the pit.

Statistical win means closing bankroll, plus credit slips for cash, chips or tokens returned to the cage, plus drop, minus opening bankroll, minus fills to the table, plus marker credits.

* * * * *

■ 3. Amend § 542.7 to add paragraph (g)(1)(iv) to read as follows:

§ 542.7 What are the minimum internal control standards for bingo?

* * * * *

(g) *Electronic equipment.*

(1) * * *

* * * * *

(iv) If the electronic equipment utilizes patron account access cards for activation of play, then § 542.13(o) (as applicable) shall apply.

* * * * *

■ 4. Amend § 542.8 to add paragraph (h)(1)(iv) to read as follows:

§ 542.8 What are the minimum internal control standards for pull tabs?

* * * * *

(h) *Electronic equipment.*

(1) * * *

* * * * *

(iv) If the electronic equipment utilizes patron account access cards for activation of play, then § 542.13(o) (as applicable) shall apply.

* * * * *

■ 5. Amend § 542.13 to redesignate paragraphs (o)(4)(ii) and (o)(4)(iii) as (o)(4)(iii) and (o)(4)(iv), add new paragraph (o)(4)(ii), and revise newly designated (o)(4)(iv) to read as follows:

§ 542.13 What are the minimum internal control standards for gaming machines?

* * * * *

(o) * * *

(4) * * *

* * * * *

(ii) For each customer file, an employee shall:

(A) Record the customer's name and current address;

(B) The date the account was opened; and

(C) At the time the initial deposit is made, account opened, or credit extended, the identity of the customer shall be verified by examination of a valid driver's license or other reliable identity credential.

* * * * *

(iv) After entering a specified number of incorrect PIN entries at the cage or player terminal, the customer shall be directed to proceed to a clerk to obtain a new PIN. If a customer forgets, misplaces or requests a change to their PIN, the customer shall proceed to a clerk for assistance.

* * * * *

§ 542.16 [Amended]

■ 6. Amend § 542.16 by removing paragraph (f)(1)(vi).

■ 7. Add § 542.19 to read as follows:

§ 542.19 What are the minimum internal control standards for accounting?

(a) Each gaming operation shall prepare accurate, complete, legible, and permanent records of all transactions pertaining to revenue and gaming activities.

(b) Each gaming operation shall prepare general accounting records according to Generally Accepted Accounting Principles on a double-entry system of accounting, maintaining detailed, supporting, subsidiary records, including, but not limited to:

(1) Detailed records identifying revenues, expenses, assets, liabilities, and equity for each gaming operation;

(2) Detailed records of all markers, IOU's, returned checks, hold checks, or other similar credit instruments;

(3) Individual and statistical game records to reflect statistical drop, statistical win, and the percentage of statistical win to statistical drop by each table game, and to reflect statistical drop, statistical win, and the percentage of statistical win to statistical drop for each type of table game, by shift, by day, cumulative month-to-date and year-to-date, and individual and statistical game records reflecting similar information for all other games;

(4) Gaming machine analysis reports which, by each machine, compare actual hold percentages to theoretical hold percentages;

(5) The records required by this part and by the Tribal internal control standards;

(6) Journal entries prepared by the gaming operation and by its independent accountants; and

(7) Any other records specifically required to be maintained.

(c) Each gaming operation shall establish administrative and accounting procedures for the purpose of determining effective control over a gaming operation's fiscal affairs. The procedures shall be designed to reasonably ensure that:

(1) Assets are safeguarded;

(2) Financial records are accurate and reliable;

(3) Transactions are performed only in accordance with management's general and specific authorization;

(4) Transactions are recorded adequately to permit proper reporting of gaming revenue and of fees and taxes, and to maintain accountability of assets;

(5) Recorded accountability for assets is compared with actual assets at reasonable intervals, and appropriate action is taken with respect to any discrepancies; and

(6) Functions, duties, and responsibilities are appropriately segregated in accordance with sound business practices.

(d) *Gross gaming revenue computations.* (1) For table games, gross revenue equals the closing table bankroll, plus credit slips for cash, chips, tokens or personal/payroll checks returned to the cage, plus drop, less opening table bankroll and fills to the table, and money transfers issued from the game through the use of a cashless wagering system.

(2) For gaming machines, gross revenue equals drop, less fills, jackpot payouts and personal property awarded to patrons as gambling winnings. Additionally, the initial hopper load is not a fill and does not affect gross revenue. The difference between the initial hopper load and the total amount that is in the hopper at the end of the gaming operation's fiscal year should be adjusted accordingly as an addition to or subtraction from the drop for the year.

(3) For each counter game, gross revenue equals:

(i) The money accepted by the gaming operation on events or games that occur during the month or will occur in subsequent months, less money paid out during the month to patrons on winning wagers (''cash basis''); or

(ii) The money accepted by the gaming operation on events or games that occur during the month, plus money, not previously included in gross revenue, that was accepted by the gaming operation in previous months on events or games occurring in the month, less money paid out during the month to patrons as winning wagers (''modified accrual basis'').

(4) For each card game and any other game in which the gaming operation is not a party to a wager, gross revenue equals all money received by the operation as compensation for conducting the game.

(i) A gaming operation shall not include either shill win or loss in gross revenue computations.

(ii) In computing gross revenue for gaming machines, keno and bingo, the actual cost to the gaming operation of any personal property distributed as losses to patrons may be deducted from winnings (other than costs of travel, lodging, services, food, and beverages), if the gaming operation maintains detailed documents supporting the deduction.

(e) Each gaming operation shall establish internal control systems sufficient to ensure that currency (other than tips or gratuities) received from a patron in the gaming area is promptly placed in a locked box in the table, or, in the case of a cashier, in the appropriate place in the cashier's cage, or on those games which do not have a locked drop box, or on card game tables, in an appropriate place on the table, in the cash register or in another approved repository.

(f) If the gaming operation provides periodic payments to satisfy a payout resulting from a wager, the initial installment payment, when paid, and the actual cost of a payment plan, which is funded by the gaming operation, may be deducted from winnings. The gaming operation is required to obtain the approval of all payment plans from the TGRA. For any funding method which merely guarantees the gaming operation's performance, and under which the gaming operation makes payments out of cash flow (e.g. irrevocable letters of credits, surety bonds, or other similar methods), the gaming operation may only deduct such payments when paid to the patron.

(g) For payouts by wide-area progressive gaming machine systems, a gaming operation may deduct from winnings only its pro rata share of a wide-area gaming machine system payout.

(h) Cash-out tickets issued at a gaming machine or gaming device shall be deducted from gross revenue as jackpot payouts in the month the tickets are issued by the gaming machine or gaming device. Tickets deducted from gross revenue that are not redeemed within a period, not to exceed 180 days of issuance, shall be included in gross revenue. An unredeemed ticket previously included in gross revenue may be deducted from gross revenue in the month redeemed.

(i) A gaming operation may not deduct from gross revenues the unpaid balance of a credit instrument extended for purposes other than gaming.

(j) A gaming operation may deduct from gross revenue the unpaid balance of a credit instrument if the gaming operation documents, or otherwise keeps detailed records of, compliance with the following requirements. Such records confirming compliance shall be made available to the TGRA or the Commission upon request:

(1) The gaming operation can document that the credit extended was for gaming purposes;

(2) The gaming operation has established procedures and relevant criteria to evaluate a patron's credit reputation or financial resources and to then determine that there is a reasonable basis for extending credit in the amount or sum placed at the patron's disposal;

(3) In the case of personal checks, the gaming operation has established procedures to examine documentation, which would normally be acceptable as a type of identification when cashing checks, and has recorded the patron's bank check guarantee card number or credit card number, or has satisfied paragraph (j)(2) of this section, as management may deem appropriate for the check-cashing authorization granted;

(4) In the case of third-party checks for which cash, chips, or tokens have been issued to the patron, or which were accepted in payment of another credit instrument, the gaming operation has established procedures to examine documentation, normally accepted as a means of identification when cashing checks, and has, for the check's maker or drawer, satisfied paragraph (j)(2) of this section, as management may deem appropriate for the check-cashing authorization granted;

(5) In the case of guaranteed drafts, procedures should be established to ensure compliance with the issuance and acceptance procedures prescribed by the issuer;

(6) The gaming operation has established procedures to ensure that the credit extended is appropriately documented, not least of which would be the patron's identification and signature attesting to the authenticity of the individual credit transactions. The authorizing signature shall be obtained at the time credit is extended.

(7) The gaming operation has established procedures to effectively document its attempt to collect the full amount of the debt. Such documentation would include, but not be limited to, letters sent to the patron, logs of personal or telephone conversations, proof of presentation of the credit instrument to the patron's bank for collection, settlement agreements, or other documents which demonstrate that the gaming operation has made a good faith attempt to collect the full amount of the debt. Such records documenting collection efforts shall be made available to the TGRA or the commission upon request.

(k) Maintenance and preservation of books, records and documents. (1) All original books, records and documents pertaining to the conduct of wagering activities shall be retained by a gaming operation in accordance with the following schedule. A record that summarizes gaming transactions is sufficient, provided that all documents containing an original signature(s) attesting to the accuracy of a gaming related transaction are independently preserved. Original books, records or documents shall not include copies of originals, except for copies that contain original comments or notations on parts of multi-part forms. The following original books, records and documents shall be retained by a gaming operation for a minimum of five (5) years:

(i) Casino cage documents;

(ii) Documentation supporting the calculation of table game win;

(iii) Documentation supporting the calculation of gaming machine win;

(iv) Documentation supporting the calculation of revenue received from the games of keno, pari-mutuel, bingo, pull-tabs, card games, and all other gaming activities offered by the gaming operation;

(v) Table games statistical analysis reports;

(vi) Gaming machine statistical analysis reports;

(vii) Bingo, pull-tab, keno and pari-mutuel wagering statistical reports;

(viii) Internal audit documentation and reports;

(ix) Documentation supporting the write-off of gaming credit instruments and named credit instruments;

(x) All other books, records and documents pertaining to the conduct of wagering activities that contain original signature(s) attesting to the accuracy of the gaming related transaction.

(2) Unless otherwise specified in this part, all other books, records, and documents shall be retained until such time as the accounting records have been audited by the gaming operation's independent certified public accountants.

(3) The above definition shall apply without regards to the medium by which the book, record or document is generated or maintained (paper, computer-generated, magnetic media, etc.).

Signed in Washington, DC, this 2nd day of May, 2006.

Philip N. Hogen,

Chairman.

Cloyce Choney,

Commissioner.

[FR Doc. 06–4276 Filed 5–10–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–0502; FRL–8168–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Six Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for six major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) pursuant to the Commonwealth of Pennsylvania's (Pennsylvania's or the Commonwealth's) SIP-approved generic RACT regulations. EPA is approving these revisions in accordance with the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on June 12, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2005–0502. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On March 2, 2006 (71 FR 10626), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of formal SIP revisions submitted by Pennsylvania on November 21, 2005. These SIP revisions consist of source-specific operating permits, consent orders and/or plan approvals issued by PADEP to establish and require RACT pursuant to the Commonwealth's SIP-approved generic RACT regulations. The following table identifies the sources and the individual consent orders (COs) and operating permits (OPs) which are the subject of this rulemaking.

PENNSYLVANIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source's name	County	Operating permit (OP No.) Consent order (CO No.)	Source type	"Major source" pollutant
DLM Foods (formerly Heinz USA)	Allegheny	CO 211	Food Processing	NO_X
NRG Energy Center (formerly Pittsburgh Thermal Limited Partnership).	Allegheny	CO 220	Steam Generation	NO_X
Tasty Baking Oxford, Inc.	Chester	OP–15–0104	Bakery Operations	VOC
Silberline Manufacturing Company	Carbon	OP–13–0014	Paint and Lacquers Production	VOC
Adhesives Research, Inc.	York	OP–67–2007	Surface Coating	VOC
Mohawk Flush Doors, Inc.	Northumberland	OP–49–0001	Surface Coating	VOC

An explanation of the CAA's RACT requirements as they apply to the Commonwealth and EPA's rationale for approving these SIP revisions were provided in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP on November 21, 2005 to establish and require VOC and NO_X RACT for six sources pursuant to the Commonwealth's SIP-approved generic RACT regulations.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal

Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for six named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 10, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving source-specific RACT requirements for six sources in the Commonwealth of Pennsylvania may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 26, 2006.

Judith Katz,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (d)(1) is amended by adding the entries for DLM Foods, NRG Energy Center, Tasty Baking Oxford, Inc., Silberline Manufacturing Company, Adhesives Research, Inc., and Mohawk Flush Doors, Inc., at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(d) * * *

(1) * * *

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
*	*	*	*	*	*
DLM Foods (formerly Heinz USA).	CO 211	Allegheny	6/9/05	5/11/06 [Insert page number where the document begins].	52.2020(d)(1)(o).
NRG Energy Center (formerly Pittsburgh Thermal Limited Partnership).	CO 220	Allegheny	6/9/05	5/11/06 [Insert page number where the document begins].	52.2020(d)(1)(o).
Tasty Baking Oxford, Inc.	OP–15–0104	Chester	5/12/04	5/11/06 [Insert page number where the document begins].	52.2020(d)(1)(o).
Silberline Manufacturing Company.	OP–13–0014	Carbon	4/19/99	5/11/06 [Insert page number where the document begins].	52.2020(d)(1)(o).
Adhesives Research, Inc.	OP–67–2007	York	7/1/95	5/11/06 [Insert page number where the document begins].	52.2020(d)(1)(o).
Mohawk Flush Doors, Inc.	OP–49–0001	Northumberland	1/20/99	5/11/06 [Insert page number where the document begins].	52.2020(d)(1)(o).

* * * * *

[FR Doc. 06–4395 Filed 5–10–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–8167–7]

Ocean Dumping; De-Designation of Ocean Dredged Material Disposal Site and Designation of New Site Near Coos Bay, OR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing its proposal to de-designate an existing ocean dredged material disposal site and designate a new ocean dredged material disposal site located offshore of Coos Bay, Oregon. EPA's proposed rule was published March 31, 2000. The new site is needed for long-term use by authorized Coos Bay navigation projects and may be available for use by persons meeting the criteria for ocean disposal of dredged material. The de-designation of the existing site allows for its incorporation into the newly designated site. This will allow EPA to manage the entire new site to avoid adverse mounding conditions and will ensure site capacity is sufficient for total volumes of dredged material. The newly designated site is necessary for current and future dredged material ocean disposal needs and will be subject to ongoing monitoring and management to ensure continued protection of the marine environment so as to mitigate adverse impacts on the environment to the greatest extent practicable.

DATES: This final rule will be effective on June 12, 2006.

ADDRESSES: EPA has established a docket for this final action under Docket ID No. EPA–R10–OW–2006–0409. All documents in the docket are listed on the *www.regulations.gov* Web site. The documents are also available for inspection at the Region 10 Library, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. For access to the documents at the Region 10 Library, contact the Region 10 Library Reference Desk at (206) 553–1289, between 9 a.m. to 11:30 a.m. and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays, for an appointment or contact John Malek, U.S. EPA, Region 10, 1200 Sixth Avenue, Mail Stop ETPA–083, e-mail: *malek.john@epa.gov,* phone number (206) 553–1286.

FOR FURTHER INFORMATION CONTACT: John Malek, Ocean Dumping Coordinator, U.S. Environmental Protection Agency, Region 10 (ETPA–083), 1200 Sixth Avenue, Seattle, WA 98101–1128, telephone (206) 553–1286, e-mail: *malek.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

1. Potentially Affected Persons

Persons potentially affected by this action include those who seek or might seek permits or approval by EPA to dispose of dredged material into ocean waters pursuant to the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 to 1414, (''MPRSA''). EPA's action would be relevant to persons, including organizations and government bodies seeking to dispose of dredged material in ocean waters offshore of Coos Bay, Oregon. Currently, the U.S. Army Corps of Engineers (Corps) and other persons with permits to use designated sites at Coos Bay would be most impacted by this final action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal Government	U.S. Army Corps of Engineers Civil Works Projects, and other Federal Agencies.
Industry and General Public	Port Authorities, Marinas and Harbors, Shipyards and Marine Repair Facilities, Berth Owners.
State, local and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. For any questions regarding the applicability of this action to a particular person, please refer to the section of this action titled **FOR FURTHER INFORMATION CONTACT**.

2. Background

a. History of Disposal Site Designations Off of Coos Bay, OR

Pursuant to the MPRSA, the Administrator of EPA, as delegated to the Regional Administrator, designated three disposal sites (Site E, original Site F and Site H) off of Coos Bay, Oregon in 1986. The original Site F began to experience mounding that rendered it unable to accept the total volume of dredged material generated on an annual basis. In 1989, with EPA approval, the size of the original Site F was roughly doubled by the Corps exercising its Section 103 authority to select disposal sites under the MPRSA. In 1995, EPA approved a second Corps expansion of the original Site F. On March 31, 2000, EPA published in the **Federal Register** its proposal to de-designate the original Site F and designate a new Site F that consisted of the 103 configured Site F and the original Site F (65 FR 17240). A forty-five day public comment period, which closed on May 14, 2000, was provided. EPA did not receive comments from the public on the proposed rule. The coordinates of the proposed Site F (North American Datum 1983; NAD 83) were:

43°22′58″ N, 124°19′32″ W
43°21′50″ N, 124°20′29″ W
43°22′52″ N, 124°23′28″ W
43°23′59″ N, 124°22′31″ W

The proposed site was rectangular with an east-west side length dimension of 14,500 feet and a north-south side length dimension of 8,000 feet. Figure 1 is a diagram of the site EPA proposed in 2000.

Subsequent to EPA's proposed designation, the North Jetty at Coos Bay failed in December 2002, due in part to undermining. The Corps then examined the potential for augmenting transport of disposed material into the eddy created by the North Jetty itself. With EPA concurrence, the Corps began making selected disposals in the southeastern corner of the 103 Site F nearest the jetty. Monitoring indicated that some material was captured by the eddy and augmented the substrate that the jetty rests upon. This experience and the lessons learned during the designations of ocean dredged material disposal sites near the Mouth of the Columbia River in 2005, as well as increased public awareness of, and attention to, coastal erosion processes and opportunities to manage dredged material more beneficially led EPA to review its proposed site designation near Coos Bay. The result of this review is a minor change to the configuration of new Site F toward the North Jetty at the north side of the mouth of Coos Bay. This reconfiguration could potentially benefit the stabilization of the North Jetty and keep material in the littoral zone. This

reconfiguration is expected to allow dredged material disposed in shallower portions of the new Site F to naturally disperse into the littoral zone without creation of mounding conditions that would contribute to adverse impacts to navigation, including adverse wave conditions.

b. Location and Configuration of New Site F

Figure 2 is a diagram of the new Site F as EPA is finalizing the site in today's rule. It also shows the other designated sites (E and H), the de-designated Site F, the 103 configured Site F and the proposed Site F. The shoremost side of the site has been extended approximately 600 feet as compared to the site when proposed and the southeastern corner has been located closer to the North Jetty at the mouth of Coos Bay. This has resulted in an overall increase to the site footprint of 399.8 acres bringing the total area of new Site F to 3,075.2 acres. This configuration will allow EPA to ensure that disposal of dredged material into the site will be managed to retain more of the material in the active littoral drift area to augment shoreline building processes. The relocation of the corner of the site closer to the jetty will allow dredged material to be more effectively placed to continue augmentation toward the nearshore and toward the North Jetty at the mouth of Coos Bay. This change, while minor, expands sediment management opportunities that are beneficial to the coastal environment in Coos Bay. The coordinates for the new Site F near Coos Bay (NAD 83) as finalized today are:

43°22′54.8887″ N, 124°19′28.9905″ W
43°21′32.8735″ N, 124°20′37.7373″ W
43°22′51.4004″ N, 124°23′32.4318″ W
43°23′58.4014″ N, 124°22′35.4308″ W

The new Site F is expected to accommodate the approximately 1.38 million cubic yards (mcy) of material dredged annually from the Coos Bay estuary by the Corps to maintain the existing Federal navigation channel. The nearshore boundary of the new site is within two thousand feet of the shoreline. Sediments disposed near this boundary are considered to be in the active transport zone and are expected to disperse rapidly both onshore and alongshore. Limited onshore transport is expected because of the nature of prevailing currents and wave transport in the vicinity. Predicted material transport at the new site is southward in the summer months and northward during the remainder of the year.

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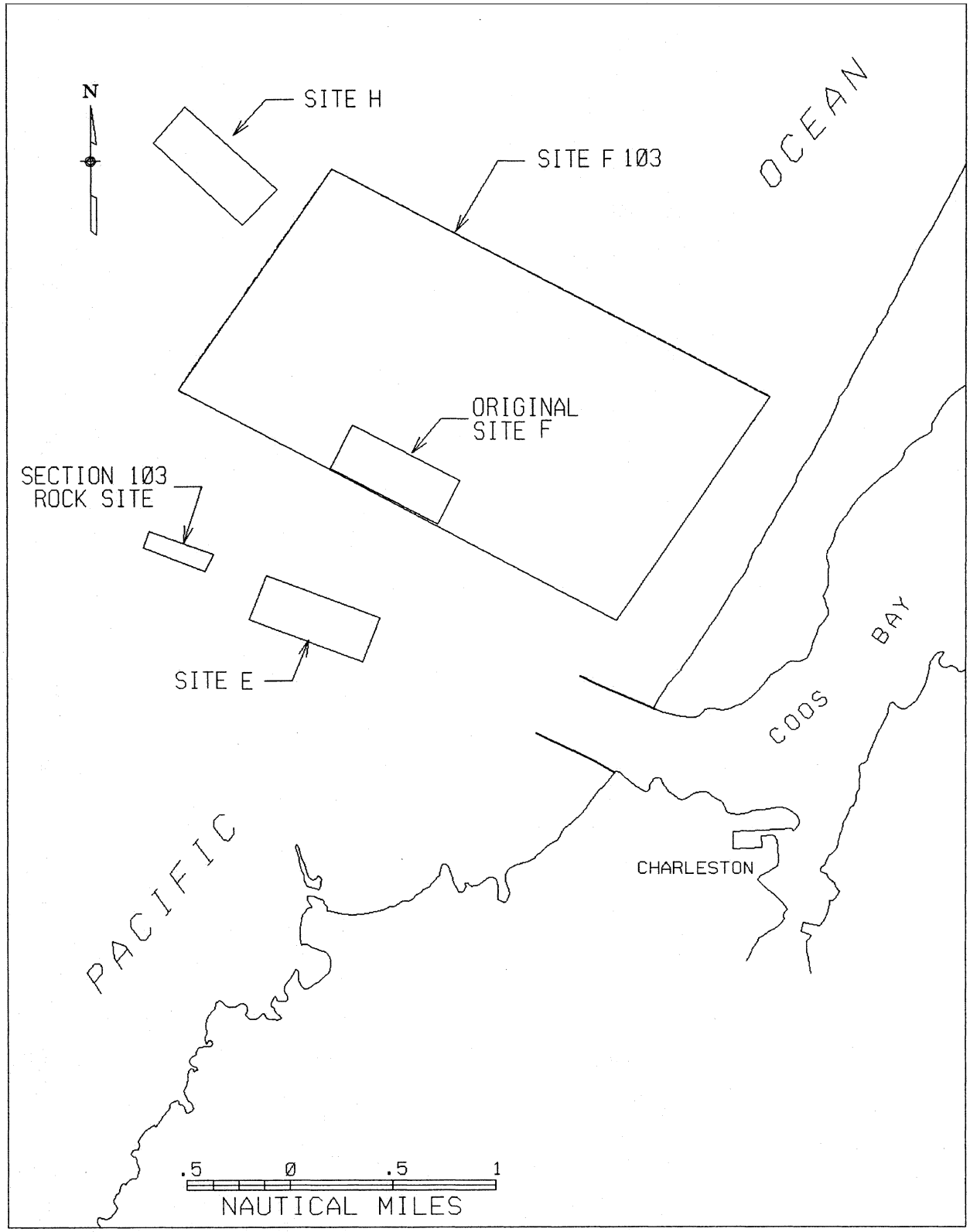

Figure 1: Coos Bay ODMDS Sites in 1995. Site F 103 was proposed in EPA's March 2000 Proposed Rule.

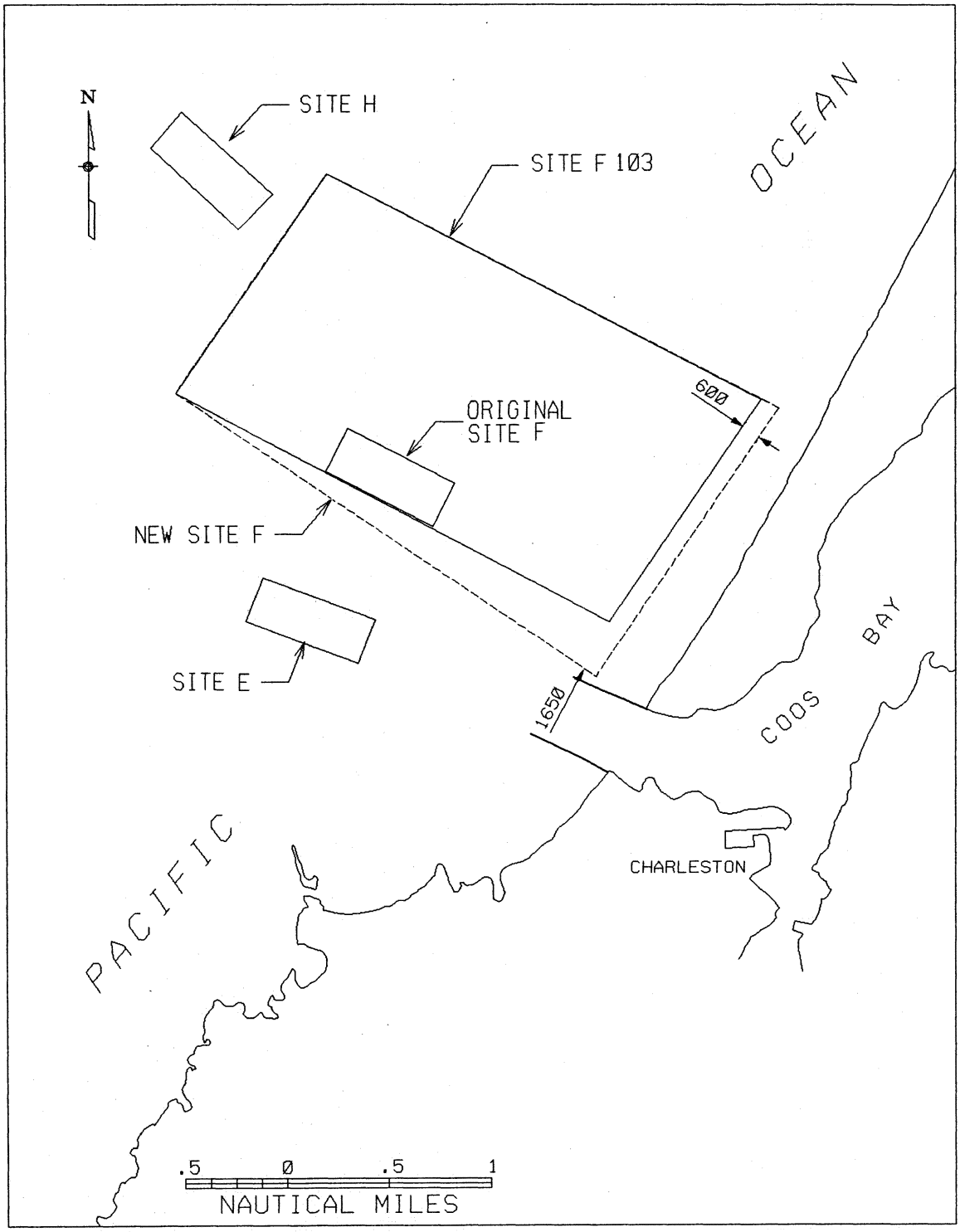

Figure 2: Comparison of Site F selected as 103 and as proposed in Draft Rule and revised configuration for Final Rule.

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c. Management and Monitoring of New Site F

The newly designated Site F will receive sediments dredged by the Corps to maintain the federally authorized navigation project at Coos Bay, Oregon and will be available to current permittees and for use by others after obtaining the appropriate permits and approvals. Existing permits issued pursuant to subchapter H of Title 40 of the CFR will not need to be modified to use new Site F. The new Site F is designated with restrictions with which all persons must comply. All persons using the site are required to follow the final Site Management and Monitoring Plan (SMMP) which is effective as of the effective date of this action. The SMMP generally addresses managing new Site F to minimize and avoid mounding and to ensure that dredged materials

disposed at the site are suitable for ocean disposal. The SMMP includes management and monitoring requirements for all of the designated sites near Coos Bay and addresses the timing of disposal into new Site F to minimize interference with commercial crabbing in the nearshore zone. Among other things, the SMMP sets out monitoring and management requirements to ensure that dredged material disposed at the site is suitable for disposal and will not lead to unacceptable impacts to human health or the environment during the dredging process, during transportation to the designated sites, during disposal or once disposed or at the disposal sites.

d. MPRSA

EPA finds that today's final action satisfies the site designation criteria of the MPRSA and the regulatory criteria of 40 CFR part 228. The assessment of the statutory criteria and general and specific regulatory criteria presented in the proposed rule has been examined in response to the slight reconfiguration of the new Site F. Moving the corner of the new Site F to the southeast and closer to the North Jetty based on EPA's increased understanding of coastal erosion issues will allow EPA to manage disposal at the new Site to retain material in the active littoral zone to augment shoreline building processes. This meets the statutory and regulatory criteria to use an appropriate location based on considerations affecting the public interest and to locate the site to minimize interference with other activities in the marine environment. New data collected since the proposed rule has been included in the discussion of the general and specific site designation criteria.

General Criteria (40 CFR 228.5)

1. Sites must be selected to minimize interference with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation (40 CFR 228.5(a)).

EPA's assessment of information available at the time of the proposed rule demonstrated that new Site F as proposed would cause only minimal interference with fisheries and shellfisheries and with navigation notwithstanding the location of the site in the Coos Bay navigation channel. This assessment has not changed with the minor reconfiguration of the site toward the North Jetty. Most of new Site F has been used over the past decade for dredged material disposal pursuant to section 103 authority exercised by the Corps with EPA concurrence and mariners in this area are accustomed to the site use. In addition, based on a conservation recommendation from the National Marine Fisheries Service (NMFS) resulting from an EPA consultation on essential fish habitat, EPA will impose use restrictions at the site to minimize the use of the site before June 1 of any year to essential work and will encourage staggering of disposal events when juvenile coho and Chinook salmon are holding in nearshore habitats.

2. Sites must be situated such that temporary perturbations to water quality or other environmental conditions during initial mixing caused by disposal operations would be reduced to normal ambient levels or undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery (40 CFR 228.5(b)).

EPA's analysis at the time of the proposed rule concluded that the new Site F would satisfy this criterion. EPA's understanding of the nearshore processes near the North Jetty indicates that this criterion will continue to be met with the reconfiguration of new Site F as finalized today. Although EPA expects some material disposed at new Site F to reach the base of the North Jetty, normal ambient levels and undetectable contaminant concentrations or effects would be expected before any material reached any beach, shoreline, marine sanctuary or known geographically limited fishery or shellfishery because of the existing high currents and wave energy.

3. If site designation studies show that any interim disposal sites do not meet the site selection criteria, use of such sites shall be terminated as soon as any alternate site can be designated (40 CFR 228.5(c)).

There are no interim disposal sites near Coos Bay as defined under the Ocean Dumping regulations. This criterion is not applicable to today's action de-designating existing Site F and designating new Site F.

4. The sizes of disposal sites will be limited in order to localize for identification and control any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. Size, configuration, and location are to be determined as part of the disposal site evaluation (40 CFR 228.5(d)).

EPA sized the proposed site to meet this criterion. The site, as finalized in today's action, continues to meet this criterion. The total area of new Site F is approximately 3,075.2 acres or 3.63 nm^2. The site tends to be moderately dispersive in the nearshore area and tends to be less dispersive in other parts of the site. The overall stability of the site is a significant part of the justification for the size of the site. The original Site F experienced significant mounding and lead to the selection of the larger site designated today. Data collected by the Corps through bathymetric monitoring shows the spread and movement of material placed at original Site F and suggests that material from the original Site F did eventually disperse over the footprint of the 103-selected site. This data also indicates that effective monitoring and surveillance of the site has been performed for many years. The SMMP describes the plan for management and monitoring of the site.

5. EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites where historical disposal has occurred (40 CFR 228.5(e)).

EPA's evaluation at the time of the proposed rule concluded that long distances and travel times between the dredging locations near Coos Bay and the continental shelf posed significant environmental, operational, safety and environmental concerns, including risk of encounter with endangered species and increased air emissions. This conclusion is unchanged and new Site F, finalized by today's rule, is consistent with this criterion.

Specific Criteria (40 CFR 228.6)

1. Geographical Position, Depth of Water, Bottom Topography and Distance From Coast (40 CFR 228.6(a)(1))

Based on the data available at the time EPA proposed the designation of Site F and data available from bathymetric surveys conducted by the Corps, EPA has concluded that the geographical position, depth of water, bottom topography and distance from the coast of new Site F will avoid adverse effects to the marine environment. Near the North Jetty, the new site will allow for the placement of material that is expected to contribute material to the littoral zone and may help decrease erosion of the jetty. Throughout most of the shallow portions of the new site the area is dispersive. Based on EPA's understanding of currents at the site and their influence on the movement of material in the area this means there is a high likelihood that material will be transported to the adjacent seafloor. The site is located and sized to allow for long-term disposal without creation of adverse mounding conditions.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

New Site F is not located in breeding, spawning, nursery or feeding areas for adult or juvenile phases of living resources. The site is, or may be, a passage area for living resources during adult or juvenile phases. The National Marine Fisheries Service (NMFS), during consultations with EPA in 2005 and 2006 for endangered species and for essential fish habitat, requested that disposal at new Site F be restricted to stagger disposal events at the new site, particularly in the nearshore zone, to avoid continuous disposal while juveniles, including salmon and groundfish species, are outmigrating or holding in nearshore environments. EPA agreed to include staggered disposal in its final SMMP. This will benefit the juveniles of concern to NMFS and will also minimize any potential short-term localized effects to marine organisms in the immediate vicinity of disposal events by minimizing the creation of mounds at the site.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3))

EPA's proposed rule concluded that the proposed site met this criterion and EPA's conclusion is not changed today notwithstanding the minor reconfiguration of the site toward the North Jetty. The site, although located in the navigation channel and close to the North Jetty is located to avoid adverse impacts to beaches and other amenity areas.

4. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any (40 CFR 228.6(a)(4))

The new Site F is being designated today for the disposal of dredged material. Disposal of other types of material will not be allowed at this site or at any of the ocean dredged material disposal sites at Coos Bay. Dredged material to be disposed at the new Site F will be predominantly sand and fine-grained material. Data collected subsequent to EPA's proposed rule included seventeen sediment samples collected from along the length of the federal navigation channel in Coos Bay, Isthmus Slough, and Charleston Channel in 2004 (Coos Bay Sediment Quality Evaluation Report, March 2005). These samples were subjected to physical and chemical analyses, which included analyses for metals, total organic carbon, pesticides, polychlorinated biphenyls (PCBs), phenols, phthalates, miscellaneous extractables, polynuclear aromatic hydrocarbons (PAHs) and total and pore water organotin (TBT).

The physical analyses resulted in mean values of 1.6% gravel (0%–10.0% range), 69.6% sand (4.0%–98.8% range), and 28.8% silt/clay (1.2%–96.0% range) with 4.5% volatile solids (0.2%–16.7% range). The chemical analyses indicated low levels of chemicals in some of the samples. The results were compared with results from previous Corps sampling efforts in 1980, 1986, 1987, 1989, 1993, 1994, 1995, and 1998. All the data are consistent in showing that material below river mile (RM) 12 of the Coos Bay channel is typically sand, while material above RM 12 is typically silt. With only a few exceptions (where adjacent sources are obvious) the sand matrix is considered low risk for contamination. The silty areas of the estuary and river typically contain low levels of contaminants-of-concern that have remained unchanged for many years or appear to be improving slightly (i.e. concentrations are dropping). Materials to be disposed of at the site must be suitable for ocean disposal.

With respect to proposed methods of releasing material at the new site, material will be released just below the surface from dredges while the dredges are under power and slowly transit the site. This method of release is expected to minimize mounding at the site and to minimize impacts to the benthic community.

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

Monitoring and surveillance at new Site F is expected to be feasible. The site is accessible for bathymetric and side-scan sonar surveys. Most of the site has been successfully monitored by the Corps during the Corps's use of the 103 site. It is also expected to be feasible to monitor and survey the minor addition made to the site through the reconfiguration toward the North Jetty. The Corps has monitored the base of the jetty on a routine basis and during emergency repairs made in 2002 after a failure of the jetty. The final SMMP requires monitoring and surveillance of the new site. At a minimum, annual bathymetric surveys will be conducted at new Site F and more frequent surveys will be required in areas of the site that receive dredged material. Off-site beach monitoring will also be required. Routine monitoring will concentrate on determining how to ensure the distribution of material in the nearshore portions of the site to augment littoral processes and in the deeper portions of the site to avoid or minimize mounding.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if Any (40 CFR 228.6(a)(6))

At the time EPA proposed the designation of the new site, EPA understood the dispersal patterns along the Oregon coast to generally flow parallel to the bathymetric contours of the bottom. Local wave and current strength and direction are impacted by the variability of the local winds, especially in shallower water. During summer months which make up the normal dredge and disposal season, material transport trends southward. The trend at other times of the year is north and northwest for currents and material transport. Re-suspension and transport of material disposed at the site would be expected to be at a maximum during winter months when winter storms occur and when no active disposal is taking place at the site. Throughout the year, material disposed in the nearshore and shallower portions of new Site F are expected to be redistributed by existing littoral processes.

Mounding at originally designated Site F led the Corps to exercise its authorities pursuant to Section 103 of the MPRSA to select a significant expansion of the site and to use modeling techniques to model placement of material within the site to avoid excessive mounding. The originally designated Site F was generally not used for disposal after 1989. However, it was thought that material at that location was eroding toward the 103 selected Site F. For this reason, the original Site F, although proposed for de-designation as a stand-alone site, was to be incorporated into the new Site F. The movement of material was considered to be most dispersive in the shallower zones of the 103 site but material disposed in the deeper and less dynamic portions of the site are redistributed across the site. Eventually, the redistribution is expected to move the material disposed at the site to the north and east.

Subsequent to publication of the proposed Rule in 2000, the Corps continued to conduct annual bathymetric surveys at the 103 Site F and to share the data collected with EPA to assess capacity at the site for the coming year's anticipated dredging. This data tended to show that the mound at the 1986-designated Site F was slowly eroding to its present

average at below minus 60 feet mean lower low water (MLLW). This indicates a minimum of 10 feet of material having eroded out of 1986-designated Site F. Dredged material was placed at various locations within the 103 Site F and monitored. Computer modeling of disposal operations was used to determine short-term and long-term sediment fate to design disposal units or cells. Bathymetric surveys during and following disposals were conducted. Initial work was focused on confirming accuracy of the models. Bathymetric changes measured by the monitoring compared well with the changes predicted by the model. For example, the model predicted a 2.9 foot change and monitoring measured the actual change at 3.0 feet. The model was used to predict disposal results in the nearshore area (i.e., along the innermost edge of the 103 Site F) and field monitoring was conducted to verify the modeled predictions. Placement height was managed to a maximum of 3 feet during initial disposal into 180 separate cells each sized as a 200 foot by 500 foot cell.

These bathymetric surveys show that the shallow water portion of the site has accumulated about 1 foot of material on the bottom, with small areas of accumulation of up to 5 feet. In the deeper portion of the 103 site, disposals were conducted to dispose of up to 24 feet of material at specific locations. Bathymetric monitoring indicates these thicker disposals had eroded down to 19 feet of accumulated material on the bottom. The surveys further show that this accumulated material is dispersing in a northeasterly direction.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7))

Annually, approximately 1.3 million cubic yards (mcy) of material has been disposed of at the Coos Bay designated sites, Sites E, F and H, from dredging undertaken by the Corps to maintain the navigation channel. The Coos Bay sites were used consistently prior to their designations in 1986. Sites E and F were not used after the late eighties because of mounding concerns. As discussed above, the mounds at those sites have been eroding over time. Originally designated Site F was recently used by the Corps for the disposal of dredged material to maintain safe navigation in the navigation channel. This site, which is de-designated by today's rule as a stand-alone site, is incorporated into the footprint of the new Site F. EPA's evaluation of data and modeling results indicates that past disposal operations at these sites and current operations have not resulted in unacceptable environmental degradation. Adverse effects are not expected to result from the minor reconfiguration of the site toward the North Jetty. EPA expects that portion of the site to benefit the nearshore environment.

8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8))

The site is not expected to interfere with shipping, fishing, recreation or other legitimate uses of the ocean. Commercial crabbing, which was referenced in EPA's proposed rule as an activity occurring in the nearshore, is not expected to be impacted by the minor reconfiguration of new Site F. Disposals at the new site will be managed through the SMMP to minimize interference with other legitimate uses of the ocean through careful timing and staggering of disposals in the nearshore portion of the new site.

9. The Existing Water Quality and Ecology of the Sites as Determined by Available Data or Trend Assessment of Baseline Surveys (40 CFR 228.6(a)(9))

At the time of EPA's proposed rule in 2000, EPA had not identified any adverse water quality impacts from ocean disposal of dredged material at originally designated Site F or at 103 selected Site F. In 2004, the Corps released a report titled ''Comparison of SPI Data and STFATE Simulation Results at Coos Bay, OR ODMDS Site 'F','' which provided some verification of numerical models used to predict the behavior of disposed material on water quality and ecology of the site. The samples, i.e. sediment profile images, indicated some important characteristics about the native sediments and dredged sediments disposed of at the site. Native sediment in the shallow and intermediate water portions of the site did not show a layer of fine grained material at the sediment-water interface. This absence indicates that burrowing infauna were absent or extremely limited in the area. This finding was not unexpected because the intermediate/shallow water locations within the site are heavily dominated by wave-current action which forces repeated and routine resuspension of sediment. The report found that ''the effects on initial disposal on benthic marine life in these areas are likely minimal.'' By contrast, the deeper portion of the site did indicate the presence of benthic infaunal activity. In addition to the sediment profile imaging (SPI), a plan-view video was also produced. Crabs, shrimp, and flatfish were all seen on the video; however, no inferences were made as to population. Biological activity and reworking of the surface sediments by natural forces was indicated in the imaging but it was not possible to penetrate the sandy substrate to measure the full thickness of the deposited material at the site.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))

In its proposed rule, EPA stated that nuisance species had not been observed at the existing Coos Bay sites in over ten years of monitoring and that EPA did not expect there to be a significant potential for the development or recruitment of nuisance species in the proposed site. That statement was based in part on the lack of organic material disposed at the site. Subsequent to EPA's proposed rule, however, circumstances at designated Site H have caused that site to be closed at present and the potential for organic material to be disposed of at new Site F has increased. Organic material is generally found above RM 12 in the Coos Bay Channel and is likelier than material below RM12 to be more attractive to nuisance species. While there is the potential for the development or recruitment of nuisance species where dredged material from above RM12 might be disposed of at the new Site F, this potential remains low. The SMMP will provide for monitoring of the new site to help ensure that nuisance species are not recruited to and do not develop at the new site.

11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11))

EPA stated in its proposed rule that no cultural features of historical importance had been identified at or near the proposed site. This continues to be the case. The new Site F is located over 7 statute miles southwest of the Oregon Dunes National Recreation Area, a significant natural feature, but is not considered to be in close proximity to that feature. The new site is located approximately 3 statute miles northeast of three Oregon state parks: Shore Acres State Park, Cape Arago State Park and Sunset Bay State Park. The new site is not considered to be in proximity to these areas. The national historic landmark, located near Cape Arago State Park, over 4 statute miles south of the new site, is not within the proximity of

the site. Impacts to significant natural or cultural features have not been identified.

e. National Environmental Policy Act (NEPA); Magnuson-Stevens Act (MSA); Coastal Zone Management Act (CZMA); Endangered Species Act (ESA)

1. NEPA

Section 102 of the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*, (NEPA) requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major federal actions significantly affecting the quality of the human environment. NEPA does not apply to EPA designations of ocean disposal sites under the MPRSA as EPA has made clear in EPA's ''Notice of Policy and Procedures for Voluntary Preparation of NEPA Documents,'' 63 FR 58045 (October 29, 1998). EPA did voluntarily cooperate with the U.S. Army Corps of Engineers (Corps) as a cooperating agency on the Feasibility Report on Navigation Improvements with Environmental Impact Statement (EIS) prepared in 1994. As discussed in the proposed rule, 63 FR 17240 (March 31, 2000), the EIS provided documentation to support the final designation of the proposed Site F. EPA did not see a need to supplement the EIS to address the minor reconfiguration of the new Site F which is finalized in today's designation.

2. MSA

In the fall of 2005, EPA consulted with the National Marine Fisheries Service (NMFS) concerning essential fish habitat. EPA prepared an essential fish habitat (EFH) assessment pursuant to section 305(b) of the Magnuson-Stevens Act, as amended (MSA), 16 U.S.C. 1855(b). NMFS reviewed EPA's action and issued six non-binding conservation recommendations. EPA accepted three of the recommendations. The three accepted by EPA included: Using the best relevant analytical methods in sampling and analysis plans included in the final SMMP; limiting site use before June 1 and staggering disposal events during nearshore holding and outmigration of juvenile salmon; and provisions to provide the results of bathymetric monitoring to NMFS. EPA incorporated these recommendations into the final SMMP.

EPA did not accept the remaining three recommendations. These recommendations asked EPA to develop and implement studies to collect information to better inform agencies on species presence and use in the disposal area, in areas that might be designated in the future, and for all existing ocean disposal sites in Oregon. EPA did not accept these recommendations because EPA did not find that the collection of information as recommended by NMFS constituted measures for ''avoiding, mitigating, or offsetting the impact'' of the Federal action on essential fish habitat.

3. CZMA

EPA consulted with the state of Oregon on coastal zone management issues. EPA prepared a consistency determination for the Oregon Ocean and Coastal Management Program (OCMP) to address consistency determinations required by the Coastal Zone Management Act, 16 U.S.C. 1446. The Oregon Department of Land Conservation and Development (DLCD) reviewed the consistency determination and concurred with EPA that the action is consistent with the OCMP to the maximum extent practicable basing its findings on the certification EPA provided.

4. ESA

EPA also consulted with NMFS and the U.S. Fish and Wildlife Service on its action to de-designate existing Site F and to designate new Site F finding that the action would not be likely to adversely affect aquatic or wildlife species listed as endangered pursuant to the Endangered Species Act, 16 U.S.C. 1531 to 1544, (ESA), or the critical habitat of such species. EPA found that site designation does not have a direct impact on any of the identified ESA species but also found that indirect impacts had to be considered. These indirect impacts included a short-term increase in suspended solids and turbidity in the water column when dredged material was disposed at the new site and an accumulation of material on the ocean floor when material was disposed at the site. EPA concluded that while its action may affect ESA-listed species, the action would not be likely to adversely affect ESA-listed species.

The U.S. Fish and Wildlife Service concurred with EPA's conclusion based on its finding that ''abundant suitable foraging habitat throughout the area'' for birds of concern would be available during disposal activities, *i.e.* site use, and that minor behavioral changes, such as foraging in areas other than the designated site, would be temporary. NMFS concurred with EPA's findings for ESA-listed marine mammals, sea turtles, and southern Oregon/northern California coho salmon, finding that the new site was not designated as critical habitat for any of those species. NMFS did not agree with EPA's conclusions for Oregon Coast coho salmon and requested additional consultation. Subsequent to that request, NMFS announced that it was withdrawing its proposal to list Oregon Coast coho salmon as endangered. The ESA consultation concluded with the withdrawal of the NMFS proposal to list Oregon Coast coho salmon and NMFS addressed Oregon Coast coho salmon in the EFH consultation.

3. Response to Comment

No public comments on the proposed designation were received; however, a letter from the Oregon Department of Environmental Quality (ODEQ) pointed out the need for improved coordination procedures between the EPA, the Corps, ODEQ's central office and ODEQ's Coos Bay field office for dredging projects in the vicinity of Coos Bay. EPA generally supports improved coordination between federal and state agencies. Coordination will be a priority for EPA at the new site to ensure that disposal activities by the Corps and by local port authorities are aware of site restrictions and are adhering to the SMMP.

4. Statutory and Executive Order Reviews

This rule finalizes the de-designation of an existing ocean dredged material disposal site, existing Site F, and designates a new ocean dredged material disposal site, new Site F. This rule complies with applicable executive orders and statutory provisions as follows:

a. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or

the principles set forth in the Executive Order. It has been determined that this final action, which simultaneously de-designates an existing ocean dredged material disposal site and designates a new site, Site F, is not a significant regulatory action under Executive Order 12866 and is therefore not subject to OMB review.

b. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, because this final action does not establish or modify any information or recordkeeping requirements for the regulated community.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

c. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601, *et seq.*, generally requires federal agencies to prepare a final regulatory flexibility analysis whenever the agency promulgates a final rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's Size Regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant economic impact on small entities because the final action regulates the location of sites to be used for the disposal of dredged materials in ocean waters. After considering the economic impacts of today's final action on small entities, I certify that this action will not have a significant impact on a substantial number of small entities directly regulated by this action.

d. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this action contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, today's action is not subject to the requirements of sections 202 and 203 of the UMRA.

e. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective June 12, 2006.

f. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.'' This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. This action addresses the designation and de-designation of sites near the mouth of Coos Bay, Oregon. Thus, Executive Order 13132 does not apply to this action.

g. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This action does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

h. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The action concerns the designation and de-designation of ocean disposal sites and would only have the effect of providing designated locations to use for ocean disposal of dredged material pursuant to section 102(c) of the MPRSA.

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

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

j. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide to Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Although EPA stated that the proposed action did not directly involve technical standards, the proposed action and today's final action include environmental monitoring and measurement as described in EPA's SMMP. EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the designated sites. Rather, the Agency plans to allow the use of any method, whether it constitutes a voluntary consensus standard or not, that meets the monitoring and measurement criteria discussed in the final SMMP.

k. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. Because this action addresses ocean disposal site designations (away from inhabited land areas), no significant adverse human health or environmental effects are anticipated. The action is not subject to Executive Order 12898 because there are no anticipated significant adverse human health or environmental effects.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Authority: This action is issued under the authority of section 102 of the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401, 1411, 1412.

Dated: April 28, 2006.

L. Michael Bogert,

Regional Administrator, Region 10.

■ For the reasons set out in the preamble, Chapter I of title 40 is amended as set forth below:

PART 228—[AMENDED]

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

■ 2. Section 228.15 is amended by revising paragraphs (n)(4)(i), (ii), (iii), (iv), (v), and (vi) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(n) * * *

(4) * * *

(i) *Location:* 43°22′54.8887″ N, 124°19′28.9905″ W; 43°21′32.8735″ N, 124°20′37.7373″ W; 43°22′51.4004″ N, 124°23′32.4318″ W; 43°23′58.4014″ N, 124°22′35.4308″ W (NAD 83).

(ii) *Size:* 4.45 kilometers long and 2.45 kilometers wide.

(iii) *Depth:* Ranges from 6 to 51 meters.

(iv) *Primary Use:* Dredged material determined to be suitable for ocean disposal.

(v) *Period of Use:* Continuing Use.

(vi) *Restriction:* Disposal shall be limited to dredged material determined to be suitable for unconfined disposal; Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP); Monitoring, as specified in the SMMP, is required.

* * * * *

[FR Doc. 06–4286 Filed 5–10–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2006–0429; FRL–8168–4]

Tennessee: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Tennessee has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant Final authorization to Tennessee. In the

''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble of the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment.

DATES: Final authorization will become effective on July 10, 2006 unless EPA receives adverse written comment on or before June 12, 2006. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2006–0429 by one of the following methods:

• *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

• E-mail: *Gleaton.Gwen@epa.gov.*

• Fax: (404) 562–8439 (prior to faxing, please notify the EPA contact listed below)

• Mail: Send written comments to Gwen Gleaton, RCRA Services Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

• Hand Delivery: Gwen Gleaton, RCRA Services Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the office's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R04–RCRA–2006–0429. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*).

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy. You may view and copy Tennessee's application at The EPA Region 4, Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The Library is open from 8:30 a.m. to 4 p.m. Monday through Friday, excluding legal holidays. The Library telephone number is (404) 562–8190.

You may also view and copy Tennessee's application from 8 a.m. to 4:30 p.m. at the following address: Tennessee Department of Environment and Conservation, Division of Solid Waste Management, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535.

FOR FURTHER INFORMATION CONTACT: Gwen Gleaton, RCRA Services Section, RCRA Programs Branch, Waste Management Division, EPA Region 4, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; (404) 562–8500; fax number: (404) 562–8439; e-mail address: *Gleaton.Gwen@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received Final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Tennessee's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Tennessee Final authorization to operate its hazardous waste program with the changes described in the authorization application. Tennessee has responsibility for permitting Treatment, Storage, and Disposal Facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Tennessee, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of This Authorization Decision?

The effect of this decision is that a facility in Tennessee subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in

order to comply with RCRA. Tennessee has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports.
- Enforce RCRA requirements and suspend or revoke permits.
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Tennessee are being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before This Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register**, we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Tennessee Previously Been Authorized For?

Tennessee initially received final authorization on January 22, 1985, effective February 5, 1985 (50 FR 2820) to implement the RCRA hazardous waste management program. We granted authorization for changes to Tennessee's program on March 14, 2005, effective May 13, 2005 (70 FR 12416), April 11, 2003, effective June 10, 2003 (68 FR 17748), December 26, 2001, effective February 25, 2002 (66 FR 66342), October 26, 2000, effective December 26, 2000 (65 FR 64161), September 15, 1999, effective November 15, 1999 (64 FR 49998), January 30, 1998, effective March 31, 1998 (63 FR 45870), on May 23, 1996, effective July 22, 1996 (61 FR 25796), on August 24, 1995, effective October 23, 1995 (60 FR 43979), on May 8, 1995, effective July 7, 1995 (60 FR 22524), on June 1, 1992, effective July 31, 1992 (57 FR 23063), and on June 12, 1987, effective August 11, 1987 (52 FR 22443).

G. What Changes Are We Authorizing With This Action?

On January 12, 2006, Tennessee submitted a final complete program revision application, seeking authorization of its changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of comments that oppose this action, that Tennessee's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant final authorization for the following program changes:

Description of federal requirement	**Federal Register** date and page	Analogous state authority [1]
203—Recycled Used Oil Management Standards; Clarification.	68 FR 44659, 07/30/03	Tennessee Revised Code 1200–1–11–.02(1)(e)10, .11(2)(a), .11(2)(a)9, .11(8)(e), .11(8)(e)2, .11(8)(e)2(i)–(iv).
204—Performance Track	69 FR 21737, 04/22/04 69 FR 62217, 10/25/04	Tennessee Revised Code 1200–1–11–.03(4)(e), .03(4)(e)13, .03(4)(e)13(i)–(ix), .03(4)(e)13(ii)(I)–(IV), .03(4)(e)13(i)–(iii)(I)–(IV), .03(4)(e)13(v)(I)–(II), .03(4)(e)13(ix)(I)–(IV), .03(4)(e)14–15.
205—NESHAP: Surface Coating of Automobiles and Light-Duty Trucks.	69 FR 22601, 04/26/04.	Tennessee Revised Code 1200–1–11–.06(31)(a), .06(31)(a)8, .05(28)(a), .05(28)(a)7.

[1] The Tennessee provisions are from the Tennessee Hazardous Waste Management Regulations effective August 23, 2005.

H. Where Are the Revised State Rules Different From the Federal Rules?

There are no State requirements that are more stringent or broader in scope than the Federal requirements.

I. Who Handles Permits After the Authorization Takes Effect?

Tennessee will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Tennessee is not authorized.

J. What Is Codification and Is EPA Codifying Tennessee's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart RR for this authorization of Tennessee's program changes until a later date.

K. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this

action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective July 10, 2006.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b), of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: April 25, 2006.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. 06–4397 Filed 5–10–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 051213334–6119–02; I.D. 112905C]

RIN 0648–AT98

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery

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

ACTION: Final rule.

SUMMARY: NMFS is implementing the regulatory provisions of Amendment 19 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 19 provides for a comprehensive program to describe and protect essential fish habitat (EFH) for Pacific Coast Groundfish. The management measures to implement Amendment 19, which are authorized by the FMP and the Magnuson-Stevens Fishery Conservation and Management or Magnuson-Stevens Act), are intended to minimize, to the extent practicable, adverse effects to EFH from fishing. The measures include fishing gear restrictions and prohibitions, areas that are closed to bottom trawling, and areas that are closed to all fishing that contacts the bottom.

DATES: Effective June 12, 2006.

ADDRESSES: Copies of the Record of Decision, the Final Environmental Impact Statement, the Final Regulatory Flexibility Analysis (FRFA), and the Small Entity Compliance Guide (SECG) are available at *www.nwr.noaa.gov* or from D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, phone: 206–526–6150.

FOR FURTHER INFORMATION CONTACT: Steve Copps (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736 and; e-mail: *steve.copps@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's website at: *www.gpoaccess.gov/fr/index.html*.

Background information and documents are available at the NMFS Northwest Region website at: *www.nwr.noaa.gov* and at the Pacific Fishery Management Council's website at: *www.pcouncil.org*.

Background

Amendment 19 was developed by NMFS and the Pacific Fishery Management Council (Council) to comply with section 303(a)(7) of the Magnuson-Stevens Act by amending the Pacific Coast Groundfish FMP to: (1) describe and identify EFH for the fishery, (2) designate Habitat Areas of Particular Concern (HAPC), (3) minimize to the extent practicable the adverse effects of fishing on EFH, and (4) identify other actions to encourage the conservation and enhancement of EFH. This final rule implements regulations in accordance with Amendment 19.

A notice of availability for the amendment was published on December 7, 2005 (70 FR 72777). A notice of availability for the Final Environmental Impact Statement (FEIS) was published on December 9, 2005 (70 FR 73233), with public comment being accepted through January 9, 2006. A proposed rule to implement Amendment 19 was published on January 12, 2006 (71 FR 1998), with public comments being accepted through February 27, 2006. NMFS published a correction to the proposed rule on January 30, 2006 (71 FR 4886). Public comments, and NMFS responses, are summarized below. The comprehensive strategy to conserve EFH, including its identification and the implementation of measures to minimize to the extent practicable adverse impacts to EFH from fishing, is consistent with provisions of the Magnuson-Stevens Act (16 U.S.C. 1801 et. seq.) and implementing regulations. Amendment 19 includes four categories of action: identification and description of EFH; designation of HAPC; measures to minimize adverse impacts of fishing on EFH; and, research and monitoring. Preparation of this amendment is pursuant to a 2000 court order in *American Ocean Campaign et. al* v. *Daley*, Civil Action No. 99–982 (GK)(D.D.C. September 14, 2000) (AOC v. Daley) that required NMFS to reconsider the EFH provisions of the FMP. The regulations herein are necessary to implement measures to minimize adverse impacts of fishing on EFH. Additional background information is contained in the preamble to the proposed rule as well as in the FEIS, Regulatory Impact Review, and Final Regulatory Flexibility Analysis.

Comments and Responses

NMFS received 19 written comments on the proposed rule. The comments are arranged by commentor and subject; and responded to below.

Comment 1: In separate letters, Hubbs-Sea World Research Institute, United Anglers, American Fishing Tackle Company, Project Aware commented in support of designating 13 oil and gas platforms as HAPC. Alaska Trollers Association, Representative Lois Capps, 23rd District California, the Environmental Defense Center, Food and Water Watch, Rob Hatfield, the Ocean Conservancy, and the Pacific Coast Federation of Fishermen's Associations commented against the designation of 13 oil and gas platforms as HAPC.

Response: NMFS partially approved Amendment 19 on March 8, 2006. For that partial approval, NMFS did not approve the designation of 13 oil and gas platforms as HAPC. These comments were considered by NMFS in making its decision on Amendment 19. These comments are relevant to the FMP amendment and not this rule. The full rationale for NMFS' partial approval of Amendment 19, including the substantive response to these comments, is contained in the Record of Decision (see **ADDRESSES**). NMFS deemed the Record of Decision to be the more appropriate vehicle to respond to this comment because HAPC are not subject to codification in the Code of Federal Regulations (CFR) and are, therefore, not the subject of this final rule.

Comment 2: Several of the commenters identified in Comment 1 requested an extension of the comment period for the proposed rule to allow them more time to formulate their comments.

Response: NMFS rejects the request to extend the comment period on the proposed rule for this action. An extension of the comment period is unnecessary to provide the public with an adequate opportunity for review and comment. A detailed discussion of opportunities for public comment on this rule is provided in the Background section above. In addition, the public has had a number of opportunities via the Council process to provide comments as the Environmental Impact Statement and FMP Amendment were being developed. Further, NMFS' deadline for a decision on the approval of this final rule is established by court order in *AOC* v. *Daley* as May 6, 2006. NMFS has determined that an extension of the comment period for this action would compromise the agency's ability to comply with this deadline.

Comment 3: Oceana commented that designation of oil production platforms as HAPC, and/or allowing oil platforms to be left in place, sets a dangerous precedent for leaving industrial infrastructure in the ocean although such precedent could be mitigated through financial investment in ocean conservation.

Response: NMFS is not, either through this action or the prior partial approval of Amendment 19, taking a position on whether oil platforms should be left in place, or on related mitigation actions such as financial investment. The rationale for disapproving the designation of oil production platforms as HAPC is contained in the ROD (see **ADDRESSES**) which is careful to point out that NMFS' decision on Amendment 19 in no way prejudices future decisions on the decommissioning of oil production platforms. Such decisions are outside the scope of Amendment 19 and the rule; and are not considered in this final rule.

Comment 4: Oceana commented that NMFS, in the preamble to the proposed rule, mis-characterized the lack of evidence for adverse impacts from fishing. Oceana states that adverse effects to EFH are occurring and that the only uncertainty is where such effects are occurring, not if they are occurring.

Response: NMFS disagrees that the preamble to the proposed rule mis-characterizes the lack of evidence for adverse impacts from fishing. NMFS considered the National Academy of Sciences report cited by the Oceana by incorporating the conclusions of the report into the FEIS and assessment of impacts. NMFS agrees with the basic conclusions of the report that research demonstrates that bottom trawling may result in physical modification to habitat and a loss in biodiversity in trawled areas. However, there is a fundamental inability to determine the relationship between historical and current levels of fishing effort, impacts to habitat, recovery of the habitat, and the current condition of groundfish EFH. It follows that the status of EFH is at some unknown point on a continuum from highly impacted to pristine and that precautionary management is appropriate; particularly due to the highly sensitive nature of some habitat types such as deep sea corals and the very little fishing effort necessary to have high levels of impact.

The inability to make a definitive determination that adverse effects to EFH from fishing have occurred or are occurring is supported by the FEIS and the related risk assessment, which underwent a substantial public review process by the Council's ad hoc Groundfish Habitat Technical Review Committee, Scientific and Statistical Committee, and other relevant groups. Through this process, NMFS determined it can not quantitatively

predict increases in the production of groundfish or enhanced ecosystem function that would result from specific management measures. However, NMFS was able to conclude that there is clear evidence in the literature that some types of fishing would result in physical alteration to habitat and losses in biodiversity. Further, after assessing the type of habitat and fishing gears found off the U.S. West Coast, NMFS concluded that adverse impacts to habitat were possible that could impair the ability of fish to carry out basic biological functions and potentially have long-lasting or permanent implications at the scale of the ecosystem. While NMFS was unable to make a more definitive determination, the information available provided a sufficient basis of the potential for adverse effects to EFH to justify the application of precautionary management measures contained in this final rule. Additional information is contained in the FEIS and Record of Decision for this action (see **ADDRESSES**).

Comment 5: Oceana commented that the coastwide prohibition of bottom trawling should extend seaward of 300 fm south of Point Conception in order to prevent expansion of the bottom trawl footprint and protect the sea floor.

Response: Public testimony provided to the Council indicates that bottom trawling is well established within the area seaward of 300 fm south of Point Conception. Therefore, the suggestion is inconsistent with the concept of preventing expansion of the footprint. Further, while a prohibition of bottom trawling seaward of 300 fm south of Point Conception (34°27′ N. lat.) would protect more habitat but would do so at a higher socioeconomic cost. In particular, public testimony with the Council indicates that displaced revenues from the bottom trawl fishery (non-groundfish) would likely be in excess of 10 percent of current levels. NMFS has determined that a coast-wide prohibition of bottom trawling within EFH seaward of 700 fm, when combined with the other measures in this final rule, will minimize to the extent practicable adverse impacts on EFH.

Comment 6: In response to NMFS' question in the proposed rule, Oceana commented that NMFS has sufficient authority to implement management measures in the portions of the Exclusive Economic Zone (EEZ) that lie seaward of EFH.

Response: NMFS disagrees. On March 8, 2006, NMFS partially approved Amendment 19. NMFS disapproved the coastwide prohibition on bottom trawling and other gear restrictions in areas of the EEZ that are not described as EFH because it can not find a link between bottom trawling in areas deeper than 3500–meters and adverse impacts on EFH or conservation of the fishery. Therefore, the Magnuson-Stevens Act does not provide authority for closure to bottom trawling in areas within the EEZ that are deeper than EFH because it is not necessary to do so under Amendment 19. The management measures in this final rule will be applied within EFH.

At this time, NMFS does not have enough information to support closing areas beyond the limits of EFH to bottom trawling. EFH is described based on the depth-contour determined by the deepest observation of groundfish, which occurred at 3400 m, plus 100 m as a precautionary adjustment to account for the paucity of data on groundfish distributions and habitat types in deep water. There is very little data available for groundfish EFH in general, but particularly for areas deeper than 2000 m. Detailed mapping of groundfish habitat has been accomplished in relatively few important areas, such as offshore banks of the Southern California Bight (Goldfinger et al., 2005), Monterey Bay, California, and Heceta Bank, Oregon (Wakefield et al., 2005), and is slowly being extended to other areas of the coast. Groundfish distributions are primarily informed by trawl surveys out to 1280 m, with other sporadic information from deeper waters available from university-funded trawl research.

The bottom trawl fishery is not prosecuted deeper than 1280 m, nor is it likely to be, with the rare exception of speculative trawling. At that depth and distance from shore, the cost of fishing is higher than in shallower waters due to increased fuel consumption and gear specifications. Gear specifications for instance would require lengths of cable that are likely to be well outside the capacity of standard fishing vessels. Such costs are likely to outweigh the benefits of fishing. NMFS acknowledges that current trends in fishing activity show that the industry continues to move farther offshore as NMFS restricts fishing opportunities to rebuild groundfish stocks and minimize bycatch nearer to shore. However, 3500 m is an extreme depth that is probably out of reach, in practical sense, to commercial fisheries. The fishing industry's potential to move seaward would most likely still be well shoreward of the 3500 m contour.

NMFS acknowledges that features that occur beyond 3500 m include hydrothermal vents, soft-bottom sediments, and hard bottom areas with biogenic structures such as deep sea corals. All or most of the deep sea environment may be highly sensitive to impact, including at very low levels of fishing effort (e.g. a single contact), and have extended recovery times (over seven years). The fact that the features in these areas may be of ecological value and sensitive to disturbance does not necessarily mean that harm to them is also harmful to groundfish EFH.

Currently, NMFS has little to no information regarding the value of the area beyond the 3500 m contour to the groundfish fishery. The best scientific data currently available does not support the presence of species managed under this plan at those depths, there is no indication that the area provides habitat for managed species, and the fishery is not prosecuted in the area. Therefore, NMFS has not identified a link between potential adverse impacts to features beyond EFH from bottom fishing activities and adverse impacts on EFH. Nor has NMFS identified a link between impacts to areas deeper than 3500 m conservation and management of the fishery. This is because there is no evidence of the value of the area deeper than 3500 m to the fishery. There is not even enough information to support use of the precautionary approach as the basis for closing these areas because there is no connection between the area and groundfish EFH. Because NMFS has identified no link between impacts to this deep habitat and the groundfish fishery, it does not have authority under the Magnuson-Stevens Act to close these areas to fishing at this time under Amendment 19. NMFS may have cause in the future to be concerned if bottom trawlers engage in speculative trawling in these deeper waters as more areas nearer shore become more restricted to fishing.

Recognizing current statutory limits to protecting such areas, the Administration offered an ecosystem approach to management in its proposal to reauthorize the Magnuson-Stevens Act. Among the ecosystem related provisions, section 4(f) of the proposal would allow the regional councils to develop fishery ecosystem plans that ''may contain conservation and management measures applicable to fishery resources throughout the fishery ecosystem, including measures that the Council or the Secretary deems appropriate to * * * (B) establish marine managed areas in the Exclusive Economic Zone. * * *'' Inclusion of such a provision in the reauthorized Magnuson-Stevens Act would authorize the type of action recommended by the Council in Amendment 19. In addition,

S. 2012, the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005, includes a provision that would allow the Councils to ''designate such zones ... to protect deep sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep sea corals, after considering long-term sustainable uses of fishery resources in such areas'' (section 105). The administration bill further supports NMFS' position that in its current form, the Magnuson-Stevens Act does not provide authority for ecosystem protection without a link to conservation and management of the fishery.

Comment 7: The Oregon Department of Fish and Wildlife proposed a change to the proposed Nehalem Bank/Shale Pile area in order to avoid impracticable impacts to the shrimp trawl industry. The change would replace the point at 45° 52.77′ N. lat., 124° 28.75′ W. long. with a point at 45° 55.63′ N. lat., 124° 30.516′ W. long.

Response: NMFS has determined that the suggested change is consistent with Amendment 19 in that it provides for substantial protection of rocky reef habitat within the constraints of practicability. Therefore, NMFS made the suggested change in this rule.

Comment 8: The Council forwarded a comment from their Enforcement Consultants (EC) that the definition of bottom longline in the proposed rule may have unforeseen consequences (unspecified).

Response: Bottom longline is defined as stationary, buoyed, and anchored groundline with hooks attached, so as to fish along the seabed. It does not include pelagic hook-and-line or troll gear. NMFS has determined that this definition is consistent with Amendment 19.

Comment 9: The Council forwarded a comment from their EC that the definition of midwater trawl includes language that may be redundant and unnecessary. The subject language is ''* * * on any part of the net or its component wires, ropes, and chains,'' and refers to rollers, bobbins, or other elements of the gear specifically designed to contact the sea floor.

Response: The language ensures an objective standard to ensure midwater trawl nets are not modified to be fished in contact with the sea floor.

Comment 10: The Council forwarded a comment from their EC that the prohibition on bottom contact gear within Anacapa Island SMCA should be modified to allow recreational fishing for lobster by hand or hoop net; and, recreational fishing for pelagic fin fish by hook and line with terminal gear not more than six ounces in weight.

Response: NMFS has consulted with the California Department of Fish and Game to determine that recreational fishing for lobster or pelagic fin fish with bottom contacting gear does not occur in the subject area nor is it likely to do so. It is therefore unnecessary to make the distinction suggested by the commentor.

Comment 11: The Council forwarded a comment from their Groundfish Advisory Subpanel (GAP) that the definition of Trawl Fishing Line should be modified from ''A length of chain or wire rope in the bottom front end of a trawl net to which the webbing or lead ropes are attached;'' to, ''A length of chain, rope, or wire rope in the bottom front end of a trawl net to which the webbing or lead ropes are attached.

Response 11: NMFS has made the suggested change for this final rule.

Comment 12: The Council forwarded a comment from their GAP that a definition of ''stowed'' should be included in the final rule as it relates to recreational gear.

Response: See NMFS response to Comment 16 in the following sections.

Comment 13: The Council forwarded a comment from their GAP that certain EFH Conservation areas, as defined in the proposed rule at section 660.395, should be downsized to reflect agreements between stakeholders.

Response: The coordinates in the proposed rule, and this final rule, were developed in consultation with the Council and its public comment process and accurately reflect the intent of Amendment 19.

Comment 14: The Council forwarded a comment from the GAP that, in the area adjacent to Soquel Canyon, the closed area line should follow the 60 fathom depth contour to avoid cutting off halibut trawl grounds and better reflect agreements by stakeholders.

Response: The coordinates in the proposed rule, and this final rule, were developed in consultation with the Council to specifically reflect stakeholder input and accurately implement Amendment 19.

Comment 15: The Council forwarded the following comment from their Groundfish Management Team (GMT). As part of the Council's action in June, the Council decided to prohibit fishing with dredge gear and beam trawl gear from the shore seaward to the outer edge of the EEZ (i.e., within state waters, but not in the bays and estuaries, and within the entire EEZ). The draft EFH regulations prohibit dredge gear and beam trawl gear only within the EEZ. The GMT believes there are advantages to including those prohibitions in the Federal regulations to apply from the shore including within state waters. Having the Federal rules in place will help facilitate the states taking conforming action. Also, having the rules in place in Federal regulations promotes consistency and will help ensure that the prohibitions will remain in place until the Council takes action to change or remove them.

Response: NMFS does not have authority to manage fishing within state waters, with limited exceptions. The Magnuson-Stevens Act provides NMFS with fishery management authority in the EEZ. If a state's action causes serious problems with carrying out an FMP, then NMFS may take action necessary to regulate the fishery in state (not internal) waters. In this case, NMFS is promulgating rules to minimize adverse effects from fishing on EFH in specific parts of the EEZ. NMFS will continue to work with the Council and coastal states to facilitate conforming action and full implementation of the intent of Amendment 19.

Comment 16: The Council forwarded the following comment from their GMT. The Council made an additional recommendation as part of the motion to forward the preceding advisory body comments (see comment 13 above). Any definition of recreational stowed gear should not include the phrase ''no fishing gear other than a swivel attached to the line.'' The GMT recommended an alternate definition to be ''stowed recreational hook-and-line fishing gear is defined as hook-and-line gear with all line reeled to the reel or rod tip with the rod and reel placed on the vessel in a manner different than when actively fishing.''

Response: NMFS disagrees that a definition of stowed recreational gear is necessary. The GMT formulated this comment based on draft regulations to prohibit all fishing in specified areas. These regulations were not proposed. The proposed rule and this final rule do not have any prohibitions on all fishing and therefore it is unnecessary to include a definition of stowed recreational gear.

Changes from the Proposed Rule

NMFS is making eight changes from the proposed rule. Each change is described in the following text.

1. The Nehalem Bank/Shale Pile Groundfish EFH Conservation Area described at § 660.398(c) is changed to avoid impracticable impacts to the shrimp trawl industry. This change is made pursuant to Comment 7 in the preceding section. The point at 45° 52.77′ N. lat., 124° 28.75′ W. long. is

replaced with a point at 45° 55.63′ N. lat., 124° 30.52′ W. long.

2. The definition of ''Trawl Fishing Line'' described at § 660.302 ''Fishing Gear'' (9)(iii)(J) is changed to provide a more accurate definition. This change is made pursuant to Comment 11 in the preceding section. The definition of Trawl Fishing Line is modified from ''A length of chain or wire rope in the bottom front end of a trawl net to which the webbing or lead ropes are attached;'' to, ''A length of chain, rope, or wire rope in the bottom front end of a trawl net to which the webbing or lead ropes are attached.''

3. As a result of the partial approval of Amendment 19 that applies the management measures within EFH, the specific coordinates of groundfish EFH within the EEZ are added to § 660.395. For ease of specification and enforcement, straight lines approximating the latitude/longitude coordinates are used in the regulations.

4. The prohibition of dredge gear within the EEZ at § 660.306(a)(13) is changed to be effective within EFH within the EEZ. This change is pursuant to NMFS partial approval of Amendment 19 that only applies management measures within EFH.

5. The prohibition of beam trawl gear within the EEZ at § 660.306(a)(14) is changed to be effective within EFH within the EEZ. This change is pursuant to NMFS partial approval of Amendment 19 that applies management measures within EFH.

6. The prohibition of bottom trawling seaward of a line approximating 700 fm (1280 m) within the EEZ at § 660.306(h)(4) is changed to be effective within EFH within the EEZ. This change is pursuant to NMFS partial approval of Amendment 19 that applies management measures within EFH.

7. The prohibition of large footrope trawl gear greater than 19'' in diameter within the EEZ at § 660.306(h)(5) is changed to be effective within EFH within the EEZ. This change is pursuant to NMFS partial approval of Amendment 19 that applies management measures within EFH.

8. The final rule contains minor, non-substantive technical changes from the proposed rule that improve the clarity and accuracy of the regulations.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to Executive Order 13175, this final rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the Pacific Coast Groundfish FMP. NMFS does not intend for any of the regulations described below to apply to tribal fisheries in usual and accustomed grounds described in 50 CFR 660.324(c). NMFS will continue to work with the tribes towards the goal of ensuring that, within their usual and accustomed fishing grounds, adequate measures are in place to protect EFH.

NMFS prepared a FRFA that describes the impact that this final rule will have on small entities.

Typically a FRFA is based on the Initial Regulatory Flexibility Analysis (IRFA) and the comments received on the IRFA. There were no comments received on the IRFA (However as indicated in the comments above, NMFS did respond to several industry comments made by the Pacific Council's chief industry advisory group, the Groundfish Advisory Panel (see Comments 11,12,13, and 14) and by a request by the Oregon Department of Fish and Wildlife on behalf of the Oregon shrimp trawl industry (Comment 7)). A description of the action, why it is being considered, and the legal basis for this action are contained at the preamble to the proposed rule and this document. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the analysis follows.

NMFS is implementing regulations to minimize to the extent practicable adverse impacts from fishing to EFH. The regulations include restrictions on the type of fishing gear that may be used and the establishment of specific areas that would be closed to specified gear types. The action is fully described in this final rule and the preamble to the proposed rule.

The entities that would be directly regulated by this action are those that operate vessels fishing for groundfish, California and Pacific halibut, crab and lobster, shrimp, and species similar to groundfish including California sheephead and white croaker in Federal EEZ waters off of the Pacific coast. Although harvest and gross revenue information is confidential for individual vessels, all shorebased vessels fishing off the Pacific coast are considered small entities for purposes of the FRFA. Although the number of vessels engaged in Pacific coast fisheries will vary by year, the average is approximately 3,800 to 4,300. Of these, approximately 1,200 to 1,500 participate in groundfish fisheries; 1,200 to 1,400 participate in crab fisheries; and 215 to 330 participate in shrimp fisheries, and many of these vessels participate in all three fisheries. Many vessels participating in these fisheries will be directly regulated by this final rule.

A total of 23 alternatives (including sub-options and the final preferred alternative) to minimize fishing impacts to EFH were analyzed within the FEIS. A brief description of the alternatives analyzed and considered in addition to the preferred alternative is described below. For a more complete description of the alternatives, see chapter 2 of the FEIS. Five of the alternatives were designed to accomplish the objective of protecting EFH while minimizing economic impacts on small entities. These include three alternatives designed to close areas to trawling that are were analyzed to be non-critical to the economic future of the trawl industry based on historical trawling patterns, an alternative to prohibit geographic expansion of the trawl fishery (e.g., limiting the fishery to historically valuable areas), and an alternative to close specified areas and compensate impacted fishermen through private purchase of their permits. The final preferred alternative includes components that were compiled from discrete elements of the other alternatives. A detailed description of all the alternatives is available in the FEIS for this action (see **ADDRESSES**).

Generally speaking, NMFS attempted to develop alternatives with a wide range of economic effects. Data on costs and models that predicted industry responses to area closures were unavailable. As a result, the key indicator used for measuring economic impacts was ''displaced'' limited entry trawl revenues. (The limited entry trawl fleet is the primary industry sector affected by this rule. Displaced revenues are revenues associated with revenues earned in areas proposed for closure. These revenues are not necessarily lost as they can be recouped through increased fishing in the areas open to fishing. The IRFA and FEIS also refer to ''displaced'' revenues as ''revenues at risk.'') In addition, a qualitative analysis of the alternatives was performed.

The management measures would result in the protection of 130,000 square miles (33,670,000 hectares) of habitat found in the U.S. exclusive economic zone off the West Coast of the U.S. This represents over 42 percent of the EEZ. Other alternatives analyzed in the FEIS protected amounts of habitat that are similar in quantity, but can be considered impracticable for various reasons. Of the alternatives protecting similar amounts of habitat, one is considered impracticable to administrative agencies because of the complexity of implementing the

alternative, and one is considered impracticable because it would close the Dungeness crab fishery. The others were modified to reduce socioeconomic impacts to acceptable levels and included as part of the preferred alternative.

The final preferred alternative was determined to have the most acceptable socioeconomic impact on commercial fishers, recreational fishers, and communities. In general, the management measures are not expected to significantly curtail harvesting opportunities. Over the long-term, the measures may improve harvesting opportunities by enhancing the productivity of harvestable fish stocks. It is also concluded that this action would not result in any disproportionate economic impacts between large and small entities because those directly regulated by this action are all small entities. (Catcher-Processors, normally considered large entities, are not affected by this rule because they are mid-water trawlers; their nets do not touch bottom habitat.)

It should be noted that the regulations being implemented by this final rule reflect a process where the affected industry played a major role. This process included several meetings held by the industry itself to design alternatives which in some instances included meetings with other groups such as Oceana, provision of industry comment through the Council's chief groundfish industry advisory group-the GAP, and direct public comment by many industry representatives at Council meetings. It also must be noted that industry comment through the various state public comment processes employed by the States of California, Oregon, and Washington led to three state- based motions at Council meetings. These three motions were combined into a coastwide preferred alternative adopted by the Council for the NMFS approval and implementation alternative.

Table 60 of Volume 7 of the FEIS titled ''Comparison of Protected Area and Trawl Revenues at Risk Over 4 Years by Alternative'' provides more summary detail on the alternatives. This table compares two different methods for estimating total revenues at risk over a four year period based on the proportion of 10 mile x 10 mile blocks of area closed. For example, the revenues at risk estimates range from $8,523,085 to $36,292,783 million for the preferred alternative. The estimates vary depending on assumptions of the degree that a particular 10 x 10 area of ocean is closed and enforced. The low estimate is based on the assumption that within any given 10 x 10 block the actual closure area is exactly equal to the particular amounts of habitat (e.g. rocky reefs) that are being protected. The high estimate is based on closure of the entire block.

Several options, taken in isolation, would have fewer economic impacts than the final preferred bundled alternative. However, the final preferred bundled alternative would be consistent with the goals and objectives of the Magnuson-Stevens Act, especially the mandate to minimize to the extent practicable adverse effects of fishing on EFH. These alternatives not selected for implementation include C.3.1 (Close Sensitive Habitat Option 1 -- $181,973 to $1,001,952), C.3.2 (Close Sensitive Habitat Option 2 $934,795 to $1,531,975), C.4.1 (Prohibit Geographic Expansion of Fishing Option 1 $88,941 to $88,941 (no difference between estimates)), C.4.2 (Prohibit Geographic Expansion of Fishing Option 2 $88,941 to $88,941 (no differences between estimates and with C.4.2 Option 1)), C.7.1 and C.7.2 (Close Areas of Interest $12.601,536 to $29,471,349, and C.10 (Central CA Trawl Zones $5,664,512 to $5,886,370).

Table 60 of Volume 7 of the FEIS also provides more summary detail on the alternatives. This table compares two different methods for estimating total revenues at risk over a four year period based on the proportion of 10 mile x 10 mile blocks of area closed. For example, the revenues at risk estimates range from $8,523,085 to $36,292,783 million for the preferred alternative. The estimates vary depending on assumptions of the degree that a particular 10 x 10 area of ocean is closed and enforced. The low estimate is based on the assumption that we within any given 10 x 10 block the actual closure area is exactly equal to the particular amounts of habitat (e.g. rocky reefs) that are being protected. The high estimate is based on closure of the entire block.

Several options, taken in isolation, would have fewer economic impacts than the final preferred bundled alternative. However, the final preferred bundled alternative would be more consistent with the goals and objectives of the Magnuson-Stevens Act, especially the mandate to minimize to the extent practicable adverse effects of fishing on EFH. These alternatives not selected for implementation include C.3.1 (Close Sensitive Habitat Option 1 -- $181,973 to $1,001,952), C.3.2 (Close Sensitive Habitat Option 2 $934,795 to $1,531,975), C.4.1 (Prohibit Geographic Expansion of Fishing Option 1 $88,941 to $88,941 (no difference between estimates)), C.4.2 (Prohibit Geographic Expansion of Fishing Option 2 $88,941 to $88,941 (no differences between estimates and with C.4.2 Option 1)), C.7.1 and C.7.2 (Close Areas of Interest $12.601,536 to $29,471,349, and C.10 (Central CA Trawl Zones $5,664,512 to $5,886,370).

Conversely, several options would have more severe economic impacts than the final preferred bundled alternative. However, the final preferred bundled alternative would be more consistent with the goals and objectives of the Magnuson-Stevens Act, especially the mandate to minimize to the extent practicable adverse effects of fishing on EFH. These alternatives not selected for implementation include C.3.3 (Close Sensitive Habitat Option 3 $3,723,698 to $47,115,054), C.3.4 (Close Sensitive Habitat Option 4 $58,458,226 to $82,895,532), C.6 (Close Hotspots $41,662,276 to $78,094,177), C.12 (Close Ecological Important Areas to Bottom Trawl 19,242,920 to $46,252,563), C.13 (Close Ecological Important Areas to Bottom-contacting gear $19,242,920 to $46,252,563), and C.14 (Close Ecological Important Areas to Fishing 19,242,920 to $46,252,563). (The revenue at risk estimates do not vary between alternatives C.12–C.14)

In addition, NMFS was unable to calculate the economic impacts in terms of revenues at risk for total 10 x 10 block areas for several alternatives due to lack of information. These alternatives not selected for implementation include C.2.1 (Depth Based Gear Restrictions Option 1 Large Footrope Depth Restriction 200 fm and Fixed Gear Depth Restriction 100/150 fm), C.2.2 (Depth-Based Gear Restrictions Option 1 Large Footrope Depth Restriction EEZ and Fixed Gear Depth Restriction 100/150 fm), and C.2.3 (Depth Based Gear Restrictions Option 1 Large Footrope Depth Restriction 200 fm and Fixed Gear Depth Restriction 60 fm), and C.8.1 and C.8.2 (Zoning Fishing Activities, options 1 and 2).

Finally, NMFS has determined that the economic impacts of several alternatives are non-existent or neutral for a variety of reasons. These alternatives not selected for implementation include C.1 (No Action), C.5 (Prohibit Krill Fishery), C.9 (Gear Restrictions), and C.11 (Relax Gear Endorsements).

There are no new reporting or recordkeeping requirements that are part of this action. No Federal rules have been identified that duplicate, overlap, or conflict with the alternatives.

NMFS issued Biological Opinions (BOs) under the Endangered Species Act on August 10, 1990, November 26, 1991,

August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, analyzing the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal, Oregon coastal), chum salmon (Hood Canal, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, northern California, and southern California). During the 2000 Pacific whiting season, the whiting fisheries exceeded the chinook bycatch amount specified in the most recent Biological Opinion's (whiting BO) (December 19, 1999) incidental catch statement estimate of 11,000 fish, by approximately 500 fish. In the 2001 whiting season, however, the whiting fishery's chinook bycatch was about 7,000 fish, which approximates the long-term average. After reviewing data from, and management of, the 2000 and 2001 whiting fisheries (including industry bycatch minimization measures), the status of the affected listed chinook, environmental baseline information, and the incidental catch statement from the 1999 whiting BO, NMFS determined in a letter dated April 25, 2002, that a re-initiation of consultation for the whiting fishery was not required. NMFS has concluded that implementation of the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. This action is within the scope of these consultations. In addition, NMFS issued a supplemental BO on March 11, 2006, that addressed the incidental take exceedence of the whiting fishery and determined no jeopardy.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as a ''small entity compliance guide.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a public notice, that also serves as small entity compliance guide, was prepared. Copies of the public notice will be mailed to all limited entry permit holders, e-mailed to all recipients of the *westcoastgroundfish@noaa.gov* listserv, faxed to recipients on our groundfish public notice fax list, and posted on our website at *www.nwr.noaa.gov*. The public notice and this final rule will be available upon request from the Northwest Regional Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, Fisheries, Fishing, Indians.

Dated: May 4, 2006.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, NMFS is amending 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.301, paragraph (a) is revised as follows:

§ 660.301 Purpose and scope.

(a) This subpart implements the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) developed by the Pacific Fishery Management Council. This subpart governs fishing vessels of the U.S. in the EEZ off the coasts of Washington, Oregon, and California. All weights are in round weight or round-weight equivalents, unless specified otherwise.

* * * * *

■ 3. In § 660.302, a definition for ''Essential Fish Habitat or EFH'' is added in alphabetical order, and the definition for ''Fishing gear'' is revised to read as follows:

§ 660.302 Definitions.

* * * * *

Essential Fish Habitat or EFH. (See § 600.10).

* * * * *

Fishing gear includes the following types of gear and equipment:

(1) *Bottom contact gear.* Fishing gear designed or modified to make contact with the bottom. This includes, but is not limited to, beam trawl, bottom trawl, dredge, fixed gear, set net, demersal seine, dinglebar gear, and other gear (including experimental gear) designed or modified to make contact with the bottom. Gear used to harvest bottom dwelling organisms (e.g. by hand, rakes, and knives) are also considered bottom contact gear for purposes of this subpart.

(2) *Demersal seine.* A net designed to encircle fish on the seabed. The Demersal seine is characterized by having its net bounded by lead-weighted ropes that are not encircled with bobbins or rollers. Demersal seine gear is fished without the use of steel cables or otter boards (trawl doors). Scottish and Danish Seines are demersal seines. Purse seines, as defined at § 600.10, are not demersal seines. Demersal seine gear is included in the definition of bottom trawl gear in (11)(i) of this subsection.

(3) *Dredge gear.* Dredge gear, with respect to the U.S. West Coast EEZ, refers to a gear consisting of a metal frame attached to a holding bag constructed of metal rings or mesh. As the metal frame is dragged upon or above the seabed, fish are pushed up and over the frame, then into the mouth of the holding bag.

(4) *Entangling nets* include the following types of net gear:

(i) *Gillnet.* (See § 600.10).

(ii) *Set net.* A stationary, buoyed, and anchored gillnet or trammel net.

(iii) *Trammel net.* A gillnet made with two or more walls joined to a common float line.

(5) *Fixed gear (anchored nontrawl gear)* includes the following gear types: longline, trap or pot, set net, and stationary hook-and-line (including commercial vertical hook-and-line) gears.

(6) *Hook-and-line.* One or more hooks attached to one or more lines. It may be stationary (commercial vertical hook-and-line) or mobile (troll).

(i) *Bottom longline.* A stationary, buoyed, and anchored groundline with hooks attached, so as to fish along the seabed. It does not include pelagic hook-and-line or troll gear.

(ii) *Commercial vertical hook-and-line.* Commercial fishing with hook-and-line gear that involves a single line anchored at the bottom and buoyed at the surface so as to fish vertically.

(iii) *Dinglebar gear.* One or more lines retrieved and set with a troll gurdy or hand troll gurdy, with a terminally attached weight from which one or more leaders with one or more lures or baited hooks are pulled through the water while a vessel is making way.

(iv) *Troll gear.* A lure or jig towed behind a vessel via a fishing line. Troll

gear is used in commercial and recreational fisheries.

(7) *Mesh size.* The opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot, regardless of twine size.

(8) *Nontrawl gear.* All legal commercial groundfish gear other than trawl gear.

(9) *Spear.* A sharp, pointed, or barbed instrument on a shaft.

(10) *Trap or pot.* These terms are used as interchangeable synonyms. See § 600.10 definition of ''trap''.

(11) *Trawl gear.* (See § 600.10)

(i) *Bottom trawl.* A trawl in which the otter boards or the footrope of the net are in contact with the seabed. It includes demersal seine gear, and pair trawls fished on the bottom. Any trawl not meeting the requirements for a midwater trawl in § 660.381 is a bottom trawl.

(A) *Beam trawl gear.* A type of trawl gear in which a beam is used to hold the trawl open during fishing. Otter boards or doors are not used.

(B) *Large footrope trawl gear.* Large footrope gear is bottom trawl gear with a footrope diameter larger than 8 inches (20 cm,) and no larger than 19 inches (48 cm) including any rollers, bobbins, or other material encircling or tied along the length of the footrope.

(C) *Small footrope trawl gear.* Small footrope trawl gear is bottom trawl gear with a footrope diameter of 8 inches (20 cm) or smaller, including any rollers, bobbins, or other material encircling or tied along the length of the footrope. Selective flatfish trawl gear that meets the gear component requirements in § 660.381 is a type of small footrope trawl gear.

(ii) *Midwater (pelagic or off-bottom) trawl.* A trawl in which the otter boards and footrope of the net remain above the seabed. It includes pair trawls if fished in midwater. A midwater trawl has no rollers or bobbins on any part of the net or its component wires, ropes, and chains.

(iii) *Trawl gear components.*

(A) *Breastline.* A rope or cable that connects the end of the headrope and the end of the trawl fishing line along the edge of the trawl web closest to the towing point.

(B) *Chafing gear.* Webbing or other material attached to the codend of a trawl net to protect the codend from wear.

(C) *Codend.* (See § 600.10).

(D) *Double-bar mesh.* Webbing comprised of two lengths of twine tied into a single knot.

(E) *Double-walled codend.* A codend constructed of two walls of webbing.

(F) *Footrope.* A chain, rope, or wire attached to the bottom front end of the trawl webbing forming the leading edge of the bottom panel of the trawl net, and attached to the fishing line.

(G) *Headrope.* A chain, rope, or wire attached to the trawl webbing forming the leading edge of the top panel of the trawl net.

(H) *Rollers or bobbins* are devices made of wood, steel, rubber, plastic, or other hard material that encircle the trawl footrope. These devices are commonly used to either bounce or pivot over seabed obstructions, in order to prevent the trawl footrope and net from snagging on the seabed.

(I) *Single-walled codend.* A codend constructed of a single wall of webbing knitted with single or double-bar mesh.

(J) *Trawl fishing line.* A length of chain, rope, or wire rope in the bottom front end of a trawl net to which the webbing or lead ropes are attached.

(K) *Trawl riblines.* Heavy rope or line that runs down the sides, top, or underside of a trawl net from the mouth of the net to the terminal end of the codend to strengthen the net during fishing.

* * * * *

■ 4. In § 660.306, paragraphs (a)(13), (a)(14), and (h)(4) through (h)(10) are added to read as follows:

§ 660.306 Prohibitions.

* * * * *

(a) * * *

(13) Fish with dredge gear (defined in § 660.302) anywhere within EFH within the EEZ. For the purposes of regulation, EFH within the EEZ is described at 660.395.

(14) Fish with beam trawl gear (defined in § 660.302) anywhere within EFH within the EEZ. For the purposes of regulation, EFH within the EEZ is described at 660.395.

* * * * *

(h) * * *

(4) Fish with bottom trawl gear (defined in § 660.302) anywhere within EFH within the EEZ seaward of a line approximating the 700–fm (1280–m) depth contour, as defined in § 660.396. For the purposes of regulation, EFH seaward of 700–fm (1280–m) within the EEZ is described at 660.395.

(5) Fish with bottom trawl gear (defined in § 660.302) with a footrope diameter greater than 19 inches (48 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope) anywhere within EFH within the EEZ. For the purposes of regulation, EFH within the EEZ is described at 660.395.

(6) Fish with bottom trawl gear (defined in § 660.302) with a footrope diameter greater than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope) anywhere within the EEZ shoreward of a line approximating the 100–fm (183–m) depth contour (defined in § 660.393).

(7) Fish with bottom trawl gear (as defined in § 660.302), within the EEZ in the following areas (defined in § 660.397 and § 660.398): Olympic 2, Biogenic 1, Biogenic 2, Grays Canyon, Biogenic 3, Astoria Canyon, Nehalem Bank/Shale Pile, Siletz Deepwater, Daisy Bank/Nelson Island, Newport Rockpile/Stonewall Bank, Heceta Bank, Deepwater off Coos Bay, Bandon High Spot, Rogue Canyon.

(8) Fish with bottom trawl gear (as defined in § 660.302), other than demersal seine, unless otherwise specified in this section or section 660.381, within the EEZ in the following areas (defined in § 660.399): Eel River Canyon, Blunts Reef, Mendocino Ridge, Delgada Canyon, Tolo Bank, Point Arena North, Point Arena South Biogenic Area, Cordell Bank/Biogenic Area, Farallon Islands/Fanny Shoal, Half Moon Bay, Monterey Bay/Canyon, Point Sur Deep, Big Sur Coast/Port San Luis, East San Lucia Bank, Point Conception, Hidden Reef/Kidney Bank (within Cowcod Conservation Area West), Catalina Island, Potato Bank (within Cowcod Conservation Area West), Cherry Bank (within Cowcod Conservation Area West), and Cowcod EFH Conservation Area East.

(9) Fish with bottom contact gear (as defined in § 660.302) within the EEZ in the following areas (defined in § 660.398 and § 660.399): Thompson Seamount, President Jackson Seamount, Cordell Bank (50–fm (91–m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara.

(10) Fish with bottom contact gear (as defined in § 660.302), or any other gear that is deployed deeper than 500–fm (914–m), within the Davidson Seamount area (defined in § 660.395).

■ 5. In § 660.385, the introductory text is revised to read as follows:

§ 660.385 Washington coastal tribal fisheries management measures.

In 1994, the United States formally recognized that the four Washington coastal treaty Indian tribes (Makah, Quileute, Hoh, and Quinault) have

treaty rights to fish for groundfish in the Pacific Ocean, and concluded that, in general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish that pass through the tribes usual and accustomed fishing areas (described at § 660.324). Measures implemented to minimize adverse impacts to groundfish EFH, as described in § 660.306, do not apply to tribal fisheries in their usual and accustomed fishing areas (described in § 660.324). Treaty fisheries operating within tribal allocations are prohibited from operating outside ususal and accustomed fishing areas. Tribal fishery allocations for sablefish and whiting, are provided in paragraphs (a) and (e) of this section, respectively, and the tribal harvest guideline for black rockfish is provided in paragraph (b)(1) of this section. Trip limits for certain species were recommended by the tribes and the Council and are specified here with the tribal allocations.

* * * * *

■ 6. Section 660.395 is added to read as follows:

§ 660.395 Essential Fish Habitat (EFH)

Essential fish habitat (EFH) is defined as those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity (16 U.S.C. 1802 (10). EFH for Pacific Coast Groundfish includes all waters and substrate within areas with a depth less than or equal to 3,500 m (1,914 fm) shoreward to the mean higher high water level or the upriver extent of saltwater intrusion (defined as upstream and landward to where ocean-derived salts measure less than 0.5 parts per thousand during the period of average annual low flow). Seamounts in depths greater than 3,500 m (1,914 fm) are also included due to their ecological importance to groundfish. Geographically, EFH for Pacific Coast groundfish includes both a large band of marine waters that extends from the Northern edge of the EEZ at the U.S. border with Canada to the Southern edge of the EEZ at the U.S. border with Mexico, and inland within bays and estuaries. The seaward extent of EFH is consistent with the westward edge of the EEZ for areas approximately north of Cape Mendocino. Approximately south of Cape Mendocino, the 3500 m depth contour and EFH is substantially shoreward of the seaward boundary of the EEZ. There are also numerous discrete areas seaward of the main 3500 m depth contour where the ocean floor rises to depths less than 3500 m and therefore are also EFH. The seaward boundary of EFH and additional areas of EFH are defined by straight lines connecting a series of latitude and longitude coordinates in § 660.395(a) through § 660.395(qq).

(a) The seaward boundary of EFH, with the exception of the areas in paragraphs (b) through (qq), is bounded by the EEZ combined with a straight line connecting all of the following points in the order stated:

(1) 40°18.17′ N. lat., 128°46.72′ W. long.;
(2) 40°17.33′ N. lat., 125°58.62′ W. long.;
(3) 39°59.10′ N. lat., 125°44.13′ W. long.;
(4) 39°44.99′ N. lat., 125°41.63′ W. long.;
(5) 39°29.98′ N. lat., 125°23.86′ W. long.;
(6) 39°08.46′ N. lat., 125°38.17′ W. long.;
(7) 38°58.71′ N. lat., 125°22.33′ W. long.;
(8) 38°33.22′ N. lat., 125°16.82′ W. long.;
(9) 38°50.47′ N. lat., 124°53.20′ W. long.;
(10) 38°51.66′ N. lat., 124°35.15′ W. long.;
(11) 37°48.74′ N. lat., 123°53.79′ W. long.;
(12) 37°45.53′ N. lat., 124°03.18′ W. long.;
(13) 37°05.55′ N. lat., 123°46.18′ W. long.;
(14) 36°41.37′ N. lat., 123°25.16′ W. long.;
(15) 36°24.44′ N. lat., 123°25.03′ W. long.;
(16) 36°10.47′ N. lat., 123°31.11′ W. long.;
(17) 35°57.97′ N. lat., 123°21.33′ W. long.;
(18) 36°05.20′ N. lat., 123°15.17′ W. long.;
(19) 36°01.23′ N. lat., 123°04.04′ W. long.;
(20) 35°29.75′ N. lat., 123°02.44′ W. long.;
(21) 35°22.25′ N. lat., 122°58.24′ W. long.;
(22) 35°21.91′ N. lat., 122°34.83′ W. long.;
(23) 35°34.35′ N. lat., 122°25.83′ W. long.;
(24) 34°57.35′ N. lat., 122°07.03′ W. long.;
(25) 34°20.19′ N. lat., 121°33.92′ W. long.;
(26) 33°55.10′ N. lat., 121°43.15′ W. long.;
(27) 33°39.65′ N. lat., 121°28.35′ W. long.;
(28) 33°40.68′ N. lat., 121°23.06′ W. long.;
(29) 33°26.19′ N. lat., 121°06.16′ W. long.;
(30) 33°03.77′ N. lat., 121°34.33′ W. long.;
(31) 32°46.38′ N. lat., 121°02.84′ W. long.;
(32) 33°05.45′ N. lat., 120°40.71′ W. long.;
(33) 32°12.70′ N. lat., 120°10.85′ W. long.;
(34) 32°11.36′ N. lat., 120°03.19′ W. long.;
(35) 32°00.77′ N. lat., 119°50.68′ W. long.;
(36) 31°52.47′ N. lat., 119°48.11′ W. long.;
(37) 31°45.43′ N. lat., 119°40.89′ W. long.;
(38) 31°41.96′ N. lat., 119°28.57′ W. long.;
(39) 31°35.10′ N. lat., 119°33.50′ W. long.;
(40) 31°24.37′ N. lat., 119°29.61′ W. long.;
(41) 31°26.74′ N. lat., 119°18.47′ W. long.;
(42) 31°03.75′ N. lat., 118°59.58′ W. long.

(b) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:

(1) 31°11.94′ N. lat., 121°57.84′ W. long.;
(2) 31°06.87′ N. lat., 121°57.42′ W. long.;
(3) 31°06.29′ N. lat., 122°09.22′ W. long.;
(4) 31°11.39′ N. lat., 122°09.10′ W. long.;

and connecting back to 31°11.94′ N. lat., 121°57.84′ W. long.

(c) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:

(1) 31°11.21′ N. lat., 122°10.24′ W. long.;
(2) 31°07.62′ N. lat., 122°09.62′ W. long.;
(3) 31°07.40′ N. lat., 122°19.34′ W. long.;
(4) 31°12.84′ N. lat., 122°18.82′ W. long.;

and connecting back to 31°11.21′ N. lat., 122°10.24′ W. long.

(d) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:

(1) 31°06.87′ N. lat., 119°28.05′ W. long.;
(2) 30°58.83′ N. lat., 119°26.74′ W. long.;
(3) 30°55.41′ N. lat., 119°45.63′ W. long.;
(4) 31°05.90′ N. lat., 119°42.05′ W. long.;

and connecting back to 31°06.87′ N. lat., 119°28.05′ W. long.

(e) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:

(1) 31°02.05′ N. lat., 119°08.97′ W. long.;
(2) 31°04.96′ N. lat., 119°09.96′ W. long.;

(3) 31°06.24′ N. lat., 119°07.45′ W. long.;
(4) 31°02.63′ N. lat., 119°05.77′ W. long.;
and connecting back to 31°02.05′ N. lat., 119°08.97′ W. long.
(f) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 31°23.41′ N. lat., 122°23.99′ W. long.;
(2) 31°25.98′ N. lat., 122°23.67′ W. long.;
(3) 31°25.52′ N. lat., 122°21.95′ W. long.;
(4) 31°23.51′ N. lat., 122°21.98′ W. long.;
and connecting back to 31°23.41′ N. lat., 122°23.99′ W. long.
(g) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 31°21.95′ N. lat., 122°25.05′ W. long.;
(2) 31°23.31′ N. lat., 122°27.73′ W. long.;
(3) 31°26.63′ N. lat., 122°27.64′ W. long.;
(4) 31°26.72′ N. lat., 122°25.23′ W. long.;
and connecting back to 31°21.95′ N. lat., 122°25.05′ W. long.
(h) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 31°21.36′ N. lat., 119°47.67′ W. long.;
(2) 31°29.17′ N. lat., 119°48.51′ W. long.;
(3) 31°29.48′ N. lat., 119°43.20′ W. long.;
(4) 31°21.92′ N. lat., 119°40.68′ W. long.;
and connecting back to 31°21.36′ N. lat., 119°47.67′ W. long.
(i) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 31°37.36′ N. lat., 122°20.86′ W. long.;
(2) 31°41.22′ N. lat., 122°21.35′ W. long.;
(3) 31°42.68′ N. lat., 122°18.80′ W. long.;
(4) 31°39.71′ N. lat., 122°15.99′ W. long.;
and connecting back to 31°37.36′ N. lat., 122°20.86′ W. long.
(j) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 31°45.92′ N. lat., 121°40.55′ W. long.;
(2) 31°48.79′ N. lat., 121°40.52′ W. long.;
(3) 31°48.61′ N. lat., 121°37.65′ W. long.;
(4) 31°45.93′ N. lat., 121°38.00′ W. long.;
and connecting back to 31°45.92′ N. lat., 121°40.55′ W. long.
(k) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 31°36.78′ N. lat., 120°54.41′ W. long.;
(2) 31°44.65′ N. lat., 120°58.01′ W. long.;
(3) 31°48.56′ N. lat., 120°43.25′ W. long.;
(4) 31°41.76′ N. lat., 120°41.50′ W. long.;
and connecting back to 31°36.78′ N. lat., 120°54.41′ W. long.
(l) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 31°45.66′ N. lat., 123°17.00′ W. long.;
(2) 31°49.43′ N. lat., 123°19.89′ W. long.;
(3) 31°54.54′ N. lat., 123°14.91′ W. long.;
(4) 31°50.88′ N. lat., 123°13.17′ W. long.;
and connecting back to 31°45.66′ N. lat., 123°17.00′ W. long.
(m) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 31°55.28′ N. lat., 121°02.98′ W. long.;
(2) 31°58.25′ N. lat., 121°05.08′ W. long.;
(3) 31°59.77′ N. lat., 121°00.37′ W. long.;
(4) 31°57.88′ N. lat., 120°57.23′ W. long.;
and connecting back to 31°55.28′ N. lat., 121°02.98′ W. long.
(n) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 32°06.04′ N. lat., 121°29.08′ W. long.;
(2) 31°59.52′ N. lat., 121°23.10′ W. long.;
(3) 31°54.55′ N. lat., 121°31.53′ W. long.;
(4) 32°01.66′ N. lat., 121°38.38′ W. long.;
and connecting back to 32°06.04′ N. lat., 121°29.08′ W. long.
(o) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 31°59.89′ N. lat., 119°54.82′ W. long.;
(2) 31°59.69′ N. lat., 120°03.96′ W. long.;
(3) 32°04.47′ N. lat., 120°00.09′ W. long.;
and connecting back to 31°59.89′ N. lat., 119°54.82′ W. long.
(p) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 31°59.49′ N. lat., 121°18.59′ W. long.;
(2) 32°08.15′ N. lat., 121°22.16′ W. long.;
(3) 32°12.16′ N. lat., 121°14.64′ W. long.;
(4) 32°04.15′ N. lat., 121°08.61′ W. long.;
and connecting back to 31°59.49′ N. lat., 121°18.59′ W. long.
(q) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 32°07.77′ N. lat., 121°46.26′ W. long.;
(2) 32°05.89′ N. lat., 121°38.01′ W. long.;
(3) 31°59.35′ N. lat., 121°52.10′ W. long.;
(4) 32°08.86′ N. lat., 121°52.13′ W. long.;
(5) 32°19.76′ N. lat., 121°43.70′ W. long.;
(6) 32°14.85′ N. lat., 121°37.16′ W. long.;
and connecting back to 32°07.77′ N. lat., 121°46.26′ W. long.
(r) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 32°17.08′ N. lat., 121°11.84′ W. long.;
(2) 32°18.96′ N. lat., 121°14.15′ W. long.;
(3) 32°23.03′ N. lat., 121°10.52′ W. long.;
(4) 32°21.23′ N. lat., 121°08.53′ W. long.;
and connecting back to 32°17.08′ N. lat., 121°11.84′ W. long.
(s) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 32°27.64′ N. lat., 121°27.83′ W. long.;
(2) 32°15.43′ N. lat., 121°23.89′ W. long.;
(3) 32°16.18′ N. lat., 121°30.67′ W. long.;
(4) 32°25.80′ N. lat., 121°33.08′ W. long.;
and connecting back to 32°27.64′ N. lat., 121°27.83′ W. long.
(t) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 32°28.05′ N. lat., 122°03.54′ W. long.;
(2) 32°30.64′ N. lat., 122°06.11′ W. long.;
(3) 32°35.90′ N. lat., 121°59.61′ W. long.;
(4) 32°32.05′ N. lat., 121°54.66′ W. long.;
and connecting back to 32°28.05′ N. lat., 122°03.54′ W. long.
(u) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 32°44.69′ N. lat., 121°39.99′ W. long.;

(2) 32°43.72′ N. lat., 121°43.03′ W. long.;
(3) 32°47.31′ N. lat., 121°43.91′ W. long.;
(4) 32°48.21′ N. lat., 121°40.74′ W. long.;
and connecting back to 32°44.69′ N. lat., 121°39.99′ W. long.

(v) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 32°48.07′ N. lat., 121°15.86′ W. long.;
(2) 32°36.99′ N. lat., 121°20.21′ W. long.;
(3) 32°25.33′ N. lat., 121°38.31′ W. long.;
(4) 32°34.03′ N. lat., 121°44.05′ W. long.;
(5) 32°43.19′ N. lat., 121°41.58′ W. long.;
and connecting back to 32°48.07′ N. lat., 121°15.86′ W. long.

(w) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 32°48.38′ N. lat., 120°47.95′ W. long.;
(2) 32°47.49′ N. lat., 120°41.50′ W. long.;
(3) 32°43.79′ N. lat., 120°42.01′ W. long.;
(4) 32°44.01′ N. lat., 120°48.79′ W. long.;
and connecting back to 32°48.38′ N. lat., 120°47.95′ W. long.

(x) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 33°08.71′ N. lat., 121°41.24′ W. long.;
(2) 33°00.10′ N. lat., 121°37.67′ W. long.;
(3) 33°01.01′ N. lat., 121°45.93′ W. long.;
(4) 33°07.71′ N. lat., 121°46.31′ W. long.;
and connecting back to 33°08.71′ N. lat., 121°41.24′ W. long.

(y) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 33°19.30′ N. lat., 121°54.69′ W. long.;
(2) 33°11.41′ N. lat., 121°47.26′ W. long.;
(3) 32°56.93′ N. lat., 121°54.41′ W. long.;
(4) 33°03.85′ N. lat., 122°03.52′ W. long.;
(5) 33°17.73′ N. lat., 122°00.05′ W. long.;
and connecting back to 33°19.30′ N. lat., 121°54.69′ W. long.

(z) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 33°23.67′ N. lat., 123°04.28′ W. long.;
(2) 33°22.88′ N. lat., 123°04.93′ W. long.;
(3) 33°23.66′ N. lat., 123°05.77′ W. long.;
(4) 33°24.30′ N. lat., 123°04.90′ W. long.;
and connecting back to 33°23.67′ N. lat., 123°04.28′ W. long.

(aa) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 33°26.06′ N. lat., 121°44.42′ W. long.;
(2) 33°32.00′ N. lat., 121°41.61′ W. long.;
(3) 33°28.80′ N. lat., 121°26.92′ W. long.;
(4) 33°23.50′ N. lat., 121°26.92′ W. long.;
and connecting back to 33°26.06′ N. lat., 121°44.42′ W. long.

(bb) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 33°38.22′ N. lat., 123°56.91′ W. long.;
(2) 33°39.58′ N. lat., 123°58.56′ W. long.;
(3) 33°41.37′ N. lat., 123°57.22′ W. long.;
(4) 33°40.08′ N. lat., 123°55.14′ W. long.;
and connecting back to 33°38.22′ N. lat., 123°56.91′ W. long.

(cc) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 33°46.86′ N. lat., 121°58.49′ W. long.;
(2) 33°41.28′ N. lat., 121°52.80′ W. long.;
(3) 33°36.95′ N. lat., 121°54.42′ W. long.;
(4) 33°42.05′ N. lat., 122°07.48′ W. long.;
(5) 33°47.07′ N. lat., 122°05.71′ W. long.;
and connecting back to 33°46.86′ N. lat., 121°58.49′ W. long.

(dd) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 34°17.70′ N. lat., 124°11.04′ W. long.;
(2) 34°19.41′ N. lat., 124°14.12′ W. long.;
(3) 34°21.61′ N. lat., 124°12.89′ W. long.;
(4) 34°20.35′ N. lat., 124°09.11′ W. long.;
and connecting back to 34°17.70′ N. lat., 124°11.04′ W. long.

(ee) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 34°13.39′ N. lat., 124°03.18′ W. long.;
(2) 34°19.45′ N. lat., 124°09.21′ W. long.;
(3) 34°23.12′ N. lat., 124°05.49′ W. long.;
(4) 34°17.93′ N. lat., 123°57.87′ W. long.;
and connecting back to 34°13.39′ N. lat., 124°03.18′ W. long.

(ff) This area of EFH is bounded by straight lines connecting all of the following points in the order stated::
(1) 35°19.23′ N. lat., 122°39.91′ W. long.;
(2) 35°08.76′ N. lat., 122°23.83′ W. long.;
(3) 35°06.22′ N. lat., 122°28.09′ W. long.;
(4) 35°15.81′ N. lat., 122°45.90′ W. long.;
and connecting back to 35°19.23′ N. lat., 122°39.91′ W. long.

(gg) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 35°25.81′ N. lat., 123°24.05′ W. long.;
(2) 35°21.76′ N. lat., 123°23.47′ W. long.;
(3) 35°21.05′ N. lat., 123°27.22′ W. long.;
(4) 35°24.89′ N. lat., 123°28.49′ W. long.;
and connecting back to 35°25.81′ N. lat., 123°24.05′ W. long.

(hh) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 35°27.15′ N. lat., 125°03.69′ W. long.;
(2) 35°28.68′ N. lat., 125°04.86′ W. long.;
(3) 35°30.23′ N. lat., 125°02.59′ W. long.;
(4) 35°28.85′ N. lat., 125°01.48′ W. long.;
and connecting back to 35°27.15′ N. lat., 125°03.69′ W. long.

(ii) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 35°31.14′ N. lat., 123°52.80′ W. long.;
(2) 35°31.38′ N. lat., 123°54.83′ W. long.;
(3) 35°32.98′ N. lat., 123°53.80′ W. long.;
and connecting back to 35°31.14′ N. lat., 123°52.80′ W. long.

(jj) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 35°24.08′ N. lat., 123°40.83′ W. long.;
(2) 35°24.76′ N. lat., 123°45.92′ W. long.;
(3) 35°33.04′ N. lat., 123°44.92′ W. long.;
(4) 35°32.24′ N. lat., 123°39.16′ W. long.;
and connecting back to 35°24.08′ N. lat., 123°40.83′ W. long.

(kk) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 36°08.72′ N. lat., 124°22.59′ W. long.;
(2) 36°07.91′ N. lat., 124°22.48′ W. long.;
(3) 36°07.90′ N. lat., 124°24.27′ W. long.;
(4) 36°08.75′ N. lat., 124°24.10′ W. long.;
and connecting back to 36°08.72′ N. lat., 124°22.59′ W. long.

(ll) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 36°07.33′ N. lat., 124°18.83′ W. long.;
(2) 36°08.21′ N. lat., 124°19.86′ W. long.;
(3) 36°09.64′ N. lat., 124°18.70′ W. long.;
(4) 36°08.62′ N. lat., 124°17.22′ W. long.;
and connecting back to 36°07.33′ N. lat., 124°18.83′ W. long.

(mm) This area of EFH is bounded by straight lines connecting all of the following points in the order stated::
(1) 36°47.33′ N. lat., 124°10.21′ W. long.;
(2) 36°50.85′ N. lat., 124°11.63′ W. long.;
(3) 36°52.22′ N. lat., 124°08.65′ W. long.;
(4) 36°49.93′ N. lat., 124°06.40′ W. long.;
and connecting back to 36°47.33′ N. lat., 124°10.21′ W. long.

(nn) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 36°56.03′ N. lat., 123°40.86′ W. long.;
(2) 36°56.37′ N. lat., 123°40.86′ W. long.;
(3) 36°56.42′ N. lat., 123°40.49′ W. long.;
(4) 36°56.18′ N. lat., 123°40.37′ W. long.;
and connecting back to 36°56.03′ N. lat., 123°40.86′ W. long.

(oo) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 36°32.58′ N. lat., 125°01.80′ W. long.;
(2) 36°50.38′ N. lat., 125°44.21′ W. long.;
(3) 37°00.91′ N. lat., 125°40.06′ W. long.;
(4) 36°41.26′ N. lat., 124°55.90′ W. long.;
and connecting back to 36°32.58′ N. lat., 125°01.80′ W. long.

(pp) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 37°45.73′ N. lat., 124°11.40′ W. long.;
(2) 37°47.91′ N. lat., 124°14.01′ W. long.;
(3) 37°50.99′ N. lat., 124°09.09′ W. long.;
(4) 37°47.97′ N. lat., 124°07.00′ W. long.;
and connecting back to 37°45.73′ N. lat., 124°11.40′ W. long.

(qq) This area of EFH is bounded by straight lines connecting all of the following points in the order stated:
(1) 38°08.53′ N. lat., 124°29.98′ W. long.;
(2) 38°10.65′ N. lat., 124°32.69′ W. long.;
(3) 38°12.81′ N. lat., 124°29.45′ W. long.;
(4) 38°10.86′ N. lat., 124°26.66′ W. long.;
and connecting back to 38°08.53′ N. lat., 124°29.98′ W. long.

■ 7. Section 660.396 is added to read as follows:

§ 660.396 EFH Conservation Areas.

EFH Conservation Areas are designated to minimize to the extent practicable adverse effects to EFH caused by fishing(16 U.S.C. 1853 section 303(a)(7)). The boundaries of areas designated as Groundfish EFH Conservation Areas are defined by straight lines connecting a series of latitude and longitude coordinates. This § 660.396 provides coordinates outlining the boundaries of the coastwide EFH Conservation Area. Section 660.397 provides coordinates outlining the boundaries of EFH Conservation Areas that occur wholly off the coast of Washington. Section 660.398 provides coordinates outlining the boundaries of EFH Conservation Areas that occur wholly off the coast of Oregon. Section 660.399 provides coordinates outlining the boundaries of EFH Conservation Areas that occur wholly off the coast of California. Fishing activity that is prohibited or permitted within the EEZ in a particular area designated as a groundfish EFH Conservation Area is detailed at § 660.306 and § 660.385.

(a) *Seaward of the 700–fm (1280–m) contour.* This area includes all waters designated as EFH within the West Coast EEZ west of a line approximating the 700–fm (1280–m) depth contour which is defined by straight lines connecting all of the following points in the order stated:
(1) 48°06.97′ N. lat., 126°02.96′ W. long.;
(2) 48°00.44′ N. lat., 125°54.96′ W. long.;
(3) 47°55.96′ N. lat., 125°46.51′ W. long.;
(4) 47°47.21′ N. lat., 125°43.73′ W. long.;
(5) 47°42.89′ N. lat., 125°49.58′ W. long.;
(6) 47°38.18′ N. lat., 125°37.26′ W. long.;
(7) 47°32.36′ N. lat., 125°32.87′ W. long.;
(8) 47°29.77′ N. lat., 125°26.27′ W. long.;
(9) 47°28.54′ N. lat., 125°18.82′ W. long.;
(10) 47°19.25′ N. lat., 125°17.18′ W. long.;
(11) 47°08.82′ N. lat., 125°10.01′ W. long.;
(12) 47°04.69′ N. lat., 125°03.77′ W. long.;
(13) 46°48.38′ N. lat., 125°18.43′ W. long.;
(14) 46°41.92′ N. lat., 125°17.29′ W. long.;
(15) 46°27.49′ N. lat., 124°54.36′ W. long.;
(16) 46°14.13′ N. lat., 125°02.72′ W. long.;
(17) 46°09.53′ N. lat., 125°04.75′ W. long.;
(18) 45°46.64′ N. lat., 124°54.44′ W. long.;
(19) 45°40.86′ N. lat., 124°55.62′ W. long.;
(20) 45°36.50′ N. lat., 124°51.91′ W. long.;
(21) 44°55.69′ N. lat., 125°08.35′ W. long.;
(22) 44°49.93′ N. lat., 125°01.51′ W. long.;
(23) 44°46.93′ N. lat., 125°02.83′ W. long.;
(24) 44°41.96′ N. lat., 125°10.64′ W. long.;
(25) 44°28.31′ N. lat., 125°11.42′ W. long.;
(26) 43°58.37′ N. lat., 125°02.93′ W. long.;
(27) 43°52.74′ N. lat., 125°05.58′ W. long.;
(28) 43°44.18′ N. lat., 124°57.17′ W. long.;
(29) 43°37.58′ N. lat., 125°07.70′ W. long.;
(30) 43°15.95′ N. lat., 125°07.84′ W. long.;
(31) 42°47.50′ N. lat., 124°59.96′ W. long.;
(32) 42°39.02′ N. lat., 125°01.07′ W. long.;
(33) 42°34.80′ N. lat., 125°02.89′ W. long.;
(34) 42°34.11′ N. lat., 124°55.62′ W. long.;
(35) 42°23.81′ N. lat., 124°52.85′ W. long.;
(36) 42°16.80′ N. lat., 125°00.20′ W. long.;
(37) 42°06.60′ N. lat., 124°59.14′ W. long.;
(38) 41°59.28′ N. lat., 125°06.23′ W. long.;
(39) 41°31.10′ N. lat., 125°01.30′ W. long.;

(40) 41°14.52′ N. lat., 124°52.67′ W. long.;
(41) 40°40.65′ N. lat., 124°45.69′ W. long.;
(42) 40°35.05′ N. lat., 124°45.65′ W. long.;
(43) 40°23.81′ N. lat., 124°41.16′ W. long.;
(44) 40°20.54′ N. lat., 124°36.36′ W. long.;
(45) 40°20.84′ N. lat., 124°57.23′ W. long.;
(46) 40°18.54′ N. lat., 125°09.47′ W. long.;
(47) 40°14.54′ N. lat., 125°09.83′ W. long.;
(48) 40°11.79′ N. lat., 125°07.39′ W. long.;
(49) 40°06.72′ N. lat., 125°04.28′ W. long.;
(50) 39°50.77′ N. lat., 124°37.54′ W. long.;
(51) 39°56.67′ N. lat., 124°26.58′ W. long.;
(52) 39°44.25′ N. lat., 124°12.60′ W. long.;
(53) 39°35.82′ N. lat., 124°12.02′ W. long.;
(54) 39°24.54′ N. lat., 124°16.01′ W. long.;
(55) 39°01.97′ N. lat., 124°11.20′ W. long.;
(56) 38°33.48′ N. lat., 123°48.21′ W. long.;
(57) 38°14.49′ N. lat., 123°38.89′ W. long.;
(58) 37°56.97′ N. lat., 123°31.65′ W. long.;
(59) 37°49.09′ N. lat., 123°27.98′ W. long.;
(60) 37°40.29′ N. lat., 123°12.83′ W. long.;
(61) 37°22.54′ N. lat., 123°14.65′ W. long.;
(62) 37°05.98′ N. lat., 123°05.31′ W. long.;
(63) 36°59.02′ N. lat., 122°50.92′ W. long.;
(64) 36°50.32′ N. lat., 122°17.44′ W. long.;
(65) 36°44.54′ N. lat., 122°19.42′ W. long.;
(66) 36°40.76′ N. lat., 122°17.28′ W. long.;
(67) 36°39.88′ N. lat., 122°09.69′ W. long.;
(68) 36°44.52′ N. lat., 122°07.13′ W. long.;
(69) 36°42.26′ N. lat., 122°03.54′ W. long.;
(70) 36°30.02′ N. lat., 122°09.85′ W. long.;
(71) 36°22.33′ N. lat., 122°22.99′ W. long.;
(72) 36°14.36′ N. lat., 122°21.19′ W. long.;
(73) 36°09.50′ N. lat., 122°14.25′ W. long.;
(74) 35°51.50′ N. lat., 121°55.92′ W. long.;
(75) 35°49.53′ N. lat., 122°13.00′ W. long.;
(76) 34°58.30′ N. lat., 121°36.76′ W. long.;
(77) 34°53.13′ N. lat., 121°37.49′ W. long.;
(78) 34°46.54′ N. lat., 121°46.25′ W. long.;
(79) 34°37.81′ N. lat., 121°35.72′ W. long.;
(80) 34°37.72′ N. lat., 121°27.35′ W. long.;
(81) 34°26.77′ N. lat., 121°07.58′ W. long.;
(82) 34°18.54′ N. lat., 121°05.01′ W. long.;
(83) 34°02.68′ N. lat., 120°54.30′ W. long.;
(84) 33°48.11′ N. lat., 120°25.46′ W. long.;
(85) 33°42.54′ N. lat., 120°38.24′ W. long.;
(86) 33°46.26′ N. lat., 120°43.64′ W. long.;
(87) 33°40.71′ N. lat., 120°51.29′ W. long.;
(88) 33°33.14′ N. lat., 120°40.25′ W. long.;
(89) 32°51.57′ N. lat., 120°23.35′ W. long.;
(90) 32°38.54′ N. lat., 120°09.54′ W. long.;
(91) 32°35.76′ N. lat., 119°53.43′ W. long.;
(92) 32°29.54′ N. lat., 119°46.00′ W. long.;
(93) 32°25.99′ N. lat., 119°41.16′ W. long.;
(94) 32°30.46′ N. lat., 119°33.15′ W. long.;
(95) 32°23.47′ N. lat., 119°25.71′ W. long.;
(96) 32°19.19′ N. lat., 119°13.96′ W. long.;
(97) 32°13.18′ N. lat., 119°04.44′ W. long.;
(98) 32°13.40′ N. lat., 118°51.87′ W. long.;
(99) 32°19.62′ N. lat., 118°47.80′ W. long.;
(100) 32°27.26′ N. lat., 118°50.29′ W. long.;
(101) 32°28.42′ N. lat., 118°53.15′ W. long.;
(102) 32°31.30′ N. lat., 118°55.09′ W. long.;
(103) 32°33.04′ N. lat., 118°53.57′ W. long.;
(104) 32°19.07′ N. lat., 118°27.54′ W. long.;
(105) 32°18.57′ N. lat., 118°18.97′ W. long.;
(106) 32°09.01′ N. lat., 118°13.96′ W. long.;
(107) 32°06.57′ N. lat., 118°18.78′ W. long.;
(108) 32°01.32′ N. lat., 118°18.21′ W. long.; and
(109) 31°57.82′ N. lat., 118°10.34′ W. long.

(b) [Reserved.]

■ 8. Section 660.397 is added to read as follows:

§ 660.397 EFH Conservation Areas off the Coast of Washington.

Boundary line coordinates for EFH Conservation Areas off Washington are provided in this § 660.397. Fishing activity that is prohibited or permitted within the EEZ in a particular area designated as a groundfish EFH Conservation Area is detailed at § 660.306 and § 660.385.

(a) *Olympic 2.* The boundary of the Olympic 2 EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 48°21.46′ N. lat., 124°51.61′ W. long.;
(2) 48°17.00′ N. lat., 124°57.18′ W. long.;
(3) 48°06.13′ N. lat., 125°00.68′ W. long.;
(4) 48°06.66′ N. lat., 125°06.55′ W. long.;
(5) 48°08.44′ N. lat., 125°14.61′ W. long.;
(6) 48°22.57′ N. lat., 125°09.82′ W. long.;
(7) 48°21.42′ N. lat., 125°03.55′ W. long.;
(8) 48°22.99′ N. lat., 124°59.29′ W. long.;
(9) 48°23.89′ N. lat., 124°54.37′ W. long.;
and connecting back to 48°21.46′ N. lat., 124°51.61′ W. long.

(b) *Biogenic 1.* The boundary of the Biogenic 1 EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 47°29.97′ N. lat., 125°20.14′ W. long.;
(2) 47°30.01′ N. lat., 125°30.06′ W. long.;
(3) 47°40.09′ N. lat., 125°50.18′ W. long.;
(4) 47°47.27′ N. lat., 125°50.06′ W. long.;
(5) 47°47.00′ N. lat., 125°24.28′ W. long.;
(6) 47°39.53′ N. lat., 125°10.49′ W. long.;
(7) 47°30.31′ N. lat., 125°08.81′ W. long.;
and connecting back to 47°29.97′ N. lat., 125°20.14′ W. long.

(c) *Biogenic 2.* The boundary of the Biogenic 2 EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 47°08.77′ N. lat., 125°00.91′ W. long.;
(2) 47°08.82′ N. lat., 125°10.01′ W. long.;

(3) 47°20.01′ N. lat., 125°10.00′ W. long.;
(4) 47°20.00′ N. lat., 125°01.25′ W. long.;
and connecting back to 47°08.77′ N. lat., 125°00.91′ W. long.

(d) *Grays Canyon.* The boundary of the Grays Canyon EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 46°51.55′ N. lat., 125°00.00′ W. long.;
(2) 46°56.79′ N. lat., 125°00.00′ W. long.;
(3) 46°58.01′ N. lat., 124°55.09′ W. long.;
(4) 46°55.07′ N. lat., 124°54.14′ W. long.;
(5) 46°59.60′ N. lat., 124°49.79′ W. long.;
(6) 46°58.72′ N. lat., 124°48.78′ W. long.;
(7) 46°54.45′ N. lat., 124°48.36′ W. long.;
(8) 46°53.99′ N. lat., 124°49.95′ W. long.;
(9) 46°54.38′ N. lat., 124°52.73′ W. long.;
(10) 46°52.38′ N. lat., 124°52.02′ W. long.;
(11) 46°48.93′ N. lat., 124°49.17′ W. long.;
and connecting back to 46°51.55′ N. lat., 125°00.00′ W. long.

(e) *Biogenic 3.* The boundary of the Biogenic 3 EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 46°48.16′ N. lat., 125°10.75′ W. long.;
(2) 46°40.00′ N. lat., 125°10.00′ W. long.;
(3) 46°40.00′ N. lat., 125°20.01′ W. long.;
(4) 46°50.00′ N. lat., 125°20.00′ W. long.;
and connecting back to 46°48.16′ N. lat., 125°10.75′ W. long.

■ 9. Section 660.398 is added to read as follows:

§ 660.398 EFH Conservation Areas off the Coast of Oregon.

Boundary line coordinates for EFH Conservation Areas off Oregon are provided in this § 660.398. Fishing activity that is prohibited or permitted within the EEZ in a particular area designated as a groundfish EFH Conservation Area is detailed at § 660.306 and § 660.385.

(a) *Thompson Seamount.* The boundary of the Thompson Seamount EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 46°06.93′ N. lat., 128°39.77′ W. long.;
(2) 46°06.76′ N. lat., 128°39.60′ W. long.;
(3) 46°07.80′ N. lat., 128°39.43′ W. long.;
(4) 46°08.50′ N. lat., 128°34.39′ W. long.;
(5) 46°06.76′ N. lat., 128°29.36′ W. long.;
(6) 46°03.64′ N. lat., 128°28.67′ W. long.;
(7) 45°59.64′ N. lat., 128°31.62′ W. long.;
(8) 45°56.87′ N. lat., 128°33.18′ W. long.;
(9) 45°53.92′ N. lat., 128°39.25′ W. long.;
(10) 45°54.26′ N. lat., 128°43.42′ W. long.;
(11) 45°56.87′ N. lat., 128°45.85′ W. long.;
(12) 46°00.86′ N. lat., 128°46.02′ W. long.;
(13) 46°03.29′ N. lat., 128°44.81′ W. long.;
(14) 46°06.24′ N. lat., 128°42.90′ W. long.;
and connecting back to 46°06.93′ N. lat., 128°39.77′ W. long.

(b) *Astoria Canyon.* The boundary of the Astoria Canyon EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 46°06.48′ N. lat., 125°05.46′ W. long.;
(2) 46°03.00′ N. lat., 124°57.36′ W. long.;
(3) 46°02.28′ N. lat., 124°57.66′ W. long.;
(4) 46°01.92′ N. lat., 125°02.46′ W. long.;
(5) 45°48.72′ N. lat., 124°56.58′ W. long.;
(6) 45°47.70′ N. lat., 124°52.20′ W. long.;
(7) 45°40.86′ N. lat., 124°55.62′ W. long.;
(8) 45°29.82′ N. lat., 124°54.30′ W. long.;
(9) 45°25.98′ N. lat., 124°56.82′ W. long.;
(10) 45°26.04′ N. lat., 125°10.50′ W. long.;
(11) 45°33.12′ N. lat., 125°16.26′ W. long.;
(12) 45°40.32′ N. lat., 125°17.16′ W. long.;
(13) 46°03.00′ N. lat., 125°14.94′ W. long.;
and connecting back to 46°06.48′ N. lat., 125°05.46′ W. long.

(c) *Nehalem Bank/Shale Pile.* The boundary of the Nehalem Bank/Shale Pile EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 46°00.60′ N. lat., 124°33.94′ W. long.;
(2) 45°55.63′ N. lat., 124°30.52′ W. long.;
(3) 45°47.95′ N. lat., 124°31.70′ W. long.;
(4) 45°52.75′ N. lat., 124°39.20′ W. long.;
(5) 45°58.02′ N. lat., 124°38.99′ W. long.;
(6) 46°00.83′ N. lat., 124°36.78′ W. long.;
and connecting back to 46°00.60′ N. lat., 124°33.94′ W. long.

(d) *Siletz Deepwater.* The boundary of the Siletz Deepwater EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 44°42.72′ N. lat., 125°18.49′ W. long.;
(2) 44°56.26′ N. lat., 125°12.61′ W. long.;
(3) 44°56.34′ N. lat., 125°09.13′ W. long.;
(4) 44°49.93′ N. lat., 125°01.51′ W. long.;
(5) 44°46.93′ N. lat., 125°02.83′ W. long.;
(6) 44°41.96′ N. lat., 125°10.64′ W. long.;
(7) 44°33.36′ N. lat., 125°08.82′ W. long.;
(8) 44°33.38′ N. lat., 125°17.08′ W. long.;
and connecting back to 44°42.72′ N. lat., 125°18.49′ W. long.

(e) *Daisy Bank/Nelson Island.* The boundary of the Daisy Bank/Nelson Island EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 44°39.73′ N. lat., 124°41.43′ W. long.;
(2) 44°39.60′ N. lat., 124°41.29′ W. long.;
(3) 44°37.17′ N. lat., 124°38.60′ W. long.;
(4) 44°35.55′ N. lat., 124°39.27′ W. long.;
(5) 44°37.57′ N. lat., 124°41.70′ W. long.;
(6) 44°36.90′ N. lat., 124°42.91′ W. long.;
(7) 44°38.25′ N. lat., 124°46.28′ W. long.;
(8) 44°38.52′ N. lat., 124°49.11′ W. long.;
(9) 44°40.27′ N. lat., 124°49.11′ W. long.;
(10) 44°41.35′ N. lat., 124°48.03′ W. long.;
and connecting back to 44°39.73′ N. lat., 124°41.43′ W. long.

(f) *Newport Rockpile/Stonewall Bank.* The boundary of the Newport Rockpile/Stonewall Bank EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 44°27.61′ N. lat., 124°26.93′ W. long.;

(2) 44°34.64′ N. lat., 124°26.82′ W. long.;
(3) 44°38.15′ N. lat., 124°25.15′ W. long.;
(4) 44°37.78′ N. lat., 124°23.05′ W. long.;
(5) 44°28.82′ N. lat., 124°18.80′ W. long.;
(6) 44°25.16′ N. lat., 124°20.69′ W. long.;
and connecting back to 44°27.61′ N. lat., 124°26.93′ W. long.

(g) *Heceta Bank.* The boundary of the Heceta Bank EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 43°57.68′ N. lat., 124°55.48′ W. long.;
(2) 44°00.14′ N. lat., 124°55.25′ W. long.;
(3) 44°02.88′ N. lat., 124°53.96′ W. long.;
(4) 44°13.47′ N. lat., 124°54.08′ W. long.;
(5) 44°20.30′ N. lat., 124°38.72′ W. long.;
(6) 44°13.52′ N. lat., 124°40.45′ W. long.;
(7) 44°09.00′ N. lat., 124°45.30′ W. long.;
(8) 44°03.46′ N. lat., 124°45.71′ W. long.;
(9) 44°03.26′ N. lat., 124°49.42′ W. long.;
(10) 43°58.61′ N. lat., 124°49.87′ W. long.;
and connecting back to 43°57.68′ N. lat., 124°55.48′ W. long.

(h) *Deepwater off Coos Bay.* The boundary of the Deepwater off Coos Bay EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 43°29.32′ N. lat., 125°20.11′ W. long.;
(2) 43°38.96′ N. lat., 125°18.75′ W. long.;
(3) 43°37.88′ N. lat., 125°08.26′ W. long.;
(4) 43°36.58′ N. lat., 125°06.56′ W. long.;
(5) 43°33.04′ N. lat., 125°08.41′ W. long.;
(6) 43°27.74′ N. lat., 125°07.25′ W. long.;
(7) 43°15.95′ N. lat., 125°07.84′ W. long.;
(8) 43°15.38′ N. lat., 125°10.47′ W. long.;
(9) 43°25.73′ N. lat., 125°19.36′ W. long.;
and connecting back to 43°29.32′ N. lat., 125°20.11′ W. long.

(i) *Bandon High Spot.* The boundary of the Bandon High Spot EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 43°08.83′ N. lat., 124°50.93′ W. long.;
(2) 43°08.77′ N. lat., 124°49.82′ W. long.;
(3) 43°05.16′ N. lat., 124°49.05′ W. long.;
(4) 43°02.94′ N. lat., 124°46.87′ W. long.;
(5) 42°57.18′ N. lat., 124°46.01′ W. long.;
(6) 42°56.10′ N. lat., 124°47.48′ W. long.;
(7) 42°56.66′ N. lat., 124°48.79′ W. long.;
(8) 42°52.89′ N. lat., 124°52.59′ W. long.;
(9) 42°53.82′ N. lat., 124°55.76′ W. long.;
(10) 42°57.56′ N. lat., 124°54.10′ W. long.;
(11) 42°58.00′ N. lat., 124°52.99′ W. long.;
(12) 43°00.39′ N. lat., 124°51.77′ W. long.;
(13) 43°02.64′ N. lat., 124°52.01′ W. long.;
(14) 43°04.60′ N. lat., 124°53.01′ W. long.;
(15) 43°05.89′ N. lat., 124°51.60′ W. long.;
and connecting back to 43°08.83′ N. lat., 124°50.93′ W. long.

(j) *President Jackson Seamount.* The boundary of the President Jackson Seamount EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 42°21.41′ N. lat., 127°42.91′ W. long.;
(2) 42°21.96′ N. lat., 127°43.73′ W. long.;
(3) 42°23.78′ N. lat., 127°46.09′ W. long.;
(4) 42°26.05′ N. lat., 127°48.64′ W. long.;
(5) 42°28.60′ N. lat., 127°52.10′ W. long.;
(6) 42°31.06′ N. lat., 127°55.02′ W. long.;
(7) 42°34.61′ N. lat., 127°58.84′ W. long.;
(8) 42°37.34′ N. lat., 128°01.48′ W. long.;
(9) 42°39.62′ N. lat., 128°05.12′ W. long.;
(10) 42°41.81′ N. lat., 128°08.13′ W. long.;
(11) 42°43.44′ N. lat., 128°10.04′ W. long.;
(12) 42°44.99′ N. lat., 128°12.04′ W. long.;
(13) 42°48.27′ N. lat., 128°15.05′ W. long.;
(14) 42°51.28′ N. lat., 128°15.05′ W. long.;
(15) 42°53.64′ N. lat., 128°12.23′ W. long.;
(16) 42°52.64′ N. lat., 128°08.49′ W. long.;
(17) 42°51.64′ N. lat., 128°06.94′ W. long.;
(18) 42°50.27′ N. lat., 128°05.76′ W. long.;
(19) 42°48.18′ N. lat., 128°03.76′ W. long.;
(20) 42°45.45′ N. lat., 128°01.94′ W. long.;
(21) 42°42.17′ N. lat., 127°57.57′ W. long.;
(22) 42°41.17′ N. lat., 127°53.92′ W. long.;
(23) 42°38.80′ N. lat., 127°49.92′ W. long.;
(24) 42°36.43′ N. lat., 127°44.82′ W. long.;
(25) 42°33.52′ N. lat., 127°41.36′ W. long.;
(26) 42°31.24′ N. lat., 127°39.63′ W. long.;
(27) 42°28.33′ N. lat., 127°36.53′ W. long.;
(28) 42°23.96′ N. lat., 127°35.89′ W. long.;
(29) 42°21.96′ N. lat., 127°37.72′ W. long.;
(30) 42°21.05′ N. lat., 127°40.81′ W. long.;
and connecting back to 42°21.41′ N. lat., 127°42.91′ W. long.

(k) *Rogue Canyon.* The boundary of the Rogue Canyon EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 42°41.33′ N. lat., 125°16.61′ W. long.;
(2) 42°41.55′ N. lat., 125°03.05′ W. long.;
(3) 42°35.29′ N. lat., 125°02.21′ W. long.;
(4) 42°34.11′ N. lat., 124°55.62′ W. long.;
(5) 42°30.61′ N. lat., 124°54.97′ W. long.;
(6) 42°23.81′ N. lat., 124°52.85′ W. long.;
(7) 42°17.94′ N. lat., 125°10.17′ W. long.;
and connecting back to 42°41.33′ N. lat., 125°16.61′ W. long.

■ 10. Section 660.399 is added to read as follows:

§ 660.399 EFH Conservation Areas off the Coast of California.

Boundary line coordinates for EFH Conservation Areas off California are provided in this § 660.399. Fishing activity that is prohibited or permitted within the EEZ in a particular area designated as a groundfish EFH Conservation Area is detailed at § 660.306 and § 660.385.

(a) *Eel River Canyon.* The boundary of the Eel River Canyon EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:

(1) 40°38.27′ N. lat., 124°27.16′ W. long.;
(2) 40°35.60′ N. lat., 124°28.75′ W. long.;
(3) 40°37.52′ N. lat., 124°33.41′ W. long.;
(4) 40°37.47′ N. lat., 124°40.46′ W. long.;
(5) 40°35.47′ N. lat., 124°42.97′ W. long.;
(6) 40°32.78′ N. lat., 124°44.79′ W. long.;
(7) 40°24.32′ N. lat., 124°39.97′ W. long.;
(8) 40°23.26′ N. lat., 124°42.45′ W. long.;
(9) 40°27.34′ N. lat., 124°51.21′ W. long.;
(10) 40°32.68′ N. lat., 125°05.63′ W. long.;
(11) 40°49.12′ N. lat., 124°47.41′ W. long.;
(12) 40°44.32′ N. lat., 124°46.48′ W. long.;
(13) 40°40.75′ N. lat., 124°47.51′ W. long.;
(14) 40°40.65′ N. lat., 124°46.02′ W. long.;
(15) 40°39.69′ N. lat., 124°33.36′ W. long.;
and connecting back to 40°38.27′ N. lat., 124°27.16′ W. long.

(b) *Blunts Reef.* The boundary of the Blunts Reef EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 40°27.53′ N. lat., 124°26.84′ W. long.;
(2) 40°24.66′ N. lat., 124°29.49′ W. long.;
(3) 40°28.50′ N. lat., 124°32.42′ W. long.;
(4) 40°30.46′ N. lat., 124°32.23′ W. long.;
(5) 40°30.21′ N. lat., 124°26.85′ W. long.;
and connecting back to 40°27.53′ N. lat., 124°26.84′ W. long.

(c) *Mendocino Ridge.* The boundary of the Mendocino Ridge EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 40°25.23′ N. lat., 124°24.06′ W. long.;
(2) 40°12.50′ N. lat., 124°22.59′ W. long.;
(3) 40°14.40′ N. lat., 124°35.82′ W. long.;
(4) 40°16.16′ N. lat., 124°39.01′ W. long.;
(5) 40°17.47′ N. lat., 124°40.77′ W. long.;
(6) 40°19.26′ N. lat., 124°47.97′ W. long.;
(7) 40°19.98′ N. lat., 124°52.73′ W. long.;
(8) 40°20.06′ N. lat., 125°02.18′ W. long.;
(9) 40°11.79′ N. lat., 125°07.39′ W. long.;
(10) 40°12.55′ N. lat., 125°11.56′ W. long.;
(11) 40°12.81′ N. lat., 125°12.98′ W. long.;
(12) 40°20.72′ N. lat., 125°57.31′ W. long.;
(13) 40°23.96′ N. lat., 125°56.83′ W. long.;
(14) 40°24.04′ N. lat., 125°56.82′ W. long.;
(15) 40°25.68′ N. lat., 125°09.77′ W. long.;
(16) 40°21.03′ N. lat., 124°33.96′ W. long.;
(17) 40°25.72′ N. lat., 124°24.15′ W. long.;
and connecting back to 40°25.23′ N. lat., 124°24.06′ W. long.

(d) *Delgada Canyon.* The boundary of the Delgada Canyon EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 40°07.13′ N. lat., 124°09.09′ W. long.;
(2) 40°06.58′ N. lat., 124°07.39′ W. long.;
(3) 40°01.18′ N. lat., 124°08.84′ W. long.;
(4) 40°02.48′ N. lat., 124°12.93′ W. long.;
(5) 40°05.71′ N. lat., 124°09.42′ W. long.;
(6) 40°07.18′ N. lat., 124°09.61′ W. long.;
and connecting back to 40°07.13′ N. lat., 124°09.09′ W. long.

(e) *Tolo Bank.* The boundary of the Tolo Bank EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 39°58.75′ N. lat., 124°04.58′ W. long.;
(2) 39°56.05′ N. lat., 124°01.45′ W. long.;
(3) 39°53.99′ N. lat., 124°00.17′ W. long.;
(4) 39°52.28′ N. lat., 124°03.12′ W. long.;
(5) 39°57.90′ N. lat., 124°07.07′ W. long.;
and connecting back to 39°58.75′ N. lat., 124°04.58′ W. long.

(f) *Point Arena North.* The boundary of the Point Arena North EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 39°03.32′ N. lat., 123°51.15′ W. long.;
(2) 38°56.54′ N. lat., 123°49.79′ W. long.;
(3) 38°54.12′ N. lat., 123°52.69′ W. long.;
(4) 38°59.64′ N. lat., 123°55.02′ W. long.;
(5) 39°02.83′ N. lat., 123°55.21′ W. long.;
and connecting back to 39°03.32′ N. lat., 123°51.15′ W. long.

(g) *Point Arena South Biogenic Area.* The boundary of the Point Arena South Biogenic Area EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 38°35.49′ N. lat., 123°34.79′ W. long.;
(2) 38°32.86′ N. lat., 123°41.09′ W. long.;
(3) 38°34.92′ N. lat., 123°42.53′ W. long.;
(4) 38°35.74′ N. lat., 123°43.82′ W. long.;
(5) 38°47.28′ N. lat., 123°51.19′ W. long.;
(6) 38°49.50′ N. lat., 123°45.83′ W. long.;
(7) 38°41.22′ N. lat., 123°41.76′ W. long.;
and connecting back to 38°35.49′ N. lat., 123°34.79′ W. long.

(h) *Cordell Bank/Biogenic Area.* The boundary of the Cordell Bank/Biogenic Area EFH Conservation Area is located offshore of California's Marin County defined by straight lines connecting all of the following points in the order stated:
(1) 38°04.05′ N. lat., 123°07.28′ W. long.;
(2) 38°02.84′ N. lat., 123°07.36′ W. long.;
(3) 38°01.09′ N. lat., 123°07.06′ W. long.;
(4) 38°01.02′ N. lat., 123°22.08′ W. long.;
(5) 37°54.75′ N. lat., 123°23.64′ W. long.;
(6) 37°46.01′ N. lat., 123°25.62′ W. long.;
(7) 37°46.68′ N. lat., 123°27.05′ W. long.;
(8) 37°47.66′ N. lat., 123°28.18′ W. long.;
(9) 37°50.26′ N. lat., 123°30.94′ W. long.;
(10) 37°54.41′ N. lat., 123°32.69′ W. long.;
(11) 37°56.94′ N. lat., 123°32.87′ W. long.;
(12) 37°57.12′ N. lat., 123°25.04′ W. long.;
(13) 37°59.43′ N. lat., 123°27.29′ W. long.;
(14) 38°00.82′ N. lat., 123°29.61′ W. long.;
(15) 38°02.31′ N. lat., 123°30.88′ W. long.;
(16) 38°03.99′ N. lat., 123°30.75′ W. long.;
(17) 38°04.85′ N. lat., 123°30.36′ W. long.;
(18) 38°04.88′ N. lat., 123°27.85′ W. long.;

(19) 38°04.44′ N. lat., 123°24.44′ W. long.;
(20) 38°03.05′ N. lat., 123°21.33′ W. long.;
(21) 38°05.77′ N. lat., 123°06.83′ W. long.;
and connecting back to 38°04.05′ N. lat., 123°07.28′ W. long.

(i) *Cordell Bank (50–fm (91–m) isobath).* The boundary of the Cordell Bank (50–fm (91–m) isobath) EFH Conservation Area is located offshore of California's Marin County defined by straight lines connecting all of the following points in the order stated:
(1) 37°57.62′ N. lat., 123°24.22′ W. long.;
(2) 37°57.70′ N. lat., 123°25.25′ W. long.;
(3) 37°59.47′ N. lat., 123°26.63′ W. long.;
(4) 38°00.24′ N. lat., 123°27.87′ W. long.;
(5) 38°00.98′ N. lat., 123°27.65′ W. long.;
(6) 38°02.81′ N. lat., 123°28.75′ W. long.;
(7) 38°04.26′ N. lat., 123°29.25′ W. long.;
(8) 38°04.55′ N. lat., 123°28.32′ W. long.;
(9) 38°03.87′ N. lat., 123°27.69′ W. long.;
(10) 38°04.27′ N. lat., 123°26.68′ W. long.;
(11) 38°02.67′ N. lat., 123°24.17′ W. long.;
(12) 38°00.87′ N. lat., 123°23.15′ W. long.;
(13) 37°59.32′ N. lat., 123°22.52′ W. long.;
(14) 37°58.24′ N. lat., 123°23.16′ W. long.;
and connecting back to 37°57.62′ N. lat., 123°24.22′ W. long.

(j) *Farallon Islands/Fanny Shoal.* The boundary of the Farallon Islands/Fanny Shoal EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 37°51.58′ N. lat., 123°14.07′ W. long.;
(2) 37°44.51′ N. lat., 123°01.50′ W. long.;
(3) 37°41.71′ N. lat., 122°58.38′ W. long.;
(4) 37°40.80′ N. lat., 122°58.54′ W. long.;
(5) 37°39.87′ N. lat., 122°59.64′ W. long.;
(6) 37°42.05′ N. lat., 123°03.72′ W. long.;
(7) 37°43.73′ N. lat., 123°04.45′ W. long.;
(8) 37°49.23′ N. lat., 123°16.81′ W. long.;
and connecting back to 37°51.58′ N. lat., 123°14.07′ W. long.

(k) *Half Moon Bay.* The boundary of the Half Moon Bay EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 37°18.14′ N. lat., 122°31.15′ W. long.;
(2) 37°19.80′ N. lat., 122°34.70′ W. long.;
(3) 37°19.28′ N. lat., 122°38.76′ W. long.;
(4) 37°23.54′ N. lat., 122°40.75′ W. long.;
(5) 37°25.41′ N. lat., 122°33.20′ W. long.;
(6) 37°23.28′ N. lat., 122°30.71′ W. long.;
and connecting back to 37°18.14′ N. lat., 122°31.15′ W. long.

(l) *Monterey Bay/Canyon.* The boundary of the Monterey Bay/Canyon EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 36°38.21′ N. lat., 121°55.96′ W. long.;
(2) 36°25.31′ N. lat., 121°54.86′ W. long.;
(3) 36°25.25′ N. lat., 121°58.34′ W. long.;
(4) 36°30.86′ N. lat., 122°00.45′ W. long.;
(5) 36°30.02′ N. lat., 122°09.85′ W. long.;
(6) 36°30.23′ N. lat., 122°36.82′ W. long.;
(7) 36°55.08′ N. lat., 122°36.46′ W. long.;
(8) 36°51.41′ N. lat., 122°14.14′ W. long.;
(9) 36°49.37′ N. lat., 122°15.20′ W. long.;
(10) 36°48.31′ N. lat., 122°18.59′ W. long.;
(11) 36°45.55′ N. lat., 122°18.91′ W. long.;
(12) 36°40.76′ N. lat., 122°17.28′ W. long.;
(13) 36°39.88′ N. lat., 122°09.69′ W. long.;
(14) 36°44.94′ N. lat., 122°08.46′ W. long.;
(15) 36°47.37′ N. lat., 122°03.16′ W. long.;
(16) 36°49.60′ N. lat., 122°00.85′ W. long.;
(17) 36°51.53′ N. lat., 121°58.25′ W. long.;
(18) 36°50.78′ N. lat., 121°56.89′ W. long.;
(19) 36°47.39′ N. lat., 121°58.16′ W. long.;
(20) 36°48.34′ N. lat., 121°50.95′ W. long.;
(21) 36°47.23′ N. lat., 121°52.25′ W. long.;
(22) 36°45.60′ N. lat., 121°54.17′ W. long.;
(23) 36°44.76′ N. lat., 121°56.04′ W. long.;
(24) 36°41.68′ N. lat., 121°56.33′ W. long.;
and connecting back to 36°38.21′ N. lat., 121°55.96′ W. long.

(m) *Point Sur Deep.* The boundary of the Point Sur Deep EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 36°25.25′ N. lat., 122°11.61′ W. long.;
(2) 36°16.05′ N. lat., 122°14.37′ W. long;
(3) 36°16.14′ N. lat., 122°15.94′ W. long.;
(4) 36°17.98′ N. lat., 122°15.93′ W. long.;
(5) 36°17.83′ N. lat., 122°22.56′ W. long.;
(6) 36°22.33′ N. lat., 122°22.99′ W. long.;
(7) 36°26.00′ N. lat., 122°20.81′ W. long.;
and connecting back to 36°25.25′ N. lat., 122°11.61′ W. long.

(n) *Big Sur Coast/Port San Luis.* The boundary of the Big Sur Coast/Port San Luis EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 36°17.83′ N. lat., 122°22.56′ W. long.;
(2) 36°17.98′ N. lat., 122°15.93′ W. long.;
(3) 36°16.14′ N. lat., 122°15.94′ W. long.;
(4) 36°10.82′ N. lat., 122°15.97′ W. long.;
(5) 36°15.84′ N. lat., 121°56.35′ W. long.;
(6) 36°14.27′ N. lat., 121°53.89′ W. long.;
(7) 36°10.93′ N. lat., 121°48.66′ W. long.;
(8) 36°07.40′ N. lat., 121°43.14′ W. long.;
(9) 36°04.89′ N. lat., 121°51.34′ W. long.;
(10) 35°55.70′ N. lat., 121°50.02′ W. long.;
(11) 35°53.05′ N. lat., 121°56.69′ W. long.;
(12) 35°38.99′ N. lat., 121°49.73′ W. long.;
(13) 35°20.06′ N. lat., 121°27.00′ W. long.;
(14) 35°20.54′ N. lat., 121°35.84′ W. long.;
(15) 35°02.49′ N. lat., 121°35.35′ W. long.;
(16) 35°02.79′ N. lat., 121°26.30′ W. long.;
(17) 34°58.71′ N. lat., 121°24.21′ W. long.;
(18) 34°47.24′ N. lat., 121°22.40′ W. long.;
(19) 34°35.70′ N. lat., 121°45.99′ W. long.;
(20) 35°47.36′ N. lat., 122°30.25′ W. long.;
(21) 35°27.26′ N. lat., 122°45.15′ W. long.;

(22) 35°34.39′ N. lat., 123°00.25′ W. long.;
(23) 36°01.64′ N. lat., 122°40.76′ W. long.;
(24) 36°17.41′ N. lat., 122°41.22′ W. long.;
and connecting back to 36°17.83′ N. lat., 122°22.56′ W. long.

(o) *Davidson Seamount.* The boundary of the Davidson Seamount EFH Conservation Area is defined by straight lines connecting the following points in the order stated:
(1) 35°54.00′ N. lat., 123°00.00′ W. long.;
(2) 35°54.00′ N. lat., 122°30.00′ W. long.;
(3) 35°30.00′ N. lat., 122°30.00′ W. long.;
(4) 35°30.00′ N. lat., 123°00.00′ W. long.;
and connecting back to 35°54.00′ N. lat., 123°00.00′ W. long.

(p) *East San Lucia Bank.* The boundary of the East San Lucia Bank EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 34°45.09′ N. lat., 121°05.73′ W. long.;
(2) 34°39.90′ N. lat., 121°10.30′ W. long.;
(3) 34°43.39′ N. lat., 121°14.73′ W. long.;
(4) 34°52.83′ N. lat., 121°14.85′ W. long.;
(5) 34°52.82′ N. lat., 121°05.90′ W. long.;
and connecting back to 34°45.09′ N. lat., 121°05.73′ W. long.

(q) *Point Conception.* The boundary of the Point Conception EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 34°29.24′ N. lat., 120°36.05′ W. long.;
(2) 34°28.57′ N. lat., 120°34.44′ W. long.;
(3) 34°26.81′ N. lat., 120°33.21′ W. long.;
(4) 34°24.54′ N. lat., 120°32.23′ W. long.;
(5) 34°23.41′ N. lat., 120°30.61′ W. long.;
(6) 33°53.05′ N. lat., 121°05.19′ W. long.;
(7) 34°13.64′ N. lat., 121°20.91′ W. long.;
(8) 34°40.04′ N. lat., 120°54.01′ W. long.;
(9) 34°36.41′ N. lat., 120°43.48′ W. long.;
(10) 34°33.50′ N. lat., 120°43.72′ W. long.;
(11) 34°31.22′ N. lat., 120°42.06′ W. long.;
(12) 34°30.04′ N. lat., 120°40.27′ W. long.;
(13) 34°30.02′ N. lat., 120°40.23′ W. long.;
(14) 34°29.26′ N. lat., 120°37.89′ W. long.;
and connecting back to 34°29.24′ N. lat., 120°36.05′ W. long.

(r) *Harris Point.* The boundary of the Harris Point EFH Conservation Area is defined by the mean high water line and straight lines connecting all of the following points in the order stated:
(1) 34°03.10′ N. lat., 120°23.30′ W. long.;
(2) 34°12.50′ N. lat., 120°23.30′ W. long.;
(3) 34°12.50′ N. lat., 120°18.40′ W. long.;
(4) 34°01.80′ N. lat., 120°18.40′ W. long.;
(5) 34°02.90′ N. lat., 120°20.20′ W. long.;
(6) 34°03.50′ N. lat., 120°21.30′ W. long.;

(s) *Harris Point Exception.* An exemption to the Harris Point reserve, where commercial and recreational take of living marine resources is allowed, exists between the mean high water line in Cuyler Harbor and a straight line connecting all of the following points:
(1) 34°02.90′ N. lat., 120°20.20′ W. long.;
(2) 34°03.50′ N. lat., 120°21.30′ W. long.;

(t) *Richardson Rock.* The boundary of the Richardson Rock EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 34°10.40′ N. lat., 120°28.20′ W. long.;
(2) 34°10.40′ N. lat., 120°36.29′ W. long.;
(3) 34°02.21′ N. lat., 120°36.29′ W. long.;
(4) 34°02.21′ N. lat., 120°28.20′ W. long.;
and connecting back to 34°10.40′ N. lat., 120°28.20′ W. long.

(u) *Scorpion.* The boundary of the Scorpion EFH Conservation Area is defined by the mean high water line and a straight line connecting all of the following points in the order stated:
(1) 34°02.94′ N. lat., 119°35.50′ W. long.;
(2) 34°09.35′ N. lat., 119°35.50′ W. long.;
(3) 34°09.35′ N. lat., 119°32.80′ W. long.;
(4) 34°02.80′ N. lat., 119°32.80′ W. long.

(v) *Painted Cave.* The boundary of the Painted Cave EFH Conservation Area is defined by the mean high water line and a straight line connecting all of the following points in the order stated:
(1) 34°04.50′ N. lat., 119°53.00′ W. long.;
(2) 34°05.20′ N. lat., 119°53.00′ W. long.;
(3) 34°05.00′ N. lat., 119°51.00′ W. long.;
(4) 34°04.00′ N. lat., 119°51.00′ W. long.

(w) *Anacapa Island.* The boundary of the Anacapa Island EFH Conservation Area is defined by the mean high water line and straight lines connecting all of the following points in the order stated:
(1) 34°00.80′ N. lat., 119°26.70′ W. long.;
(2) 34°05.00′ N. lat., 119°26.70′ W. long.;
(3) 34°05.00′ N. lat., 119°21.40′ W. long.;
(4) 34°01.00′ N. lat., 119°21.40′ W. long.

(x) *Carrington Point.* The boundary of the Carrington Point EFH Conservation Area is defined by the mean high water line and straight lines connecting all of the following points:
(1) 34°01.30′ N. lat., 120°05.20′ W. long.;
(2) 34°04.00′ N. lat., 120°05.20′ W. long.;
(3) 34°04.00′ N. lat., 120°01.00′ W. long.;
(4) 34°00.50′ N. lat., 120°01.00′ W. long.;
(5) 34°00.50′ N. lat., 120°02.80′ W. long.;

(y) *Judith Rock.* The boundary of the Judith Rock EFH Conservation Area is defined by the mean high water line and a straight line connecting all of the following points in the order stated:
(1) 34°01.80′ N. lat., 120°26.60′ W. long.;
(2) 33°58.50′ N. lat., 120°26.60′ W. long.;
(3) 33°58.50′ N. lat., 120°25.30′ W. long.;
(4) 34°01.50′ N. lat., 120°25.30′ W. long.

(z) *Skunk Point.* The boundary of the Skunk Point EFH Conservation Area is defined by the mean high water line and straight lines connecting all of the following points in the order stated:
(1) 33°59.00′ N. lat., 119°58.80′ W. long.;
(2) 33°59.00′ N. lat., 119°58.02′ W. long.;
(3) 33°57.10′ N. lat., 119°58.00′ W. long.;
(4) 33°57.10′ N. lat., 119°58.20′ W. long.

(aa) *Footprint.* The boundary of the Footprint EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 33°59.00′ N. lat., 119°26.00′ W. long.;
(2) 33°59.00′ N. lat., 119°31.00′ W. long.;

(3) 33°54.11′ N. lat., 119°31.00′ W. long.;

(4) 33°54.11′ N. lat., 119°26.00′ W. long.;

and connecting back to 33°59.00′ N. lat., 119°26.00′ W. long.

(bb) *Gull Island.* The boundary of the Gull Island EFH Conservation Area is defined by the mean high water line and straight lines connecting all of the following points in the order stated:

(1) 33°58.02′ N. lat., 119°51.00′ W. long.;

(2) 33°58.02′ N. lat., 119°53.00′ W. long.;

(3) 33°51.63′ N. lat., 119°53.00′ W. long.;

(4) 33°51.62′ N. lat., 119°48.00′ W. long.;

(5) 33°57.70′ N. lat., 119°48.00′ W. long.

(cc) *South Point.* The boundary of the South Point EFH Conservation Area is defined by the mean high water line and straight lines connecting all of the following points in the order stated:

(1) 33°55.00′ N. lat., 120°10.00′ W. long.;

(2) 33°50.40′ N. lat., 120°10.00′ W. long.;

(3) 33°50.40′ N. lat., 120°06.50′ W. long.;

(4) 33°53.80′ N. lat., 120°06.50′ W. long.

(dd) *Hidden Reef/Kidney Bank.* The boundary of the Hidden Reef/Kidney Bank EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:

(1) 33°48.00′ N. lat., 119°15.06′ W. long.;

(2) 33°48.00′ N. lat., 118°57.06′ W. long.;

(3) 33°33.00′ N. lat., 118°57.06′ W. long.;

(4) 33°33.00′ N. lat., 119°15.06′ W. long.;

and connecting back to 33°48.00′ N. lat., 119°15.06′ W. long.

(ee) *Catalina Island.* The boundary of the Catalina Island EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:

(1) 33°34.71′ N. lat., 118°11.40′ W. long.;

(2) 33°25.88′ N. lat., 118°03.76′ W. long.;

(3) 33°11.69′ N. lat., 118°09.21′ W. long.;

(4) 33°19.73′ N. lat., 118°35.41′ W. long.;

(5) 33°23.90′ N. lat., 118°35.11′ W. long.;

(6) 33°25.68′ N. lat., 118°41.66′ W. long.;

(7) 33°30.25′ N. lat., 118°42.25′ W. long.;

(8) 33°32.73′ N. lat., 118°38.38′ W. long.;

(9) 33°27.07′ N. lat., 118°20.33′ W. long.;

and connecting back to 33°34.71′ N. lat., 118°11.40′ W. long.

(ff) *Potato Bank.* Potato Bank is within the Cowcod Conservation Area West, an area south of Point Conception. The boundary of the Potato Bank EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:

(1) 33°30.00′ N. lat., 120°00.06′ W. long.;

(2) 33°30.00′ N. lat., 119°50.06′ W. long.;

(3) 33°20.00′ N. lat., 119°50.06′ W. long.;

(4) 33°20.00′ N. lat., 120°00.06′ W. long.;

and connecting back to 33°30.00′ N. lat., 120°00.06′ W. long.

(gg) *Santa Barbara.* The Santa Barbara EFH Conservation Area is defined by the mean high water line and straight lines connecting all of the following points in the order stated:

(1) 33°28.50′ N. lat., 119°01.70′ W. long.;

(2) 33°28.50′ N. lat., 118°54.54′ W. long.;

(3) 33°21.78′ N. lat., 118°54.54′ W. long.;

(4) 33°21.78′ N. lat., 119°02.20′ W. long.;

(5) 33°27.90′ N. lat., 119°02.20′ W. long.

(hh) *Cherry Bank.* Cherry Bank is within the Cowcod Conservation Area West, an area south of Point Conception. The Cherry Bank EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:

(1) 32°59.00′ N. lat., 119°32.05′ W. long.;

(2) 32°59.00′ N. lat., 119°17.05′ W. long.;

(3) 32°46.00′ N. lat., 119°17.05′ W. long.;

(4) 32°46.00′ N. lat., 119°32.05′ W. long.;

and connecting back to 32°59.00′ N. lat., 119°32.05′ W. long.

(ii) *Cowcod EFH Conservation Area East.* The Cowcod EFH Conservation Area East is defined by straight lines connecting all of the following points in the order stated:

(1) 32°41.15′ N. lat., 118°02.00′ W. long.;

(2) 32°42.00′ N. lat., 118°02.00′ W. long.;

(3) 32°42.00′ N. lat., 117°50.00′ W. long.;

(4) 32°36.70′ N. lat., 117°50.00′ W. long.;

(5) 32°30.00′ N. lat., 117°53.50′ W. long.;

(6) 32°30.00′ N. lat., 118°02.00′ W. long.;

(7) 32°40.49′ N. lat., 118°02.00′ W. long.;

and connecting back to 32°41.15′ N. lat., 118°02.00′ W. long.

[FR Doc. 06–4357 Filed 5–10–06; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 91
Thursday, May 11, 2006

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

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RIN 3209–AA04

Standards of Ethical Conduct for Employees of the Executive Branch; Proposed Amendments To Clarify the Coverage of Detailees to an Agency Under the Intergovernmental Personnel Act

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule; amendments.

SUMMARY: The Office of Government Ethics is proposing amendments to the regulation governing standards of ethical conduct for executive branch employees of the Federal Government, to clarify the coverage of employees of State or local governments or other organizations detailed to an agency under the Intergovernmental Personnel Act.

DATES: Written comments are invited and must be received before July 10, 2006.

ADDRESSES: You may submit comments in writing to OGE on this proposed rule by any of the following methods:

- E-Mail: *usoge@oge.gov*. Include the reference ''Proposed Amendments to Part 2635'' in the subject line of the message.
- Fax: (202) 482–9237.
- Mail/Hand Delivery/Courier: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Richard M. Thomas, Associate General Counsel.

Instructions: All submissions must include OGE's agency name and the Regulation Identifier Number (RIN), 3209–AA04, for this proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: Richard M. Thomas, Associate General Counsel, Office of Government Ethics; telephone: (202) 482–9300; TDD: (202) 482–9293; FAX: (202) 482–9237.

SUPPLEMENTARY INFORMATION:

I. Background

The Intergovernmental Personnel Act (IPA), 5 U.S.C. 3371, *et seq.*, provides two distinct mechanisms for assigning employees of State or local governments or other organizations to a Federal agency. Such IPA assignees may either be ''appointed'' in the Federal agency or ''detailed'' to the Federal agency. 5 U.S.C. 3374(a). An IPA appointee generally is ''deemed an employee of the Federal agency for all purposes'', with certain exceptions that are not relevant to Federal ethics requirements. 5 U.S.C. 3374(b). Consequently, it always has been clear that IPA appointees are subject to the same ethical requirements as other executive branch employees, including the standards of ethical conduct provisions in 5 CFR part 2635 and any supplemental agency standards of conduct.

IPA detailees, on the other hand, are deemed Federal employees only for those purposes specifically enumerated in the statute. 5 U.S.C. 3374(c)(2). Until the IPA was amended in 2001, IPA detailees were not deemed Federal employees for purposes of the Ethics in Government Act of 1978 (except for the provisions in title V, which simply amended 18 U.S.C. 207), although they were deemed employees for purposes of the criminal conflict of interest statutes (18 U.S.C. 203, 205, 207, 208, and 209), as well as chapter 73 of title 5 of the U.S. Code, which includes certain restrictions on gifts from outside sources and gifts between employees (5 U.S.C. 7353 and 7351). *See* OGE Informal Advisory Letter 79 x 1, which is available on OGE's Web site (*http://www.usoge.gov*). The 2001 amendments to the IPA, however, added the Ethics in Government Act of 1978 to the list of authorities with respect to which IPA detailees are deemed Federal employees. National Defense Authorization Act for Fiscal Year 2002, Public Law 101–107, section 1117, December 28, 2001; 5 U.S.C. 3374(c)(2).

The Office of Government Ethics issued its final rule establishing the ''Standards of Ethical Conduct for Employees of the Executive Branch'' in 1992, effective February 3, 1993. 57 FR 35006 (August 7, 1992). These regulations (the Standards), codified at 5 CFR part 2635, do not expressly address the status or conduct of IPA detailees. More important, on various occasions after the Standards were promulgated, OGE advised agency ethics officials that many of the requirements of part 2635 did not apply to IPA detailees because the scope of OGE's authority to regulate their conduct was unclear. For one thing, the Ethics in Government Act, which is OGE's organic Act and most general authority for rulemaking, did not apply to IPA detailees at the time that the Standards were promulgated.[1] Additionally, the Office of Personnel Management, not OGE, had specific authority to issue regulations governing IPA detailees. *See* Executive Order 11589, April 1, 1971, 36 FR 6343, 3 CFR, 1971–1975 Comp., p. 557, as amended by Executive Order 12107, December 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264 (delegating Presidential authority to OPM to issue IPA regulations).

OGE has advised agencies that IPA detailees may be subject to certain provisions of part 2635 that implement statutory requirements applicable to detailees under 5 U.S.C. 3374(c)(2). For example, many of the gift provisions in subparts B and C of part 2635 implement parts of chapter 73 of title 5, U.S. Code, for purposes of which IPA detailees were deemed Federal employees when the Standards were promulgated. OGE has also advised that agencies could require detailees to agree to follow the requirements of part 2635, by including such provisions in their IPA agreements (or related documents), pursuant to 5 U.S.C. 3374(c). However, this approach creates the potential for an uneven or incomplete application of part 2635, which would not further the fundamental purpose of establishing ''a single, comprehensive, and clear set of executive-branch standards of conduct.'' Executive Order 12674, section 201(a), 54 FR 15159, 3 CFR, 1989 Comp., p.

[1] In this regard, the historical status of IPA detailees has been more uncertain than that of detailees under the recently established Federal Information Technology Exchange Program (IT Exchange Program). The IT Exchange Program was created under a 2002 law that, from the inception, treated detailees from certain for-profit business entities as agency ''employees'' for purposes of the Ethics in Government Act of 1978, among other things. *See* 5 U.S.C. 3701, *et seq.*; 70 FR 47711 (August 15, 2005) (final rule implementing provisions of the E-Government Act of 2002). OGE believes it is clear that detailees under the IT Exchange Program are covered ''employees'' under the OGE Standards in part 2635 and any supplemental agency regulations issued under § 2635.105 thereof.

215, as modified by Executive Order 12731, section 201(a), 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Now that the IPA has been amended to make detailees ''employees'' for purposes of the Ethics in Government Act, there is no further doubt as to OGE's authority to cover IPA detailees under the Standards. Therefore, consistent with the goal of maintaining a single, comprehensive and clear set of Standards, OGE is proposing to amend part 2635 to make clear that all IPA detailees are subject to the Standards, as described below.

II. Proposed Amendments to the Standards

A. Definition of Employee

OGE proposes to amend the definition of ''employee,'' at 5 CFR 2635.102(h) of the Standards, to indicate that the term includes IPA detailees. This would resolve any doubts concerning the application of the Standards to IPA detailees.

B. Supplemental Agency Regulations

OGE also is proposing to amend 5 CFR 2635.105 of the Standards, the provision concerning supplemental agency standards of conduct regulations. This provision permits an agency, with the concurrence of OGE, to promulgate regulations in addition to the uniform, executive branchwide requirements of part 2635, to address circumstances specific to the particular agency, in view of its programs and operations. The proposed amendment would authorize an agency to apply all or portions of its supplemental requirements to its IPA detailees, by express provision in the supplemental regulations.

OGE has advised agency ethics officials that supplemental requirements generally are not applicable to IPA detailees, for the same reasons discussed above with respect to part 2635. Thus, agency officials have drafted certain supplemental restrictions, such as divestiture or outside activity rules, with the understanding that they would not apply to IPA detailees. As a result, some existing agency supplemental rules might not be viewed as necessary or appropriate for IPA detailees, particularly those detailees who are expected to serve on relatively short-term assignments. For example, an agency might not find it necessary or reasonable to impose certain divesture requirements on detailees who are expected to serve in an agency only for a year. In this connection, it also may be relevant that IPA detailees are not eligible for certificates of divestiture, which is a tax benefit provided by Congress to mitigate some of the financial burden of complying with divestiture requirements. (Section 1043 of the Internal Revenue Code, 26 U.S.C. 1043, which is the authority for granting certificates of divestiture, is not included among the provisions of law in 5 U.S.C. 3374(c)(2) for purposes of which IPA detailees are deemed employees of an agency.)

It also is important to remember that supplemental agency requirements, by definition, are an exception to the general requirement of executive branch uniformity for standards of ethical conduct. *See* Executive Order 12674, section 301(a), 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by Executive Order 12731, section 301(a), 55 FR 42547, 3 CFR, 1990 Comp., p. 306. Therefore, OGE is less concerned about ensuring that all IPA detailees are subject to agency supplemental requirements.

At the same time, OGE also is aware that some agency ethics officials believe that certain agency supplemental restrictions are appropriate for IPA detailees. In some cases, for example, we understand that agencies have required IPA detailees to agree to follow not only the Standards in part 2635 but also supplemental agency standards. Therefore, in order to accommodate the needs of different agencies, OGE is proposing to amend § 2635.105 by adding a new paragraph (d), which would provide that IPA detailees are subject to supplemental agency requirements to the extent expressly provided in supplemental agency regulations.

Under this proposal, agencies that wish to subject IPA detailees to supplemental requirements would need to amend their supplemental regulations to state this intent. The proposed amendment uses the term ''requirements'' intentionally, because some supplemental agency regulations include provisions that do not impose additional requirements but actually relieve certain restrictions in part 2635, such as provisions that divide the agency into separate components for purposes of certain restrictions in 5 CFR 2635.202 and 2635.807. It is OGE's intent that IPA detailees would still benefit from any such provisions in supplemental agency regulations that do not add additional requirements or restrictions, without the need for an amendment to the supplemental regulations. Additionally, agencies would have the discretion, provided that the general requirements of § 2635.105 are met, to make appropriate adjustments to any supplemental regulations to account for any unique circumstances related to the use of IPA detailees in the agency's programs and operations.

Agencies that already have required IPA detailees, by agreement, to abide by any supplemental regulations could continue to recognize any agreements in force as of the effective date of the future final rule amending § 2635.105. Additionally, agencies that wished to amend their supplemental regulations expressly to cover IPA detailees could continue to use IPA agreements to obtain commitments to follow current supplemental regulations, pending the promulgation of amendments, for a reasonable period determined in consultation with OGE.

III. Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons are invited to submit written comments on this proposed amendatory rulemaking, to be received by July 10, 2006. The comments will be carefully considered and any appropriate changes will be made before a final rule is adopted and published in the **Federal Register** by OGE.

Regulatory Flexibility Act

As Acting Director of OGE, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed rule will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this proposed rule because it does not contain an information collection requirement that requires the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this proposed amendatory rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this proposed rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will, before the

future final rule takes effect, submit a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law.

Executive Order 12866

In promulgating this proposed rule, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This proposed rule has not been reviewed by the Office of Management and Budget under that Executive order, since it deals with agency organization, management and personnel matters, and is not deemed to be ''significant'' thereunder.

Executive Order 12988

As Acting Director of the Office of Government Ethics, I have reviewed this proposed amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2635

Conflict of interests, Executive branch standards of ethical conduct, Government employees.

Approved: May 5, 2006.

Marilyn L. Glynn,

Acting Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is proposing to amend part 2635 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations, as follows:

PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

1. The authority citation for part 2635 continues to read as follows:

Authority: 5 U.S.C. 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

2. Section 2635.102 is amended by adding a new sentence after the second sentence of paragraph (h) to read as follows:

§ 2635.102 Definitions.

* * * * *

(h) * * * It includes employees of a State or local government or other organization who are serving on detail to an agency, pursuant to 5 U.S.C. 3371, *et seq.* * * *

* * * * *

3. Section 2635.105 is amended by adding a new paragraph (d) to read as follows:

§ 2635.105 Supplemental agency regulations.

* * * * *

(d) Employees of a State or local government or other organization who are serving on detail to an agency, pursuant to 5 U.S.C. 3371, *et seq.*, are subject to any requirements, in addition to those in this part, established by a supplemental agency regulation issued under this section to the extent that such regulation expressly provides.

[FR Doc. E6–7222 Filed 5–10–06; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24320; Airspace Docket No. 06–AEA–013]

Establishment of Class E Airspace; Forest Hill, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Forest Hill Airport, Forest Hill, Maryland. The development of a Standard Instrument Approach Procedure (SIAP) to serve flights operating into the airport during Instrument Flight Rules (IFR) conditions makes this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing an approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before June 12, 2006.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. FAA–2006–24320; Airspace Docket No. 06–AEA–013, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809: telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–24320; Airspace Docket No. 06–AEA–013''. The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket closing both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal

Aviation Regulations (14 CFR part 71) to establish Class E airspace area at Forest Hill Airport, MD. The development of a SIAP to serve flights operating into the airport during IFR conditions makes this action necessary. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9N, dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N dated September 1, 2005, and effective September 16, 2005, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AEA MD E5, FOREST HILL AIRPORT, [NEW]

Forest Hill, Maryland
(Lat. 39°34′47″ N., long. 76°22′40″ W.)

That airspace extending upward from 700 feet above the surface within a 6.0 mile radius of the Forest Hill Airport, Forest Hill, MD.

Issued in Jamaica, New York on March 30, 2006.

John G. McCartney,

Acting Area Director, Eastern Terminal Operations.

[FR Doc. 06–4362 Filed 5–10–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23926; Airspace Docket No. 06–AAL–10]

RIN 2120–AA66

Proposed Modification of the Norton Sound Low Offshore Airspace Area; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Norton Sound Low Offshore Airspace Area in Alaska. Specifically, this action proposes to modify the Norton Sound Low Offshore Airspace Area in the vicinity of the Shishmaref Airport, AK, by lowering the offshore airspace floor to 1,200 feet mean sea level (MSL) within a 30-mile radius of the airport. Additionally, this action proposes to modify the airspace in the vicinity of Nome Airport, AK, by lowering the airspace floor to 700 feet MSL within a 25-mile radius of the airport, and 1,200 feet MSL within a 77.4-mile radius of the Nome VORTAC. The FAA is proposing this action to provide additional controlled airspace for aircraft instrument flight rules (IFR) operations at the Nome and Shishmaref Airports.

DATES: Comments must be received on or before June 26, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2006–23926 and Airspace Docket No. 06–AAL–10, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2006–23926 and Airspace Docket No. 06–AAL–10) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2006–23926 and Airspace Docket No. 06–AAL–10.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov*, or the

Federal Register's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue 14, Anchorage, AK 99513.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify the Norton Sound Low Offshore Airspace Area, AK, by lowering the floor to 1,200 feet MSL within a 30-mile radius of two geographic points near the Shishmaref Airport, AK. Additionally, this action proposes lowering the controlled airspace floor to 700 feet MSL within a 25-mile radius of the Nome Airport and to 1,200 feet MSL within a 77.4-mile radius of the Nome VORTAC. The purpose of this proposal is to establish controlled airspace to support IFR operations at the Nome and Shishmaref Airports, Alaska. Additional controlled airspace extending upward from 700 feet and 1,200 feet MSL above the surface in international airspace would be created by this action.

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

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of System Operations Airspace and AIM, Airspace & Rules, in areas outside the United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 6007 Offshore Airspace Areas.

* * * * *

Norton Sound Low, AK [Amended]

That airspace extending upward from 700 feet MSL within a 25-mile radius of the Nome Airport; and that airspace extending upward from 1,200 feet MSL within a 45-mile radius of Deering Airport, AK, within a 35-mile radius of lat. 60°21′17″ N., long. 165°04′01″ W., within a 30-mile radius of lat. 66°09′58″ N., long. 166°30′03″ W., within a 30-mile radius of lat. 66°19′55″ N., long. 165°40′32″ W. and within a 77.4-mile radius of the Nome VORTAC; and airspace extending upward from 14,500 feet MSL within an area bounded by a line beginning at lat. 59°59′57″ N., long. 168°00′08″ W.; to lat. 62°35′00″ N., long. 175°00′00″ W.; to lat. 65°00′00″ N., long. 168°58′23″ W.; to lat. 68°00′00″ N., long. 168°58′23″ W.; to a point 12 miles offshore at lat. 68°00′00″ N.; thence by a line 12 miles from and parallel to the shoreline to lat. 56°42′59″ N., long. 160°00′00″ W.; to lat. 58°06′57″ N., long. 160°00′00″ W.; to lat. 57°45′57″ N., long. 161°46′08″ W.; to the point of beginning.

* * * * *

Issued in Washington, DC, on May 5, 2006.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E6–7155 Filed 5–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Hampton Roads 06–046]

RIN 1625–AA00

Safety Zone; Live-Fire Gun Exercise, Southeast of Ocean City, MD, Atlantic Ocean

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone on June 19, 20 and 21, 2006 from 7 a.m. to 3 p.m. for a live-fire gun exercise approximately 9 nautical miles southeast of Ocean City, MD. This action is intended to restrict vessel traffic on the Atlantic Ocean as necessary to protect mariners from the hazards associated with gunnery exercise. Entry into this Coast Guard safety zone would be prohibited, unless authorized by the Captain of the Port or a designated representative.

DATES: Comments and related material must reach the Coast Guard on or before June 12, 2006.

ADDRESSES: You may mail comments and related material to the Norfolk Federal Building, 200 Granby Street, Suite 700, Norfolk, Virginia 23510. Sector Hampton Roads maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Sector Field Office Eastern Shore between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Bill Clark, Waterways Division, Sector Hampton Roads, (757) 668–5581.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD05–06–046, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Sector Hampton Roads at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Regulatory Information

The Coast Guard is proposing to establish this safety zone to conduct training essential to carrying out Coast Guard missions relating to military operations and national security. Accordingly, this proposed safety zone falls within the military function exception to the Administrative Procedure Act (APA), 5 U.S.C. 553(a)(1). Notice and comment rulemaking under 5 U.S.C. 553(b) and an effective date of 30 days after publication under 5 U.S.C. 553(d) are not required for this rulemaking.

However, we have determined that it would be beneficial to accept public comments on this proposed rule. Therefore, we will be accepting comments until June 12, 2006. By issuing this notice of proposed rulemaking and accepting public comments, the Coast Guard does not waive its use of the military-function exception to notice and comment rulemaking under 5 U.S.C. 553(b).

Background and Purpose

This rule is necessary to protect the public from the hazards associated with gunnery exercises. When established, this zone will provide the Coast Guard adequate coverage of the area affected by small arms fire. No other related rules have been issued in relation this proposed rule.

Discussion of Proposed Rule

The Coast Guard is establishing a safety zone on June 19, 20 and 21, 2006 from 7 a.m. to 3 p.m. on specified waters of the Atlantic Ocean, approximately 9 nautical miles southeast of Ocean City, MD. The regulated area will consist of a circular zone, four nautical miles in radius, centered on position 38–13.0 N/074–58.0 W. This safety zone will be enforced when gunnery exercises are being conducted by Coast Guard vessels. All vessel traffic will be temporarily restricted from transiting through this area while the safety zone is in effect unless otherwise authorized by the Captain of the Port's designated representative.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this regulation restricts access to the regulated area, the effect of this rule will not be significant as the safety zone will be in effect for a limited duration of time and the Coast Guard will provide the public adequate notification via maritime advisories and local notice to mariners in order for mariners to adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit in that portion of the Atlantic Ocean while the regulated area is in affect. The safety zone will not have a significant impact on a substantial number of small entities because: (i) The zone will only be in place for a limited duration of time; (ii) mariners will be allowed to transit through at the discretion of the Captain of the Port's designated representative; and (iii) maritime advisories will be issued allowing mariners to adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your

small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Brian Sullivan, Sector Field Office Eastern Shore, (757) 336–2859. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T06–046 to read as follows:

§ 165.T06–046 Safety zone; live-fire gun exercise Southeast of Ocean City, MD, Atlantic Ocean.

(a) *Location.* The following area is a safety zone: All waters of the Atlantic Ocean, from surface to bottom, within a 4 nautical mile radius of position 38–13.0 N/074–58.0 W, approximately 9 nautical miles southeast of Ocean City, MD., which lies within the Captain of the Port, Hampton Roads zone as defined in 33 CFR 3.25–10.

(b) *Definitions.* (1) ''*Designated representative*'' means a U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP), Hampton Roads, in the enforcement of the safety zone.

(2) [Reserved]

(c) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP, Hampton Roads, or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must

contact the COTP or the COTP's representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement and suspension of enforcement of certain safety zones.* (1) The safety zone in paragraph (a) of this section will be enforced only when a Coast Guard vessel is operating in the safety zone for the purpose of conducting gunnery exercises.

(2) The Captain of the Port, Hampton Roads, will provide notice of the enforcement of the safety zones listed in paragraph (a) of this section and notice of suspension of enforcement by the means appropriate to affect the widest publicity, including broadcast notice to mariners and publication in the local notice to mariners.

(e) *Effective period.* This section is effective from 7 a.m. on June 19, 2006 until 3 p.m. on June 21, 2006.

Dated: April 26, 2006.

Patrick B. Trapp,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. E6–7205 Filed 5–10–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–06–025]

RIN 1625–AA00

Safety Zone; TCF Bank Milwaukee Air Expo, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to implement a temporary safety zone for the TCF Bank Milwaukee Air Expo. This safety zone is necessary to safeguard vessels and spectators from hazards associated with air shows. This proposed rule is intended to restrict vessel traffic from a portion of Lake Michigan and Milwaukee Harbor.

DATES: Comments and related material must reach the Coast Guard on or before May 24, 2006.

ADDRESSES: You may mail comments and related material to Commander, U.S. Coast Guard Sector Lake Michigan (CGD09–06–025), 2420 South Lincoln Memorial Drive, Milwaukee, Wisconsin 53207. Sector Lake Michigan Prevention Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Sector Lake Michigan between 7 a.m. and 3:30 p.m. (local), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer Brad Hinken, U.S. Coast Guard Sector Lake Michigan, at (414) 747–7154.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09–06–025), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Sector Lake Michigan at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

This safety zone is necessary to protect the public from the hazards associated with air shows. Due to the high profile nature and extensive publicity associated with this event, the Captain of the Port (COTP) expects a significantly large number of spectators in confined areas adjacent to and on Lake Michigan. As such, the COTP is proposing to implement a safety zone to ensure the safety of both participants and spectators in these areas.

The combination of large numbers of inexperienced recreational boaters, congested waterways, boaters crossing commercially transited waterways, and low flying aircraft could easily result in serious injuries or fatalities.

Discussion of Proposed Rule

The Coast Guard is proposing a safety zone on the waters of Lake Michigan near Sheboygan, Wisconsin. The safety zone will include all waters within the following coordinates: starting at 41°01.606′ N, 087°53.041′ W; then northeast to 43°03.335′ N, 087°51.679′ W; then northwest to 43°03.583′ N, 087°52.265′ W; then going southwest to 43°01.856′ N, 087°53.632′ W; then returning back to point of origin. The Coast Guard will notify the public in advance by way of the Ninth Coast Guard District Local Notice to Mariners, the Broadcast Notice to Mariners, and, for those who request it from Sector Lake Michigan, by facsimile (fax).

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based upon the size and location of the safety zone within the waterway. Recreational vessels may transit through the safety zone with permission from the Captain of the Port Lake Michigan or his designated on-scene patrol commander.

Small Entities

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

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

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: the safety zone

would be enforced for only a few hours per day on each day of the event and vessel traffic can safely pass outside of the proposed safety zone during the event. Before the effective period, we would issue maritime advisories widely available to users of the lake.

If you think your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Sector Lake Michigan (see **ADDRESSES**). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal government, even if that impact may not constitute a ''tribal implication '' under that Order.

Energy Effects

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

Technical Standards

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

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

Environment

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

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5, Department of Homeland Security Delegation No. 0170.

2. A new temporary § 165.T09–025 is added to read as follows:

§ 165.T09–025 Safety Zone; TCF Bank Milwaukee Air Expo Milwaukee, Wisconsin.

(a) *Location.* The following area is a Safety Zone: All waters within the following coordinates: starting at 43°01.606′ N, 087°53.041′ W; then northeast to 43°03.335′ N, 087°51.679′ W; then northwest to 43°03.583′ N, 087°52.265′ W; then going southwest to 43°01.856′ N, 087°53.632′ W; then returning back to point of origin. These coordinates are based upon North American Datum 1983.

(b) *Effective Dates and Times.* This safety zone is effective from 1 p.m. (local) on July 14, 2006 through 5 p.m. on July 17, 2006. This safety zone will be enforced between the hours of 1 p.m. (local) to 5 p.m. (local) on July 14 through 17, 2006. The Captain of the Port Lake Michigan or the on scene Patrol Commander may terminate this event at anytime.

(c) *Regulations.* In accordance with the general regulations in section 165.23 of this part, entry into this zone is subject to the following requirements:

(1) This safety zone is closed to all marine traffic, except as may be permitted by the Captain of the Port or his duly appointed representative.

(2) The ''duly appointed representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Lake Michigan, to act on his behalf. The representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(3) Vessel operators desiring to enter or operate within the Safety Zone shall contact the Captain of the Port or his representative to obtain permission to do so. Vessel operators given permission to enter or operate in the Safety Zone shall comply with all directions given to them by the Captain of the Port or his representative.

(4) The Captain of the Port may be contacted by telephone via the Sector Lake Michigan Operations Center at (414) 747–7182 during working hours. Vessels assisting in the enforcement of the Safety Zone may be contacted on VHF–FM channels 16 or 23A. Vessel operators may determine the restrictions in effect for the safety zone by coming alongside a vessel patrolling the perimeter of the Safety Zone.

(5) Coast Guard Sector Lake Michigan will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the Safety Zone and restriction imposed.

Dated: April 26, 2006.

S.P. LaRochelle,

Captain, U.S. Coast Guard, Captain of the Port Sector Lake Michigan.

[FR Doc. 06–4393 Filed 5–10–06; 8:45 am]

BILLING CODE 4910–15–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Order No. 1464; Docket No. R2006–1]

Postal Rate and Fee Changes

AGENCY: Postal Rate Commission.

ACTION: Notice and order in omnibus rate filing.

SUMMARY: This document informs the public that the United States Postal Service has filed a request for a decision on proposed changes in essentially all domestic postage rate and fee changes, along with proposed classification changes. It identifies several procedural steps the Commission has taken in response to the filing. The request reflects a system-wide average increase of 8.5 percent; however, there are limited (and in some instances, significant) exceptions.

DATES: 1. *May 31, 2006:* deadline for interventions, answers to motion for waiver and for protective conditions. 2. *June 5, 2006:* Deadline for answer to motion for waiver of rules regarding certain library references, and answer to motion concerning Forever Stamp. 3. *June 7, 2006:* Deadline for statements identifying topics for prehearing conference. 4. *June 16, 2006:* Prehearing conference.

ADDRESSES: File notices of intervention and other documents electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharman, General Counsel, 202–789–6820.

SUPPLEMENTARY INFORMATION:

I. Introduction

Public notice. This order provides notice to the public that on May 3, 2006, the United States Postal Service (Postal Service or Service) filed a formal Request with the Postal Rate Commission (Commission) for a recommended decision on proposed changes in domestic postage rates, fees and classifications.[1] The Request was accompanied by several contemporaneous notices and motions.

The Service filed the Request pursuant to chapter 36 of title 39, United States Code, based on its determination that such changes would be in the public interest and in accordance with policies of that title. The filing of the Request triggers a statutory process mandated by 39 U.S.C. 3624. This process involves an opportunity for public hearings on the Service's proposals. It also requires issuance of the Commission's recommended decision within 10 months of the date of the Service's filing.

II. Establishment of Formal Docket

Establishment of formal docket. The Commission hereby institutes a proceeding under 39 U.S.C. 3622 and 3623, designated as Docket No. R2006–1, Postal Rate and Fee Changes, to consider the instant Request. In the course of consideration, participants may propose alternatives to the Service's proposals, the Commission may propose certain classification changes, and the Service may revise, supplement, or amend its filing. The Commission's review of the Request, including any revisions or alternatives (including full or partial settlement proposals), may result in recommendations that differ from proposed rates, fees and classification changes.

This notice apprises the public of the Service's Request, of the overall magnitude and scope of the Request, and of the institution of a formal proceeding. It does not address or review all aspects of the filing, which is comprehensive and complex; therefore, interested persons are urged to carefully review the filing to determine its impact on aspects of postal rates, fees and classifications that may be of interest to them.

Availability; Web site posting. The Commission has posted the Service's Request and most related or supporting material on its Web site at *http://www.prc.gov.* Additional Postal Service filings in this case and participants' submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's Webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The Service's Request and related documents are also available for public inspection in the Commission's docket

[1] Request of the United States Postal Service for a Recommended Decision on Changes in Rates of Postage and Fees for Postal Services, May 3, 2006 (Request).

section. Docket section hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Paper copies. Intervenors' options for obtaining paper copies of the Docket No. 2006–1 filing from the Postal Service are described in the Notice of the United States Postal Service Regarding Availability and Distribution of Paper Copies of the Postal Service's Direct Case, May 3, 2006.

III. Overview of the Service's Filing

Contents. The Service's Docket No. R2006–1 filing includes its formal Request (with seven attachments); 47 pieces of testimony (along with related exhibits) presented by 41 witnesses; and 133 library references.[2] The Service notes that it anticipates supplementing its Request during the course of this proceeding with testimony on a proposal referred to as the ''Forever Stamp,'' which mainly affects senders of single-piece one-ounce First-Class Mail. *See* Motion of the United States Postal Service for Partial Waiver or Suspension of Commission Rules Specifying Materials to be Filed in Support of its Request for Changes in Postal Rates and Classifications, May 3, 2006 (Motion Concerning Forever Stamp).

Test year; contingency; key projections. The Postal Service operates under a breakeven constraint pursuant to controlling law and, under Commission rules, generally relies on a future test year for ratemaking purposes. The Service proposes using fiscal year 2008 as the test year in its Request, and makes various projections based on that choice. In particular, it projects that it will incur a net revenue deficiency of $5.874 billion in the test year under existing rates. It projects that its proposed set of rates and fees would generate additional revenues of $3.983 billion, resulting in a test year revenue deficiency of $0.8 million. USPS–T–47 at 9. The filing assumes a contingency of 1 percent. USPS–T–6 at 62.

System-wide average increase. The Service's Request reflects a system-wide average increase of 8.5%. *Id.* at 9. In certain instances, percentage increases for individual classes and subclasses of mail and Special Services vary considerably from that average. These departures from the system-wide average are often due to rate design changes, such as the proposed introduction of shape-based rates.

First-Class stamp price. The price of the First-Class stamp for a single-piece one-ounce letter—traditionally the Postal Service's flagship offering and the product most familiar to the general public—increases by 3 cents under the Service's proposal, thereby going from the current rate of 39 cents to 42 cents. The rate for each additional ounce of single-piece First-Class Mail (through 13 ounces) *decreases* by 4 cents, going from the current rate of 24 cents to 20 cents.

Defining features. The Service's Request is marked by two defining features. One is a return to the traditional approach to postal ratemaking, which entails a process which results in the percentage increase for any given class or service being arrived at as a result of application of the factors of 39 U.S.C. 3622, rather than through application of a generally uniform ''across the board'' percentage.[3] The other feature is the incorporation of extensive proposed rate design and classification changes based on new (or substantially updated) cost studies; other new data and information; policy considerations; and important assumptions about the mailing environment, including the evolving postal network.

The Service's summary of percentage changes in proposed rates relative to current rates provides the following information:

	Percent
First-Class Mail:	
Letters and Sealed Parcels	7.0
Cards	10.6
Priority Mail	13.8
Express Mail	12.5
Periodicals:	
Within-County	24.4
Outside County	11.4
Standard Mail:	
Regular	9.6
Nonprofit	9.5
Enhanced Carrier Route	8.6
Nonprofit Enhanced Carrier Route	9.1
Package Services:	
Parcel Post	13.7
Bound Printed Matter	11.9
Media Mail	18.0
Library Rate	18.4
Total All Mail	8.5

USPS–T–31, Exh. USPS–31D.

Special Services. Percentage changes vary widely for Special Services. A summary of proposed cost coverages for Special Services appears at USPS–T–31, Exh. USPS–31B. Detailed development of the proposed fee levels and discussion of other aspects of the filing affecting Special Services is provided in USPS–T–39; USPS–T–40; and USPS–T–41.

IV. ''Roadmap'' Testimony and Master List of Library References

Witness Davis (USPS–T–47) presents ''roadmap'' testimony in compliance with Commission rule 53(b), that provides an overview of the Service's filing. It describes the subject matter of each witness's testimony; explains the inter-relationship between and among the testimonies; describes changes in cost methodology, volume estimation, and rate design relative to the Commission's approach in Docket No. R2005–1; and identifies each witness who addresses any material methodological change. Witness Davis's testimony also includes two attachments: Roadmap Testimony Quick Reference Guide (Attachment 1) and Postal Testimony Flowchart (Attachment 2). A master list of library references appears in Notice of the United States Postal Service of Filing of Master List of Library References, May 3, 2006.

Witness O'Hara (USPS–T–31) addresses rate policy. His testimony presents proposed cost coverages (rate levels) for each subclass and addresses the consistency of these coverages with applicable Postal Reorganization Act criteria.

V. Attachments to the Request

Attachment A, Requested Changes in Rates and Fees, and Attachment B, Proposed Changes to Domestic Mail Classification Schedule, identify changes that would be required if the Service's proposals are adopted. Attachment C, Specification of the Rules, Regulations, and Practices that Establish Standards of Service and Conditions of Mailability, addresses Commission rule 54(b)(2), by designating the contents of the Domestic Mail Manual (DMM) as the source of such rules, regulations and practices, and provides a copy of the table of contents of the DMM (updated as of April 13, 2006). The DMM in its entirety is available for review on the Postal

[2] The Service has prepared, but withheld, one library reference (USPS–LR–L–35) pending resolution of a request for protective conditions. *See* Motion of United States Postal Service for Waiver and for Protective Conditions for Library Reference that Includes Costs and Other Data Associated with the FedEx Transportation Agreement, May 3, 2006 (FedEx Waiver Motion). *See also* USPS–LR–L–133 (Redacted Addendum to FedEx Transportation Contract.) **Note:** The Service's library reference count includes some library references that have been reserved by number, with contents expected to be filed later.

[3] The ''across the board'' approach was used in the two most recent omnibus cases.

Service's Web site at *http://www.USPS.gov.*

Attachment D is a certification, filed pursuant to Commission rule 54(p), attesting to the accuracy of cost statements and other documentation submitted with the Request. Attachment E presents the Audited Financial Statements for Fiscal Year 2005, as filed with the Commission on February 15, 2006 as part of the United States Postal Service Annual Report. Attachment F is an index that identifies witnesses, the numerical designation of each piece of testimony, related exhibits and library references, and attorney contacts. Attachment G is a compliance statement addressing pertinent provisions of rules 53, 54 and 64.

VI. Nature and Impact of the Proposed Changes

The following summary identifies some central elements of the Service's Request, focusing mainly on changes relative to existing rate design and classification. Interested persons are urged to review the filing in its entirety for other important aspects of the filing.

A. Mail Classes, Subclasses and Categories

First-Class Mail. The Service proposes introducing the shape of a mailpiece (in terms of being presented as a letter, flat or parcel) as a factor in developing rates, along with elimination of the heavy piece discount and limitations on the application of the nonmachinable surcharge. A piece would have to weigh 3.5 ounces or less to be eligible for letter rates. USPS–T–32 at 19. The Service also proposes altering the approach to additional-ounce rates, which apply through 13 ounces. Additional proposals affecting First-Class Mail, among others, include separating the workshared mail rate design from the single-piece rate design; eliminating the Automation Carrier Route rate categories; and introducing a Forever Stamp. The Forever Stamp proposal, in brief, would allow a First-Class stamp to continue to be accepted as valid payment of postage for single-piece First-Class Mail weighing less than one ounce following a rate change, thereby avoiding the need to add a relatively small amount of incremental ''makeup'' postage.

Priority Mail. The Service proposes, among other things, the introduction of a dimensional-weight price structure to recognize the role of cubic volume as a cost driver in Priority Mail; a permanent classification for the Priority Mail flat-rate box; and a fee for on-call and scheduled Priority Mail, Express Mail, and Parcel Post pick-up service. *See* USPS–T–33 (witness Scherer) and references cited therein for additional details related to Priority Mail.

Express Mail. The Service proposes a new one-pound Express Mail flat rate. *See* USPS–T–34 (witness Berkeley) and references cited therein for additional details.

Periodicals. The Service proposes the introduction of a container charge of 85 cents for each sack and pallet used by senders of Outside County Periodicals mail (including Science of Agriculture publications). This charge would replace existing co-palletization discounts, including an experimental co-pallet discount. USPS–T–35 at 4; *id.* at 16. The Service proposes raising 37 percent of revenue from pounds and 63 percent from pieces, reflecting a slight alteration in the existing 40/60 split. *Id.* at 6. It also proposes separate editorial pound dropship rates for destinating ADC, SCF and DDU mail. *Id.* at 7. These proposed rate design and classification changes do not apply to mail that qualifies for Within County subclass rates. The proposed Ride-Along rate is 15.5 cents. at 14. *See* witness Tang's testimony (USPS–T–35) and references cited therein for additional details about the Service's Periodicals proposals.

Standard Mail. The Service proposes several nomenclature changes; a new rate category for ''hybrid'' pieces that share characteristics of both flats and parcels; changes to better align rate design with mail processing categories; and certain shape-related changes. It proposes expanded dropshipping incentives, often linked to postal facilities where certain automated sorting equipment is available in Standard Mail; a separate charge (of 1.5 cents) for the use of detached address labels in connection with Saturation mailings; and a new rate category for parcels and pieces that are not commonly processed on the Service's flat sorting machines. *See* USPS–T–36.

The Service also proposes de-averaging worksharing rates for non-automation letters and for automation and non-automation non-letters. The Service proposes separate rate structures for parcels and ''hybrid'' pieces. USPS–T–47 at 45. *See* USPS–T–36 (witness Kiefer) and references cited therein for additional details.

Package Services. In the Parcel Post subclass, the Service proposes one rate design change, which it characterizes as minor. This entails requiring all Parcel Select DBMC machinable parcels to be barcoded. Cost savings from barcoding would be reflected in rates, instead of being separately stated. Pieces without appropriate barcodes would pay the applicable retail rate. USPS–T–37 at 7. The Service also proposes raising the weight for balloon parcels from 15 pounds to 20 pounds. *Ibid.* See USPS–T–37 (witness Kiefer) and references cited therein for additional details. The Service is not proposing any fundamental changes to the rate designs for Bound Printed Matter, Media Mail or Library Mail. USPS–T–38 at 15 and 16–17. See USPS–T–38 (witness Yeh) and references cited therein for additional details.

B. Special Services

For electronic Address Correction Service, the Service proposes a distinction between the fee for First-Class Mail and other classes, with First-Class Mail having a lower price. USPS–T–40 at 8. It also proposes a new automated option limited to letters, given that only letters are processed through the Postal Automation Redirection System. *Ibid.* For Confirm, the Service proposes classification changes, a new pricing structure based on the concept of purchasing units, and new fees. *Id.* at 14. The Service states that the use of a unit-based approach will provide, among other benefits, a mechanism to expand the types of data available without creating multiple subscriptions or accounts. *Id.* at 17. The Service proposes several fee, classification and operational changes for Insurance. These include, among others, elimination of the signature requirement for items insured for $50.01 to $200; use of a barcode for all insured items, which will be scanned at delivery; lower fees for Express Mail insurance; and a cap of $15 on the Service's regular insurance liability for negotiable items, currency or bullion, which would match the Express Mail insurance limit. *Id.* at 24.

The Service proposes classification changes affecting the account maintenance fee for special services, limited in many instances to changes in DMCS language and nomenclature. USPS–T–39 at 1. For post office boxes, the Service proposes changes that include new box fees and caller service fees that vary in relation to location space cost. The planned fee design is characterized as a continuation of the progress toward increased cost homogeneity in the post office fee groups. USPS–T–41 at 1. Interested persons are encouraged to review the testimony of witness Berkeley (USPS–T–39), witness Mitchum (USPS–T–40) and witness Kaneer (USPS–T–41) for further details about these changes and for information on proposed fees, rate design and classification for other Special Services.

VII. Motion Pertaining to FedEx Contract Material

In a motion filed with its Request, the Postal Service states that it has prepared, but not yet filed, USPS–LR–L–35, Calculation of FedEx Day Turn Variability Factors, which it identifies as a category 2 library reference sponsored by witness Kelley (USPS–T–15).[4] FedEx Waiver Motion at 1. The Service's stated reason for withholding this document is its interest in application of protective conditions. The proposed conditions appear as Attachment A to the FedEx Waiver Motion. The Service also seeks waiver of relevant portions of Commission rules 31(k) and 54 for this document.

In support of its interest in protective conditions, the Service states the FedEx agreement contains commercially sensitive information, given that it includes cost data for fuel charges, non-fuel charges, and handling charges (all on a daily basis), as well as applicable contract prices, along with volume information on a daily basis. *Id.* at 1. Among other things, it asserts that the volume-related information is proprietary to both the Postal Service and FedEx. It also notes that similar conditions were granted by the Postal Rate Commission for FedEx data in two previous rate case (Docket Nos. R2001–1 and R2005–1), *Id.* at 2, citing Presiding Officer's Ruling No. R2001–1/5 (October 31, 2001) and Presiding Officer's Ruling No. R2005–1/4 (May 4, 2005). Answers to the FedEx Waiver Motion are due no later than May 31, 2006.

VIII. Motion Pertaining to Forever Stamp Proposal

Witness Taufique outlines the Service's interest in incorporating a Forever Stamp proposal in the instant Request. USPS–T–32 at 26–27. In a related motion, the Service seeks waiver or suspension of certain Commission rules to accommodate the anticipated filing of material supporting this proposal. Motion of the United States Postal Service for Partial Waiver or Suspension of Commission Rules Specifying Materials to be Filed in Support of its Request for Changes in Postal Rates and Classifications, May 3, 2006 (Motion Concerning Forever Stamp Proposal). Answers to the Motion Concerning Forever Stamp Proposal are due no later than June 5, 2006.

[4] Notice of the United States Postal Service of Filing of Master List of Library References (May 3, 2006).

IX. Motions for Waiver of Various Commission Rules on Category 1, 2, 3 and 5 Library References

The Service seeks waiver, to the extent deemed necessary, of the Commission's rules on library references for documents in the following categories: Category 1 (Data Reporting Systems); Category 2 (Witness Foundational Material); Category 3 (Reference Material); and Category 5 (Disassociated Material).[5] The motion clearly identifies the library references proposed to be covered by the waiver request and provides a detailed explanation of the Service's rationale for seeking waiver. *See* Motion of the United States Postal Service Requesting Waiver of the Commission Rules with Respect to Category 1, 2, 3 and 5 Library References, May 3, 2006 (Waiver Motion). Answers to the referenced Waiver Motion are due no later than June 5, 2006.

X. Participation

The Commission invites both formal participation in this case and informal expression of views. Interested persons may elect full, limited or commenter status (under rules 20, 20a, and 20b, respectively). Those electing full or limited status shall file notices of intervention conforming to Commission rules no later than May 31, 2006. Notices of intervention and other documents generally should be submitted electronically via the Commission's Filing Online system at *http://www.prc.gov.* Persons seeking to intervene on a full or limited basis after May 31, 2006 must file a motion for intervention.

Commenters are not required to file intervention notices or motions; instead, they may direct their comments to the attention of Steven W. Williams, Secretary of the Commission, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001. Commenters may also submit their views via electronic mail by addressing them to *prc-admin@prc.gov.*

Persons unsure of their intervention status under Commission rules or seeking more information on how to participate in this case should contact Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, by telephone at 202–789–6837 or via electronic mail at *shelley.dreifuss@prc.gov.*

[5] Library reference categories are identified in Commission rule 31(b)(2).

XI. Representation of the Interests of the General Public

The Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, to represent the interests of the general public in this proceeding, pursuant to 39 U.S.C. 3624(a). Ms. Dreifuss shall direct the activities of Commission personnel assigned to assist her and, at an appropriate time, provide the names of these employees for the record. Neither Ms. Dreifuss nor the assigned personnel shall participate in or advise as to any Commission decision in this proceeding, other than in their designated capacity.

XII. Prehearing Conference

The Commission will hold a prehearing conference on June 16, 2006, beginning at 10 a.m. in the Commission's hearing room, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001. The Presiding Officer will discuss initial scheduling matters at the conference. Participants may propose schedule dates or offer additional topics for discussion at the prehearing conference by filing a statement identifying such topics no later than June 7, 2006.

Ordering Paragraphs

It is ordered:

1. The Commission hereby institutes Docket No. R2006–1, Postal Rate and Fee Changes, for consideration of the Service's request for omnibus rate, fee and classification changes.
2. The Commission will sit *en banc* in this proceeding.
3. Notices of intervention shall be filed no later than May 31, 2006.
4. Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public in this proceeding.
5. A prehearing conference will be held on June 16, 2006, at 10 a.m. in the Commission's hearing room.
6. Statements identifying topics for discussion at the preheating conference shall be filed no later than June 7, 2006.
7. Answers to the Motion of the United States Postal Service for Waiver and for Protective Conditions for Library Reference that Includes Costs and Other Data Associated with the FedEx Transportation Agreement, filed May 3, 2006, are due no later than May 31, 2006.
8. Answers to the Motion of the United States Postal Service Requesting Waiver of the Commission Rules with Respect to Category 1, 2, 3 and 5 Library References, filed May 3, 2006, are due no later than June 5, 2006.

9. Answers to the Motion of the United States Postal Service for Partial Waiver or Suspension of Commission Rules Specifying Materials to be filed in Support of its Request for Changes in Postal Rates and Classifications, filed May 3, 2006, are due no later than June 5, 2006.

10. The Secretary shall cause this Notice and Order to be published in the **Federal Register**.

Steven W. Williams,

Secretary.

[FR Doc. E6–7218 Filed 5–10–06; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA R03–OAR–2004–WV–0001; FRL–8168–7]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Withdrawal of Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing its Notice of Proposed Rulemaking to redesignate the City of Weirton PM–10 nonattainment area to attainment and approval of the maintenance plan published on October 27, 2004 (69 FR 62637). EPA is also withdrawing the correcting amendment to the NPR published on November 9, 2004 (69 FR 64860).

DATES: The proposed rule is withdrawn as of May 11, 2006.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068, or by e-mail at *miller.linda@epa.gov.*

SUPPLEMENTARY INFORMATION: Elsewhere in today's **Federal Register**, a separate proposed rulemaking entitled ''*Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the City of Weirton PM–10 Nonattainment Area to Attainment and Approval of the Limited Maintenance Plan,*'' provides more detailed legal and factual basis for supporting our decision to withdraw the NPR and its related correcting amendment. Our proposed action to approve the State of West Virginia request to redesignate the Weirton area to attainment and approve the associated maintenance plan is also found in the NPR in today's **Federal Register.**

Separate dockets have been prepared for the new proposal and this notice to withdraw the October 27, 2004 Weirton notice of proposed rulemaking.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National Parks, Wilderness areas.

Dated: April 28, 2006.

Judith Katz,

Acting Regional Administrator, Region III.

[FR Doc. E6–7215 Filed 5–10–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2005–0480; FRL–8168–6]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the City of Weirton PM–10 Nonattainment Area to Attainment and Approval of the Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On May 24, 2004, the State of West Virginia submitted a request that EPA redesignate the Weirton nonattainment area (Weirton Area) to attainment for the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10), and concurrently requested approval of a limited maintenance plan (LMP) as a revision to the West Virginia State Implementation Plan (SIP). In this action, the EPA proposes to approve the LMP for the Weirton Area in West Virginia and grant the State's request to redesignate the area from nonattainment to attainment. EPA's proposed approval is based on its determination that the area has met the criteria for redesignation for attainment specified in the Clean Air Act (CAA). EPA is also proposing to determine that, because the Weirton Area has continued to attain the PM–10 NAAQS, certain attainment demonstration requirements, along with other related requirements of the CAA, are not applicable to the Weirton Area.

DATES: Written comments must be received on or before June 12, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2005–0480 by one of the following methods:

A. *http://www.regulations.gov.* Follow the online instructions for submitting comments.

B. E-mail: *Morris.makeba@epa.gov.*

C. Mail: EPA–R03–OAR–2005–0480, Makeba Morris, Chief, Air Quality Planning and Analysis Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2005–0480. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE., Charleston, WV 25304.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068, or by e-mail at *miller.linda@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we'', ''us'', or ''our'' are used, we mean EPA.

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I. Background

A. What NAAQS Are Considered in Today's Rulemaking?

Particulate matter with an aerodynamic diameter less than or equal to a nominal ten microns (PM–10) is the pollutant subject to this action. The NAAQS are safety thresholds for certain ambient air pollutants set to protect public health and welfare. PM–10 is among the ambient air pollutants for which we have established such a health-based standard. PM–10 causes adverse health effects by penetrating deep in the lung, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable. On July 1, 1987 (52 FR 24634) we revised the NAAQS for particulate matter with an indicator that includes those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. See 40 CFR 50.6. The annual primary PM–10 standard is 50 μ/m^3 as an annual arithmetic mean. The 24-hour primary PM–10 standard is 150 $\mu g/m^3$ with no more than one expected exceedance per year. The secondary PM–10 standards, promulgated to protect against adverse welfare effects, are identical to the primary standards.

B. What Is a State Implementation Plan (SIP)?

The Act requires states to attain and maintain ambient air quality equal to or better than the NAAQS. Section 107(d)(1)(A)(I) of the Act defines nonattainment area as any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for that pollutant.

A state's strategy for attaining and maintaining the NAAQS are outlined in the state implementation plan (SIP). The SIP is a planning document that, when implemented, is designed to ensure the achievement of the NAAQS by the applicable attainment date. The Act requires that states make SIP revisions periodically, as necessary, to provide continued compliance with the standards.

SIPs include, among other things, the following: (1) A current, accurate and comprehensive inventory of emission sources; (2) statutes and regulations adopted by the State Legislature and executive agencies; (3) air quality analyses that include demonstrations that adequate controls are in place to meet the NAAQS; and (4) contingency measures to be undertaken if an area fails to attain the standard or make reasonable progress toward attainment by the required date.

A state must make the SIP and subsequent revisions available for public review and comment through a public hearing, it must be adopted by the State, and submitted to EPA by the Governor or the Governor's designee. EPA takes action to approve the SIP, thus rendering the rules and regulations federally enforceable. The approved SIP is the state's commitment to take actions that will reduce or eliminate air quality problems. Any subsequent revisions to the SIP must go through the formal SIP revision process specified in the Act.

C. What are the Requirements for Redesignating a Nonattainment Area to Attainment?

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain additional requirements are met. Section 107(d)(3)(E) of the Act provides the criteria for redesignation. These criteria are further clarified in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498, April 16, 1992, as supplemented 57 FR 18070, April 28, 1992) (the General Preamble), and in a guidance memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards dated September 4, 1992, ''Procedures for Processing Requests to Redesignate Areas to Attainment, (Calcagni memo).'' The criteria for redesignation are:

(1) A determination that the area has attained the applicable NAAQS;

(2) Full approval of the applicable SIP for the area under section 110(k) of the Act;

(3) The state containing the area has met all requirements applicable to the area under section 110 and part D of the Act;

(4) A determination that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable reductions; and

(5) Full approval of a maintenance plan for the area as meeting the requirements of section 175A of the Act.

D. What is the Background of the SIP for the Weirton Area?

The Weirton Area, consisting of Hancock County and part of Brooke County, West Virginia, was designated

by EPA as a moderate PM–10 nonattainment area on December 21, 1993 (58 FR 67334).

On May 16, 2001 (66 FR 27034), EPA promulgated a final rule entitled, ''Determination of Attainment of the NAAQS for PM–10 in the Weirton, West Virginia Nonattainment Area'' finding that the Weirton PM–10 nonattainment had attained the NAAQS for PM–10 by its applicable December 31, 2000 attainment date.

In order to be redesignated from nonattainment to attainment, West Virginia requested that EPA apply its clean data policy to the Weirton Area in a letter dated October 14, 2003. West Virginia submitted a request to redesignate the Weirton Area to attainment for PM–10 and a SIP submittal for the related maintenance plan on May 24, 2004.

EPA published a direct final rule (DFR) and notice of proposed rulemaking (NPR) in which we determined that certain attainment demonstration requirements, along with other related requirements of the Act, are not applicable to the Weirton Area. In the same October 27, 2004 DFR and NPR, EPA also approved the request from the State of West Virginia to redesignate the Weirton Area from nonattainment to attainment of the NAAQS for PM–10, and to approve the 10-year maintenance plan for the area submitted by the WVDEP as a revision to the West Virginia SIP. (October 27, 2004, 69 FR 62591 and 69 FR 62637).

EPA published a correcting amendment to the DFR and NPR on November 9, 2004 (69 FR 64860) to include additional explanation of why motor vehicle emissions do not contribute significantly to any nonattainment with the PM–10 NAAQS in the Weirton Area.

EPA received adverse comments on the October 27, 2004 DFR/NPR from one commenter. Therefore, EPA withdrew the DFR on December 20, 2004 (69 FR 75847). The withdrawal of the DFR converted EPA's action to a proposal based on the October 27, 2004 NPR. In a separate rulemaking in today's **Federal Register**, EPA is withdrawing the October, 27 2004 NPR and the November 9, 2004 amendment thereto, and issuing this current proposal. Because we are withdrawing the earlier action, we will not respond to the comments received on the withdrawn DFR and NPR. Any person wishing to comment on this current proposal must submit comments pursuant to the instructions given in this notice of proposed rulemaking.

E. What are the Air Quality Characteristics of the Weirton Area?

The primary years used by EPA for the purposes of establishing PM–10 designations and classifications were 1987 to 1989. For this base year period, the Weirton Area 24-hour average PM–10 design value was 198 μg/m^3. This value exceeded the NAAQS of 150 μg/m^3. The Weirton Area has never exceeded the annual average standard of 50 μg/m^3. As provided in the WV SIP submittal, for the 2000 to 2002 period, the comparable 24-hour average design value is 112 μg/m^3 and the PM–10 annual average design value is 32 μg/m. Both values meet the NAAQS. Based on the certified ambient air quality data through the close of calendar year 2005, EPA proposes to determine that the area continues to attain the PM–10 NAAQS. Furthermore, there have been no recorded exceedances of the 24-hour PM–10 standard or the annual PM–10 standard from 1997 through the end of 2005 in the Weirton Area, and the highest annual value in the Weirton area for the years 2003–2005 is 29 μg/m^3. See also the discussion in Section II.A.1. and the technical support document (TSD) accompanying this rulemaking.

II. Review of the West Virginia Submittal Addressing the Requirements for Redesignation

A. Does the Submittal Meet the Criteria for Redesignation?

1. Has the State demonstrated that the Weirton Area has attained the applicable NAAQS?

States must demonstrate that an area has attained the PM–10 NAAQS through analysis of ambient air quality data from an ambient air monitoring network representing peak PM–10 concentrations. The data should be stored in the EPA Air Quality System (AQS) database. The 24-hour PM–10 NAAQS is 150 μg/m^3. An area has attained the 24-hour standard when the average number of expected exceedences per year is less than or equal to one, when averaged over a three-year period (40 CFR 50.6). To make this determination, three consecutive years of complete ambient air quality data must be collected in accordance with Federal requirements (40 CFR part 58, including appendices). The annual PM–10 NAAQS is 50 μg/m^3. To determine attainment, the standard is compared to the expected annual mean, which is the average of the weighted annual mean for three consecutive years. More detailed monitoring data is available in the TSD.

EPA previously determined in ''A Determination of Attainment of the NAAQS for PM–10 in the Weirton, West Virginia Nonattainment Area'' on May 16, 2001 (66 FR 27034) that the area had attained the PM–10 NAAQS. As previously stated, the most recent air quality monitoring continues to support this determination. Thus, EPA proposes to determine that the Weirton Area has satisfied the criterion of section 107(d)(3)(E)(I) that the area has attained the PM–10 NAAQS.

2. Does the Weirton Area have a Fully Approved SIP under section 110(k) of the Act that meets all requirements applicable under section 110 and Part D for Purposes of Redesignation?

In order to qualify for redesignation, the SIP must satisfy all requirements that apply to the area for purposes of redesignation. EPA interprets the Act to require state adoption and EPA approval of the requirements applicable for purposes of redesignation under section 110 and part D before EPA may approve a redesignation request. Thus in order to qualify for redesignation, the SIP for the area must be fully approved under section 110(k) with respect to all requirements that apply to the area for purposes of redesignation.

As we explain more fully in later sections of this action, EPA has determined that West Virginia has met all SIP requirements applicable for purposes of redesignation under section 110 of the CAA and has also determined that the West Virginia SIP meets requirements applicable for purposes of redesignation under Part D, Title I of the CAA. EPA has analyzed the SIP codified at 40 CFR part 52, subpart XX, and determined that it is consistent with the requirements of section 110 applicable for purposes of redesignation.

The air quality planning requirements for moderate PM–10 nonattainment areas under part D of Title I of the CAA are set out in subparts 1 and 4. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic requirements applicable to all nonattainment areas. Subpart 4 of part D, found in section 189 of the CAA, establishes additional specific requirements for PM–10 areas depending upon the area's nonattainment classification. For purposes of evaluating the redesignation request, EPA is proposing to determine that these applicable requirements have been met for the reasons discussed in later sections of this notice.

The Part D provisions that the Weirton Area must evaluate prior to redesignation as attainment include an emissions inventory, conformity, a

permit program for new and modified stationary sources (called new source review or NSR), Reasonably Available Control Measure (RACM) requirements contained in sections 172 and 189 of the Act), a demonstration of reasonable further progress (RFP) toward attainment, an attainment demonstration, and contingency measures. We address how the Weirton Area has met the RACM, RFP, attainment demonstration and contingency measure requirements in the next section of this notice (Clean Data Policy).

With respect to the emissions inventory requirement, the Calcagni memo notes that the requirements for an emission inventory will be satisfied by the inventory requirements of the maintenance plan. An attainment year emissions inventory for the Weirton Area has been included in the maintenance plan, and thus this requirement has been satisfied.

With respect to the conformity requirement, section 176(c) of the CAA requires states to establish criteria and procedures to ensure the Federally supported or funded projects ''conform'' to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C and the Federal Transit Act (''transportation conformity'') as well as to other Federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. See *Wall* v. *EPA,* 265F 3d 426 (6th Cir. 2001), upholding this interpretation. See, also, 60 FR 62748 (December 7, 1995).

With respect to the NSR program requirement, EPA has determined that areas being redesignated need not have an approved NSR program prior to redesignation, provided that the area demonstrates maintenance of the standard without Part D NSR in effect. The rationale for this view is described in a memorandum for Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review Requirements of Areas Requesting Redesignation to Attainment.'' The State has demonstrated that the area will be able to maintain the standard without Part D NSR in effect, and therefore the State need not have a fully approved Part D NSR program prior to approval of the redesignation request. The State's Prevention of Significant Deterioration (PSD) program will become effective in the area upon redesignation to attainment. Detroit, MI (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorrain, OH (61 FR 20458, 20469–20470, May 7, 1996); Louisville, KY (66 FR 53665, October 23 2001); Grand Rapids, MI (61 FR 31834–31837, June 21, 1996).

3. Clean Data Policy

In some designated nonattainment areas, monitored data demonstrates that the NAAQS has already been achieved. Based on its interpretation of the Act, EPA has determined that certain requirements of part D, subpart 1 and 2 of the Act do not apply and therefore do not require certain submissions for an area that has attained the NAAQS. These include reasonable further progress (RFP) requirements, attainment demonstrations and contingency measures, because these provisions have the purpose of helping achieve attainment of the NAAQS.

The so-called Clean Data Policy is the subject of two EPA memoranda setting forth our interpretation of the provisions of the Act as they apply to areas that have attained the relevant NAAQS. EPA also finalized the statutory interpretation set forth in the policy in a final rule, 40 CFR 51.918, as part of its Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2 (Phase 2 Final Rule). See discussion in the preamble to the rule at 70 FR 71645–71646 (November 29, 2005). EPA believes that the legal bases set forth in detail in our Phase 2 Final rule, our May 10, 1995 memorandum from John S. Seitz, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'' (Seitz memo), and our December 14, 2004 memorandum from Stephen D. Page entitled ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards'' (Page memo), are equally pertinent to the interpretation of provisions of subparts 1 and 4 applicable to PM–10. EPA's interpretation of how the provisions of the Act apply to areas with ''clean data'' is not logically limited to ozone and PM–2.5, because the rationale is not dependent upon the type of pollutant. Our interpretation that an area that is attaining the standard is relieved of obligations to demonstrate reasonable further progress (RFP) and to provide an attainment demonstration and contingency measures pursuant to part D of the CAA, pertains whether the standard is PM–10, ozone or PM–2.5.

The reasons for relieving an area that has attained the relevant standard of certain part D, subpart 1 and 2 (sections 171 and 172) obligations, applies equally as well to part D, subpart 4, which contains specific attainment demonstration and RFP provisions for PM–10 nonattainment areas. As we have explained in the Phase 2 Final Rule and our ozone and PM–2.5 clean data memoranda, EPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with related requirements, so as not to require SIP submissions if an area subject to those requirements is already attaining the NAAQS (i.e., attainment of the NAAQS is demonstrated with three consecutive years of complete, quality-assured air quality monitoring data). Three U.S. Circuit Courts of Appeals have upheld EPA rulemakings applying its interpretation of subparts 1 and 2 with respect to ozone. *Sierra Club* v. *EPA,* 99F.3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation* v. *EPA,* N. 04–73032 (9th Cir. June 28, 2005) (memorandum opinion). It has been EPA's longstanding interpretation that the general provisions of part D, subpart 1 of the Act (sections 171 and 172) do not require the submission of SIP revisions concerning RFP for areas already attaining the ozone NAAQS. In the General Preamble, we stated:

> [R]equirements for RFP will not apply in evaluating a request for redesignation to attainment, since, at a minimum, the air quality data for the area must show that the area has already attained. A showing that the State will make RFP toward attainment will, therefore, have no meaning at that point. 57 FR at 13564.

EPA believes the same reasoning applies to the PM–10 provisions of part D, subpart 4.

With respect to RFP, section 171(1) states that, for purposes of part D of title I, RFP ''means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.'' Thus, whether dealing with the general RFP requirement of section 172(c)(2), the ozone-specific RFP requirements of

sections 182(b) and (c), or the specific RFP requirements for PM–10 areas of part D, subpart 4, section 189(c)(1), the stated purpose of RFP is to ensure attainment by the applicable attainment date. Section 189(c)(1) states that:

> Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 7501(l) of this title, toward attainment by the applicable date.

Although this section states that revisions shall contain milestones which are to be achieved until the area is redesignated to attainment, such milestones are designed to show reasonable further progress ''toward attainment by the applicable date'', as defined by section 171. Thus it is clear that once the area has attained the standard, no further milestones are necessary or meaningful. This interpretation is supported by language in section 189(c)(3), which mandates that a state that fails to achieve a milestone must submit a plan that assures that the state achieve the next milestone or attain the NAAQS if there is no next milestone. Section 189(c)(3) assumes that the requirement to submit and achieve milestones does not continue after attainment of the NAAQS.

If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled.[1] EPA took this position with respect to the general RFP requirement of section 172(c)(2) in the April 16, 1992 General Preamble and also in the May 10, 1995 memorandum with respect to the requirements of sections 182(a)(b) and (c). We are extending that interpretation to the specific provisions of part D, subpart 4. In the General Preamble, we stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the ''requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.'' (57 FR at 13564). See also Calcagni memo, p.6.

With respect to the attainment demonstration requirements of section 189(a)(1)(B) an analogous rationale leads to the same result. Section 189(a)(1)(B) requires that the plan provide for ''a demonstration (including air quality modeling) that the [SIP] will provide for attainment by the applicable attainment date.* * *'' As with the RFP requirements, if an area is already monitoring attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of the section 172(c) requirements provided by EPA in the General Preamble, the Page memo and of the section 182(b) and (c) requirements set forth in the Seitz memo. As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached.'' (57 FR at 13564).

Other SIP submission requirements are linked with these attainment demonstration and RFP requirements, and similar reasoning applies to them. These requirements include the contingency measure requirements of sections 172(c)(9) and 182(c)(9). We have interpreted the contingency measure requirements of sections 172(c)(9) and 182(c)(9) as no longer applying when an area has attained the standard because those ''contingency measures are directed at ensuring RFP and attainment by the applicable date.'' (57 FR at 13564); Seitz memo, pp. 5–6.

Both sections 172(c) and 189(a)(1)(c) require ''provisions to assure that reasonable available control measures'' (i.e, RACM) are implemented in a nonattainment area. However, the Weirton Area was able to attain the PM–10 NAAQS without any additional measures being implemented. The General Preamble, 57 FR 13560 (April 16, 1992) states that EPA interprets section 172(c)(1) so that RACM requirements are a ''component'' of an area's attainment demonstration. Thus, for the same reason the attainment demonstration no longer applies by its own terms, the requirement for RACM no longer applies. EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could contribute to reasonable further progress or to attainment. General Preamble, 57 FR at 13498. Thus, where an area is already attaining the standard, no additional RACM measures are required.[2] EPA is interpreting section 189(a)(1)(c) consistent with its interpretation of section 172(c)(1). Therefore, there is no requirement for the West Virginia SIP to contain RACM for the Weirton Area in order for EPA to redesignate that area as attainment for the PM–10 NAAQS.

Here, as in both our Phase 2 final rule and ozone and PM–2.5 clean data memoranda, we emphasize that the suspension of a requirement to submit SIP revisions concerning these RFP, attainment demonstration, RACM, and other related requirements exists only for as long as a nonattainment area continues to monitor attainment of the standard. If such an area experiences a violation of the NAAQS, the basis for the requirements being suspended would no longer exist. Therefore, the area would again be subject to a requirement to submit the pertinent SIP revision or revisions and would need to address those requirements. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard. However, once EPA ultimately redesignates the area to attainment, the area will be entirely relieved of these requirements to the extent the maintenance plan for the area does not rely on them.

Therefore, we believe that, for the reasons set forth here and established in our prior ''clean data'' memoranda and rulemakings, a PM–10 nonattainment area that has ''clean data,'' should be relieved of the part D, subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B) the RACM provisions of 189(a)(1)(c), and the RFP provisions established by section 189(c)(1) of the Act, as well as the aforementioned attainment demonstration, RACM, RFP and contingency measure provisions of

[1] Thus we believe that it is a distinction without a difference that section 189(c)(1) speaks of the RFP requirement as one to be achieved until an area is ''redesignated as attainment'', as opposed to section 172(c)(2), which is silent on the period to which the requirement pertains, or the ozone nonattainment area RFP requirements in sections 182(b)(1) or 182(c)(2), which refer to the RFP requirements as applying until the ''attainment date'', since, section 189(c)(1) defines RFP by reference to section 171(l) of the Act. Reference to 171(l) clarifies that, as with the general RFP requirements in section 172(c)(2) and the ozone-specific requirements of section 182(b)(1) and 182(c)(2), the PM-specific requirements may only be required ''for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' 42 U.S.C. section 7501(1). As discussed in the text of this rulemaking, EPA interprets the RFP requirements, in light of the definition of RFP in section 171(l), and incorporated in section 189(c)(1), to be a requirement that no longer applies once the standard has been attained.

[2] The EPA's interpretation that the statute only requires implementaion of RACM measures that would advance attainment was upheld by the United States Court of Appeals for the Fifth Circuit (Sierra Club v. EPA, 314 F.3d 735, 743–745 (5th Cir. 2002)), and by the United States Court of Appeals for the D.C. Circuit (Sierra Club v. EPA, 294 F3d 155, 162–163 (D.C. Cir. 2002)).

part D, subpart 1 contained in section 172 of the Act.[3]

Should EPA at some future time determine that an area that had clean data, but which has not yet been redesignated as attainment for a NAAQS has violated the relevant standard, the area would again be required to submit the pertinent requirements under the SIP for the area. Attainment determinations under the policy do not shield an area from other required actions, such as provisions to address pollution transport.

As set forth, above, EPA proposes to find that because the Weirton Area has continued to attain the NAAQS the requirement of an attainment demonstration, reasonable further progress, reasonably available control measures and contingency measures no longer apply.

Thus, EPA has determined that all provisions of CAA section 110 and part D applicable to the Weirton Area for purposes of redesignation have been approved into the West Virginia SIP.

4. Has the State demonstrated that the air quality improvement is due to permanent and enforceable reductions?

The State must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. In making this showing, the State must demonstrate that air quality improvements are the result of actual enforceable emission reductions. The control measures for the area, which were responsible for bringing the area into attainment, are contained in a Consent Order (CO) between the State of West Virginia and the Weirton Steel Corporation. The control measures and emission limits established in the CO were made permanent and enforceable when EPA approved them into the West Virginia SIP on May 5, 2004 (69 FR 24986). These control measures resulted in a reduction of 1345.5 tons per year of allowable PM–10 emissions and a reduction of 886 tons per year of actual PM–10 emissions. EPA approved these measures as RACT in the West Virginia SIP on May 4, 2004 (69 FR 24986).

[3] In prior rulemakings involving the Clean Data Policy and PM–10, EPA has applied criteria in addition to that of attainment of the standard. See *e.g.*, 67 FR 43020 (June 26, 2002). EPA does not believe that those additional criteria are required by statute or are necessary for application of the policy for PM–10 areas, and does not employ them in applying the policy to ozone and $PM_{2.5}$ areas. EPA intends to make its application of the policy consistent for ozone, PM–10, and $PM_{2.5}$, and does not intend to require an area to meet additional criteria for PM–10.

III. Review of the Limited Maintenance Plan

A. What is a Maintenance Plan?

As discussed in section II of this action, to be redesignated to attainment, the Weirton Area is required to have a fully approved maintenance plan under section 175A of the CAA. A maintenance plan should identify the level of air emissions from cars, industry and other sources which is sufficient to attain the NAAQS. The State must commit to re-evaluate the maintenance plan. The plan must also show that the area will maintain clean air for at least 10 years after redesignation. Additionally, the plan must include a list of contingency measures to be implemented should the NAAQS be violated. The requirements for the contingency measures is found in paragraph (d) of CAA section 175A.

B. What is the LMP Option for PM–10 Nonattainment Areas Seeking Redesignation to Attainment

On August 9, 2001, EPA issued guidance on streamlined maintenance plan provisions for certain moderate PM–10 nonattainment areas seeking redesignation to attainment (Memorandum from Lydia Wegman, Director, Air Quality Standards and Strategies Division, entitled ''Limited Maintenance Plan Option for Moderate PM–10 Nonattainment Areas'', (Wegman memo). The Wegman memo contains a statistical demonstration that areas meeting certain air quality criteria will, with a high degree of probability, maintain compliance with the standard 10 years into the future. Thus, EPA has already provided the maintenance demonstration for areas that meet the air quality criteria outlined in the Wegman memo. The Wegman memo streamlines the full maintenance plan requirements and establishes the LMP option. The LMP option does not require air quality modeling estimates that clean air can be maintained, a projection of emissions into the future, or some of the standard analyses to determine conformity with the air quality standards. The Wegman memo identifies core provisions that must be included in the LMP. These provisions include an attainment year emission inventory, assurance of continued operation of an EPA-approved air quality monitoring network, and contingency provisions.

C. Does the Weirton Area qualify for the LMP option?

To qualify for the LMP option, the area must have attained the PM–10 NAAQS, and the average annual PM–10 design value for the area, based upon the most recent 5 years of air quality data at all monitors in the area, should be at or below 40 μg/m3, and the 24 hour design value should be at or below 98 μg/m3. If an area cannot meet this test, it may still be able to qualify for the LMP Option if the average design value (ADV) for the site is less than the site-specific critical design values (CDV) (as those terms are used in the Wegman memo). In addition, the area should expect only limited growth in on-road motor vehicle PM–10 emissions (including fugitive dust) and should have passed a motor vehicle regional emissions analysis test.

To show that future emissions will not exceed the level of the attainment inventory, the WVDEP determined the CDV. The CDV is a statistical technique based upon the average design value and its observed variability to estimate the probability of exceeding the NAAQS in the future.

When applied specifically to the Weirton Area 24-hour data for the years 2000 through 2004, the CDV is 137 $\mu g/m^3$. The actual 5-year average design value for the Weirton Area is 96.8 $\mu g/m^3$ which is below the level of 98 $\mu g/m^3$ established for the LMP option. Furthermore, the maximum site average design value of 105.2 $\mu g/m^3$ is less than the area-specific CDV of 137 $\mu g/m^3$.

There is no expected population growth in the Weirton Area. The impact of vehicle emissions in the Weirton Area has been determined to be an insignificant contributor to PM–10 nonattainment in the area. Details can be found in the TSD.

Based on our foregoing analysis, we have determined that the Weirton Area qualifies for use of the LMP option.

D. Does the LMP Submitted Meet all the Requirements for a Fully Approved Maintenance Plan?

The Weirton Area meets the criteria for using a LMP for redesignation. The LMP does not require a modeling demonstration to show maintenance of the NAAQS. A projected emissions inventory is also not required. The LMP does require the following:

1. An attainment year emissions inventory
2. Assurance of continued operation of an EPA-approved air quality monitoring network
3. Contingency provisions.

The LMP for the Weirton Area, dated May 24, 2004 includes the necessary provisions for approval. Specifically, it contains the following:

1. Attainment Year Emission Inventory

In the May 24, 2004 submittal, an inventory of allowable emissions of

sources in the nonattainment area was included in the maintenance plan. This inventory will be approved into the SIP as part of the LMP. The inventory is presented in the TSD.

2. Continued Operation of Air Quality Monitoring Network

The LMP includes a commitment to continue to monitor PM–10 in the Weirton Area throughout the 10-year term of the maintenance plan to verify continued attainment of the NAAQS. The monitoring procedures will be determined in accordance with 40 CFR parts 53 and 58.

3. Contingency Measures

Pursuant to section 175A of the Act, 42 U.S.C. 7505A, a maintenance plan must include such contingency measures, as EPA deems necessary, to promptly correct any violation of the NAAQS which may occur after redesignation of the area to attainment. As explained in the Wegman and Calcagni memos, these contingency measures do not have to be fully adopted at the time of redesignation.

The State will rely on monitored ambient air data to determine the need to implement contingency measures. In the event of an exceedance of the PM–10 standard, the State will review the monitored data, the local meteorological data, and the compliance of certain local facilities identified in the maintenance plan. If all such facilities are in compliance with applicable SIP and permit emission limits, the State will then determine the additional control measures the state will need to impose on the area's stationary sources in order to continue to maintain the NAAQS.

In the event of three exceedances of the 24-hour PM–10 standard within a three-year period, the State will notify the stationary sources in the Weirton Area that the potential exists for a NAAQS violation, and that if a violation occurs, these sources will need to implement the measures previously identified. Within six months of receiving notice from the State, the stationary sources must submit a detailed plan of action to WVDEP to implement the identified additional control measures within 18 months after the state notifies the source of an actual violation of the NAAQS. The sources' additional control measure plans will be submitted to EPA for approval and incorporation into the SIP.

E. Has the State met Conformity Requirements?

As we stated previously in this notice, EPA believes the conformity SIP requirements do not apply for purposes of evaluating a redesignation request, because conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. The transportation conformity rule (40 CFR parts 51 and 93) and the general conformity rule (40 CFR parts 51 and 93) apply to nonattainment areas and maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating that a Federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the emissions budget for the area.

While EPA's LMP policy does not exempt an area from the need to demonstrate conformity, it explains that the area may demonstrate conformity without submitting an emissions budget. Under the LMP policy, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that the qualifying areas would experience so much growth in that period that a violation of the PM–10 NAAQS would result. For transportation conformity purposes, EPA concludes that mobile source emissions in these areas need not be capped at any level for the maintenance period, and therefore the requirement for a regional emissions analysis would be considered to be met. Similarly, Federal actions subject to the general conformity rule could be considered to satisfy the ''budget test'' specified in § 93.158(a)(5)(i)(A) for the same reasons that the budgets are essentially considered to be unlimited.

For Federal actions which are required to address the specific requirements of the general conformity rule, one set of requirements applies particularly to ensuring that emissions from the action will not cause or contribute to new violations of the NAAQS, exacerbate current violations, or delay timely attainment. One way that this requirement can be met is to demonstrate that ''the total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment area, would not exceed the emissions budgets specified in the applicable SIP.'' 40 CFR 93.158(a)(5)(i)(A).

The decision about whether to include specific allocations of allowable emissions increases to sources is one made by the State and local air quality agencies. These emissions budgets are not the same as those used in transportation conformity. Emissions budgets in transportation conformity are required to limit and restrain emissions. Emissions budgets in general conformity allow increases in emissions up to specified levels. West Virginia has chosen not to include specific emissions allocations for Federal projects that would be subject to the provisions of general conformity.

While areas with maintenance plans approved under the LMP option are thus essentially not subject to the budget test, the areas remain subject to other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the State will still need to document and ensure that: (a) Transportation plans and projects provide for timely implementation of SIP transportation control measures in accordance with 40 CFR 93.113; (b) transportation plans and projects comply with the fiscal constraint element per 40 CFR 93.108; (c) the MPO's interagency consultation procedures meet applicable requirements of 40 CFR 93.105; (d) conformity of transportation plans is determined no less frequently than every four years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104; (e) the latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111; (6) projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and, (7) project sponsors and/or operators provide appropriate written commitments as specified in 40 CFR 93.125.

IV. Proposed Action

Based on the foregoing analysis, we have determined that the Weirton Area fulfills the criteria for redesignation as attainment with the PM–10 NAAQS. EPA has determined that the submitted maintenance plan meets the requirements of the Act, and the Weirton Area fulfills the criteria for redesignation to attainment for the PM–10 NAAQS based on the State's May 24, 2004 submission. EPA is proposing to determine that the area has continued to attain the PM–10 NAAQS and to determine that certain attainment demonstration requirements, along with other related requirements of part D title I of the CAA as set forth above, are not applicable to the area. EPA is proposing to redesignate the Weirton PM–10

moderate nonattainment area to attainment and to approve the West Virginia SIP revision for the 10-year maintenance plan for the Weirton Area, submitted on May 24, 2004. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to affect the status of a geographical area, does not impose any new requirements on sources, or allow the state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This proposed rule to redesignate the Weirton Area to attainment with the PM–10 NAAQS and approve the LMP as a SIP revision does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air Pollution Control, National parks, Wilderness areas.

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

Dated: May 3, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E6–7216 Filed 5–10–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2006–0429; FRL–8168–3]

Tennessee: Proposed Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Tennessee has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Tennessee. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble of the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal.

If we receive comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment.

DATES: Comments must be received on or before June 12, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2006–0429 by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: *Gleaton.Gwen@epa.gov.*
- Fax: (404) 562–8439 (prior to faxing, please notify the EPA contact listed below)
- Mail: Send written comments to Gwen Gleaton, RCRA Services Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The

Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

• Hand Delivery: Gwen Gleaton, RCRA Services Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R04–RCRA–2006–0429. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*).

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy. You may view and copy Tennessee's application at The EPA Region 4, Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The Library is open from 8:30 a.m. to 4 p.m. Monday through Friday, excluding legal holidays. The Library telephone number is (404) 562–8190.

You may also view and copy Tennessee's application from 8 a.m. to 4:30 p.m. at the following address: Tennessee Department of Environment and Conservation, Division of Solid Waste Management, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535.

FOR FURTHER INFORMATION CONTACT: Gwen Gleaton, RCRA Services Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; (404) 562–8500; fax number: (404) 562–8439; e-mail address: *Gleaton.Gwen @epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: April 25, 2006.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. 06–4396 Filed 5–10–06; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 71, No. 91

Thursday, May 11, 2006

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 8, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

Agricultural Marketing Service

Title: Reporting Requirements Under Regulations Governing Inspection and Grading Services of Manufactured or Processed Dairy Products.

OMB Control Number: 0581–0126.

Summary of Collection: The Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621–1627), directs and authorizes the Department to develop standards of quality, condition, quantity, grading programs, and services to enable a more orderly marketing of agricultural products. The Government, industry and consumer will be well served if the Government can help ensure that dairy products are produced under sanitary conditions and that buyers have the choice of purchasing the quality of the product they desire. The dairy grading program is a voluntary user fee program. In order for a voluntary inspection program to perform satisfactorily with a minimum of confusion, information must be collected to determine what services are requested.

Need and Use of the Information: The information collected is used to identify the product offered for grading, to identify and contact the individuals responsible for payment of the grading fee and to identify the person responsible for administering the grade label program. The Agriculture Marketing service will use forms to collect essential information to carry out and administer the inspection and grading program.

Description of Respondents: Business or other for profit.

Number of Respondents: 400.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 360.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–7207 Filed 5–10–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–815, A–533–806, C–533–807)

Continuation of Antidumping and Countervailing Duty Orders: Sulfanilic Acid from the People's Republic of China and India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (the ''ITC'') that revocation of the antidumping duty (''AD'') orders on sulfanilic acid from the People's Republic of China (''PRC'') and India would likely lead to continuation or recurrence of dumping, that revocation of the countervailing duty (''CVD'') order on sulfanilic acid from India would likely lead to continuation or recurrence of a countervailable subsidy, and that revocation of these AD and CVD orders would likely lead to a continuation or recurrence of material injury to an industry in the United States, the Department is publishing this notice of the continuation of these AD and CVD orders.

EFFECTIVE DATE: May 11, 2006.

FOR FURTHER INFORMATION CONTACT: Robert Bolling (PRC Order), Tipten Troidl (Indian AD/CVD Orders), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3434 and (202) 482–1767, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2005, the Department initiated and the ITC instituted sunset reviews of the AD and CVD orders on sulfanilic acid from the PRC and India, pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (the ''Act''), respectively. *See Notice of Initiation of Five–Year (''Sunset'') Reviews*, 70 FR 22632 (May 2, 2005). As a result of its reviews, the Department found that revocation of the AD orders would likely lead to continuation or recurrence of dumping and that revocation of the CVD order would

likely lead to continuation or recurrence of subsidization, and notified the ITC of the margins of dumping and the subsidy rates likely to prevail were the orders revoked. *See Sulfanilic Acid from India and the People's Republic of China; Notice of Final Results of Expedited Sunset Reviews of Antidumping Duty Orders*, 70 FR 53164 (September 7, 2005) and *Final Results of Expedited Sunset Review of Countervailing Duty Order: Sulfanilic Acid from India*, 70 FR 53168 (September 7, 2005) (collectively, ''*Final Results*'').

On April 27, 2006, the ITC determined that revocation of the AD and CVD orders on sulfanilic acid from the PRC and India would likely lead to continuation or recurrence of material injury within a reasonably foreseeable time. *See Sulfanilic Acid from China and India*, 71 FR 24860 (April 27, 2006) (''*ITC Determination*'') and USITC Publication 3849 (April 2006), entitled *Sulfanilic Acid from China and India* (Inv. Nos. 701–TA–318 and 731–TA–538 and 561 (Second Review)).

Scope of the Orders

The merchandise covered by the AD and CVD orders is all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid (sodium sulfanilate).

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used a a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additive. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry free flowing powders.

Technical sulfanilic acid contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials. Sodium salt of sulfanilic acid (sodium sulfanilate) is a granular or crystalline material containing 75 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

In response to a request from 3V Corporation, on May 5, 1999, the Department clarified that sodium sulfanilate processed in Italy from sulfanilic acid produced in India is within the scope of the AD and CVD orders on sulfanilic acid from India. *See Notice of Scope Rulings*, 65 FR 41957 (July 7, 2000).

The merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 2921.42.22 and 2921.42.24.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Determination

As a result of the determinations by the Department and the ITC that revocation of these AD and CVD orders would likely lead to continuation or recurrence of dumping or a countervailable subsidy, and of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD and CVD orders on sulfanilic acid from the PRC and India. U.S. Customs and Border Protection will continue to collect cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of these orders is the date of publication in the **Federal Register** of this Notice of Continuation.

Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five–year review of these orders not later than April 2011.

These five–year (sunset) reviews and notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: May 4, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–7228 Filed 5–10–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–588–824)

Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Preliminary Results of Antidumping Duty Administrative Review, and Preliminary Intent to Rescind, In part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on certain corrosion–resistant carbon steel flat products (''CORE'') from Japan. The period of review (''POR'') is August 1, 2004, through July 31, 2005. This review covers imports of CORE from Kawasaki Steel Corporation (''Kawasaki'') and Nippon Steel Corporation (''Nippon Steel''). We have preliminarily found that there were no entries of CORE produced by Kawasaki. Therefore, we preliminarily determine to rescind this review with respect to Kawasaki. Further, we preliminarily determine that sales of subject merchandise sold by Nippon Steel have been made at less than normal value.

If these preliminary results are adopted in our final results of this administrative review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of Nippon Steel's merchandise during the POR, in accordance with 19 CFR 351.106 and 351.212(b).

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding should also submit with each argument: (1) a statement of the issue and (2) a brief summary of the argument. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: May 11, 2006.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett, George McMahon, or James Terpstra, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4161, (202) 482–1167, or (202) 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on CORE from Japan on August 19, 1993. *See Antidumping Duty Orders: Certain Corrosion–Resistant Carbon Steel Flat Products from Japan*, 58 FR 44163 (Aug. 19, 1993). On August 31, 2005, Nucor Corporation (''Nucor''), a domestic producer of the subject merchandise, requested an administrative review (''AR'') of the antidumping order referenced above with respect to Kawasaki and Nippon Steel. *See Letter from Nucor Corporation Requesting Administrative Review*. On September 28, 2005, the Department published a notice of initiation of this antidumping duty AR. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in*

Part, 70 FR 56631 (Sept. 28, 2005). On November 19, 2005, the Department issued Sections A, B, C and D questionnaires to JFE Steel and its affiliate, Kawasho Corporation (collectively ''JFE Steel''), and to Nippon Steel.

Issuing the questionnaire to JFE Steel was an inadvertent error based on a slight difference between the request for initiation in this and the previous review. In the previous administrative review, Nucor requested an administrative review of ''Kawasaki Steel Corp. (and any alleged successor–in-interest including JFE Steel Corp.)'' Based on this request, we initiated for Kawasaki /JFE and sent JFE a questionnaire. In the present review, Nucor requested a review solely for ''Kawasaki Steel Corporation'' and we initiated the review solely for ''Kawasaki Steel Corporation.'' Because Nucor did not included a review request for ''(any alleged successor–in-interest including JFE),'' we did not initiate for Kawasaki/JFE, and should not have sent JFE a questionnaire.

JFE Steel responded to the Department's questionnaire on November 28, 2006, requesting that the Department withdraw the questionnaire because no AR had been initiated with respect to JFE Steel. The Department agreed and withdrew the questionnaire. *See* ''Intent to Rescind, in Part'' section of this notice.

In response to the questionnaire it received, Nippon Steel sent a letter to the Department stating it would not participate in the AR. *See Letter from Nippon Steel Corporation*, Dec. 9, 2005. The Department issued a letter Nippon Steel advising them that nonparticipation might result in the application of adverse faces available (''AFA'') pursuant to section 776(a) and (b) of the Tariff Act of 1930, as amended (''the Act''). *See Letter to Nippon Steel: Nonparticipation in Administrative Review (A–588–824)*, Jan. 17, 2006. *See* ''Adverse Facts Available'' section of this notice.

Intent to Rescind, in Part

In response to the questionnaire, JFE Steel submitted letters to the Department arguing that because JFE Steel was not named in the Department's Notice of Initiation, it was not required to respond to the November 19, 2005, questionnaire and requesting that the Department withdraw its questionnaire. *See Letter from JFE Steel*, Nov. 28, 2005; *Letter from JFE Steel*, Dec. 9, 2005; and *Letter from JFE Steel*, Jan. 26, 2006. Nucor submitted a letter to the Department agreeing with JFE Steel that Nucor had not requested a review of JFE Steel and that JFE Steel does not need to respond to the questionnaire. Nucor also stated that information recently became available on the internet that demonstrates that Kawasaki ceased to be a producer and exporter of subject merchandise in 2003, and is no longer capable of exporting subject merchandise to the United States. *See Letter from Nucor: Response to Comments by JFE Steel Corporation* at 2–3, Dec. 19, 2005.

As a result of Nucor's statements, the Department conducted a data query to determine whether there were any shipments of CORE produced by Kawasaki during the POR. The Department found that there were no entries by Kawasaki during the POR. Further, we found that there were no entries under the Kawasaki–specific 10–digit case number. *See Memo to the File*, Feb. 10, 2006. Additionally, the Department withdrew the questionnaire issued to JFE Steel and Kawasho Corporation. *See Letter to JFE Steel*, Feb. 10, 2006. Based on our analysis of the shipment data, we are treating Kawasaki as a non–shipper for the purpose of this review. Therefore, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice, we preliminarily determine to rescind this review, in part. *See e.g.*, *Stainless Steel Bar from India; Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review, and Partial Rescission of Administrative Review*, 65 FR 12209 (March 8, 2000); *Persulfates From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review*, 65 FR 18963 (April 10, 2000).

Scope of Order

The products subject to this order include flat–rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion–resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron–based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 mm, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness, or if of a thickness of 4.75 mm or more, are of a width which exceeds 150 mm and measures at least twice the thickness, as currently classifiable in the HTS under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090.

Included in the order are flat–rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') -- for example, products which have been beveled or rounded at the edges.

Excluded from the scope of the order are flat–rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin–free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from the scope of the order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Also excluded from the scope of the order are certain clad stainless flat–rolled products, which are three–layered corrosion- resistant carbon steel flat–rolled products less than 4.75 mm in composite thickness that consist of a carbon steel flat–rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio. *See Antidumping Duty Orders: Certain Corrosion–Resistant Carbon Steel Flat Products From Japan*, 58 FR 44163 (Aug. 19, 1993).

Exclusions due to Changed Circumstances Reviews

The Department has issued the following rulings to date:

Excluded from the scope of this order are imports of certain corrosion–resistant carbon steel flat products meeting the following specifications: widths ranging from 10 mm (0.394 inches) through 100 mm (3.94 inches); thicknesses, including coatings, ranging from 0.11 mm (0.004 inches) through 0.60 mm (0.024 inches); and a coating that is from 0.003 mm (0.00012 inches) through 0.005 mm (0.000196 inches) in thickness and that is comprised of three evenly applied layers, the first layer

consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, and finally a layer consisting of silicate. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 62 FR 66848 (Dec. 22, 1997).

Also excluded from the scope of this order are imports of subject merchandise meeting all of the following criteria: (1) Widths ranging from 10 mm (0.394 inches) through 100 mm (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 mm (0.004 inches) through 0.60 mm (0.024 inches); and (3) a coating that is from 0.003 mm (0.00012 inches) through 0.005 mm (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 64 FR 14862 (Mar. 29, 1999).

Also excluded from the scope of this order are: (1) Carbon steel flat products measuring 1.84 mm in thickness and 43.6 mm or 16.1 mm in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys; and (2) carbon steel flat products measuring 0.97 mm in thickness and 20 mm in width consisting of carbon steel coil (SAE 1008) with a two–layer lining, the first layer consisting of a copper–lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% polytetrafluorethylene (''PTFE''), 3% to 5% molybdenum disulfide and less than 2% other materials. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Antidumping Duty Review, and Revocation in Part of Antidumping Duty Order*, 64 FR 57032 (Oct. 22, 1999).

Also excluded from the scope of the order are imports of doctor blades meeting the following specifications: carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 mm (0.006 inches), a width between 31.75 mm (1.25 inches) and 50.80 mm (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900--990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to 0.03% of phosphorous; less than or equal to 0.006% of sulfur; other elements representing 0.24%; and the remainder of iron. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 65 FR 53983 (Sept. 6, 2000).

Also excluded from the scope of the order are imports of carbon steel flat products meeting the following specifications: carbon steel flat products measuring 1.64 mm in thickness and 19.5 mm in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium; less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 66 FR 8778 (Feb. 2, 2001).

Also excluded from the scope of the order are carbon steel flat products meeting the following specifications: (1) Carbon steel flat products measuring 0.975 mm in thickness and 8.8 mm in width consisting of carbon steel coil (SAE 1012) clad with a two–layer lining, the first layer consisting of a copper–lead alloy powder that is balance copper, 9%-11% tin, 9%-11% lead, maximum 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 13%-17% carbon, 13%-17% aromatic polyester, with a balance (approx. 66%-74%) of PTFE; and (2) carbon steel flat products measuring 1.02 mm in thickness and 10.7 mm in width consisting of carbon steel coil (SAE 1008) with a two–layer lining, the first layer consisting of a copper–lead alloy powder that is balance copper, 9%-11% tin, 9%-11% lead, less than 0.35% iron, and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45%-55% lead, 3%-5% molybdenum disulfide, with a balance (approx. 40%-52%) of PTFE. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 66 FR 15075 (Mar. 15, 2001).

Also excluded from this order are carbon steel flat products meeting the following specifications: (1) carbon steel coil or strip, measuring 1.93 mm or 2.75 mm (0.076 inches or 0.108 inches) in thickness, 87.3 mm or 99 mm (3.437 inches or 3.900 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 0.3% antimony, 2.5% silicon, 1% maximum total other (including iron), and remainder aluminum; and (2) carbon steel coil or strip, clad with aluminum, measuring 1.75 mm (0.069 inches) in thickness, 89 mm or 94 mm (3.500 inches or 3.700 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 2.5% silicon, 0.3% antimony, 1% maximum total other (including iron), and remainder aluminum. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 66 FR 20967 (Apr. 26, 2001).

Also excluded from this order are carbon steel flat products meeting the following specifications: carbon steel coil or strip, measuring a minimum of and including 1.10 mm to a maximum of and including 4.90 mm in overall thickness, a minimum of and including 76.00 mm to a maximum of and including 250.00 mm in overall width, with a low carbon steel back comprised of: carbon under 0.10%, manganese under 0.40%, phosphorous under 0.04%, sulfur under 0.05%, and silicon under 0.05%; clad with aluminum alloy comprised of: under 2.51% copper, under 15.10% tin, and remainder aluminum as listed on the mill specification sheet. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 67 FR 7356 (Feb. 19, 2002).

Also excluded from this order are products meeting the following specifications: (1) Diffusion–annealed, non–alloy nickel–plated carbon products, with a substrate of cold–rolled battery grade sheet (''CRBG'') with both sides of the CRBG initially electrolytically plated with pure, unalloyed nickel and subsequently annealed to create a diffusion between the nickel and iron substrate, with the nickel plated coating having a thickness of 0–5 microns per side with one side equaling at least 2 microns; and with the nickel carbon sheet having a thickness of from 0.004'' (0.10 mm) to 0.030'' (0.762 mm) and conforming to the following chemical specifications (%): C ≤ 0.08; Mn ≤ 0.45; P ≤ 0.02; S ≤ 0.02; Al ≤ 0.15; and Si ≤ 0.10; and the following physical specifications: Tensile = 65 KSI maximum; Yield = 32 - 55 KSI; Elongation = 18% minimum (aim 34%); Hardness = 85 - 150 Vickers; Grain Type = Equiaxed or Pancake; Grain Size (ASTM) = 7–12; Delta r value = aim less than 0.2; Lankford value ≥1.2.; and (2) next generation diffusion–annealed nickel plate meeting the following specifications: (a) Nickel–graphite plated, diffusion–annealed, tin–nickel plated carbon products, with a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion–annealed tin–nickel plated carbon steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel–tin alloy is created, and an additional layer of mixture of natural nickel and graphite then electrolytically plated on the top side of the strip of the nickel–tin alloy; having a coating thickness: top side: nickel–graphite, tin–nickel layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers, nickel–graphite layer only > 0.2 micrometers, and bottom side: nickel layer ≥ 1.0 micrometers; (b) nickel–graphite, diffusion–annealed, nickel plated carbon products, having a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion–annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; with both sides of the cold rolled base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion between the nickel and the iron substrate; with an additional layer of natural nickel–graphite then electrolytically plated on the top side of the strip of the nickel plated steel strip; with the nickel–graphite, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having a coating thickness: top side: nickel–graphite, tin–nickel layer ≥ 1.0 micrometers; nickel–graphite layer ≥ 0.5 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (c) diffusion–annealed nickel–graphite plated products, which are cold–rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; having the bottom side of the base metal first electrolytically plated with natural nickel, and the top side of the strip then plated with a nickel–graphite composition; with the strip then annealed to create a diffusion of the nickel–graphite and the iron substrate on the bottom side; with the nickel–graphite and nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having coating thickness: top side: nickel–graphite layer ≥ 1.0 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (d) nickel–phosphorous plated diffusion–annealed nickel plated carbon product, having a natural composition mixture of nickel and phosphorus electrolytically plated to the top side of a diffusion–annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion of the nickel and iron substrate; another layer of the natural nickel–phosphorous then electrolytically plated on the top side of the nickel plated steel strip; with the nickel–phosphorous, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel–phosphorous, nickel layer ≥ 1.0 micrometers; nickel–phosphorous layer ≥ 0.1 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (e) diffusion–annealed, tin–nickel plated products, electrolytically plated with natural nickel to the top side of a diffusion–annealed tin–nickel plated cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the cold rolled strip initially electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel–tin alloy is created, and an additional layer of natural nickel then electrolytically plated on the top side of the strip of the nickel–tin alloy; sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having coating thickness: top side: nickel–tin-nickel combination layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; and (f) tin mill products for battery containers, tin and nickel plated on a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel; then annealed to create a diffusion of the nickel and iron substrate; then an additional layer of natural tin electrolytically plated on the top side; and again annealed to create a diffusion of the tin and nickel alloys; with the tin–nickel, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel–tin layer ≥1 micrometer; tin layer alone ≥0.05 micrometers; bottom side: nickel layer ≥1.0 micrometer. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 67 FR 47768 (Jul. 22, 2002).

Also excluded from this order are products meeting the following specifications: (1) Widths ranging from 10 mm (0.394 inches) through 100 mm (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 mm (0.004 inches) through 0.60 mm (0.024 inches); and (3) a coating that is from 0.003 mm (0.00012 inches) through 0.005 mm (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of phosphate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of phosphate, and finally a

layer consisting of silicate. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 67 FR 57208 (Sept. 9, 2002).

Also excluded from this order are products meeting the following specifications: (1) Flat–rolled products (provided for in HTSUS subheading 7210.49.00), other than of high–strength steel, known as ''ASE Iron Flash'' and either: (A) having a base layer of zinc–based zinc–iron alloy applied by hot–dipping and a surface layer of iron–zinc alloy applied by electrolytic process, the weight of the coating and plating not over 40% by weight of zinc; or (B) two–layer-coated corrosion–resistant steel with a coating composed of (a) a base coating layer of zinc–based zinc–iron alloy by hot–dip galvanizing process, and (b) a surface coating layer of iron–zinc alloy by electro–galvanizing process, having an effective amount of zinc up to 40% by weight, and (2) corrosion resistant continuously annealed flat–rolled products, continuous cast, the foregoing with chemical composition (percent by weight): carbon not over 0.06% by weight, manganese 0.20 or more but not over 0.40, phosphorus not over 0.02, sulfur not over 0.023, silicon not over 0.03, aluminum 0.03 or more but not over 0.08, arsenic not over 0.02, copper not over 0.08 and nitrogen 0.003 or more but not over 0.008; and meeting the characteristics described below: (A) Products with one side coated with a nickel–iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a two–layer coating composed of a base nickel–iron-diffused coating layer and a surface coating layer of annealed and softened pure nickel, with total coating thickness for both layers of more than 2 micrometers; surface roughness (RA–microns) 0.18 or less; with scanning electron microscope (SEM) not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (B) products having one side coated with a nickel–iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a four–layer coating composed of a base nickel–iron-diffused coating layer; with an inner middle coating layer of annealed and softened pure nickel, an outer middle surface coating layer of hard nickel and a topmost nickel–phosphorus-plated layer; with combined coating thickness for the four layers of more than 2 micrometers; surface roughness (RA–microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (C) products having one side coated with a nickel–iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a three–layer coating composed of a base nickel–iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, luster–agent-added nickel which is not heat–treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA–microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; or (D) products having one side coated with a nickel–iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a three–layer coating composed of a base nickel–iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, pure nickel which is not heat–treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA–microns) 0.18 or less; SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length. *See Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 68 FR 19970 (Apr. 23, 2003).

Also excluded from the scope of this order is merchandise meeting the following specifications: (1) Base metal: Aluminum Killed, Continuous Cast, Carbon Steel SAE 1008, (2) Chemical Composition: Carbon 0.08% max. Silicon, 0.03% max., Manganese 0.40% max., Phosphorus, 0.020% max., Sulfur 0.020% max., (3) Nominal thickness of 0.054 mm, (4) Thickness tolerance minimum 0.0513 mm, maximum 0.0567 mm, (5) Width of 600 mm or greater, and (7) Nickel plate min. 2.45 microns per side. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, In Part: Certain Corrosion–Resistant Carbon Steel Flat Products From Japan*, 70 FR 2608 (Jan. 14, 2005).

Also excluded from the scope of this order are the following 24 separate corrosion–resistant carbon steel coil products meeting the following specifications:

Product 1 Products described in industry usage as of carbon steel, measuring 1.625 mm to 1.655 mm in thickness and 19.3 mm to 19.7 mm in width, consisting of carbon steel coil (SAE 1010) with a lining clad with an aluminum alloy containing by weight 10% or more but not more than 15% of tin, 1% or more but not more than 3% of lead, 0.7% or more but not more than 1.3% of copper, 1.8% or more but not more than 3.5% of silicon, 0.1% or more but not more than 0.7% of chromium and less than or equal to 1% of other materials, and meeting the requirements of SAE standard 788 for Bearing and Bushing Alloys.

Product 2 Products described in industry usage as of carbon steel, measuring 0.955 mm to 0.985 mm in thickness and 8.6 mm to 9.0 mm in width, consisting of carbon steel coil (SAE 1012) clad with a two–layer lining, the first layer consisting of a copper–lead alloy powder that contains by weight 9% or more but not more than 11% of tin, 9% or more but not more than 11% of lead, less than 0.05% phosphorus, less than 0.35% iron and less than or equal to 1% other materials, and meeting the requirements of SAE standard 797 for Bearing and Bushing Alloys, with the second layer containing by weight 13% or more but not more than 17% of carbon, 13% or more but not more than 17% of aromatic polyester, and the remainder (approx. 66–74%) of PTFE.

Product 3 Products described in industry usage as of carbon steel, measuring 1.01 mm to 1.03 mm in thickness and 10.5 mm to 10.9 mm in width, consisting of carbon steel coil (SAE 1010) with a two–layer lining, the first layer consisting of a copper–lead alloy powder that contains by weight 9% or more but not more than 11% of tin, 9% or more but not more than 11% of lead, less than 1% zinc and less than or equal to 1% other materials, and meeting the requirements of SAE standard 797 for Bearing and Bushing Alloys, with the second layer containing by weight 45% or more but not more than 55% of lead, 3% or more but not more than 5% of molybdenum disulfide, and the remainder made up of PTFE (approximately 38% to 52%) and less than 2% in the aggregate of other materials.

Product 4 Products described in industry usage as of carbon steel, measuring 1.8 mm to 1.88 mm in thickness and 43.4 mm to 43.8 mm or 16.1 mm to 1.65 mm in width, consisting of carbon steel coil (SAE 1010) clad with an aluminum alloy that contains by weight 19% to 20% tin, 1% to 1.2% copper, less than 0.3% silicon, 0.15% nickel and less than 1% in the aggregate other materials and meeting

the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Product 5 Products described in industry usage as of carbon steel, measuring 0.95 mm to 0.98 mm in thickness and 19.95 mm to 20 mm in width, consisting of carbon steel coil (SAE 1010) with a two–layer lining, the first layer consisting of a copper–lead alloy powder that contains by weight 9% or more but not more than 11% of tin, 9% or more but not more than 11% of lead, less than 1% of zinc and less than or equal to 1% in the aggregate of other materials and meeting the requirements of SAE standard 797 for Bearing and Bushing Alloys, with the second layer consisting by weight of 45% or more but not more than 55% of lead, 3% or more but not more than 5% of molybdenum disulfide and with the remainder made up of PTFE (approximately 38% to 52%) and up to 2% in the aggregate of other materials.

Product 6 Products described in industry usage as of carbon steel, measuring 0.96 mm to 0.98 mm in thickness and 18.75 mm to 18.95 mm in width; base of SAE 1010 steel with a two–layer lining, the first layer consisting of copper–base alloy powder with chemical composition (percent by weight): tin 9 to 11, lead 9 to 11, phosphorus less than 0.05, ferrous group less than 0.35, and other materials less than 1%; meeting the requirements of SAE standard 797 for bearing and bushing alloys; the second layer consisting of lead 33 to 37%, aromatic polyester 28 to 32%, and other materials less than 2% with a balance of PTFE.

Product 7 Products described in industry usage as of carbon steel, measuring 1.21 mm to 1.25 mm in thickness and 19.4 mm to 19.6 mm in width; base of SAE 1012 steel with lining of copper base alloy with chemical composition (percent by weight): tin 9 to 11, lead 9 to 11, phosphorus less than 0.05, ferrous group less than 0.35 and other materials less than 1%; meeting the requirements of SAE standard 797 for bearing and bushing alloys.

Product 8 Products described in industry usage as of carbon steel, measuring 0.96 mm to 0.98 mm in thickness and 21.5 mm to 21.7 mm in width; base of SAE 1010 steel with a two–layer lining, the first layer consisting of copper–base alloy powder with chemical composition (percent by weight): tin 9 to 11, lead 9 to 11, phosphorus less than 0.05%, ferrous group less than 0.35 and other materials less than 1; meeting the requirements of SAE standard 797 for bearing and bushing alloys; the second layer consisting of (percent by weight) lead 33 to 37, aromatic polyester 28 to 32 and other materials less than 2 with a balance of PTFE.

Product 9 Products described in industry usage as of carbon steel, measuring 0.96 mm to 0.99 mm in thickness and 7.65 mm to 7.85 mm in width; base of SAE 1012 steel with a two–layer lining, the first layer consisting of copper–based alloy powder with chemical composition (percent by weight): tin 9 to 11, lead 9 to 11, phosphorus less than 0.05, ferrous group less than 0.35 and other materials less than 1; meeting the requirements of SAE standard 797 for bearing and bushing alloys; the second layer consisting of (percent by weight) carbon 13 to 17 and aromatic polyester 13 to 17, with a balance of PTFE.

Product 10 Products described in industry usage as of carbon steel, measuring 0.955 mm to 0.985 mm in thickness and 13.6 mm to 14 mm in width; base of SAE 1012 steel with a two–layer lining, the first layer consisting of copper–based alloy powder with chemical composition (percent by weight): tin 9 to 11, lead 9 to 11, phosphorus less than 0.05, ferrous group less than 0.35 and other materials less than 1; meeting the requirements of SAE standard 797 for bearing and bushing alloys; the second layer consisting of (percent by weight) carbon 13 to 17, aromatic polyester 13 to 17, with a balance (approximately 66 to 74) of PTFE.

Product 11 Products described in industry usage as of carbon steel, measuring 1.2 mm to 1.24 mm in thickness; 20 mm to 20.4 mm in width; consisting of carbon steel coils (SAE 1012) with a lining of sintered phosphorus bronze alloy with chemical composition (percent by weight): tin 5.5 to 7; phosphorus 0.03 to 0.35; lead less than 1 and other non–copper materials less than 1.

Product 12 Products described in industry usage as of carbon steel, measuring 1.8 mm to 1.88 mm in thickness and 43.3 mm to 43.7 mm in width; base of SAE 1010 steel with a lining of aluminum based alloy with chemical composition (percent by weight: tin 10 to 15, lead 1 to 3, copper 0.7 to 1.3, silicon 1.8 to 3.5, chromium 0.1 to 0.7 and other materials less than 1; meeting the requirements of SAE standard 788 for bearing and bushing alloys.

Product 13 Products described in industry usage as of carbon steel, measuring 1.8 mm to 1.88 mm in thickness and 24.2 mm to 24.6 mm in width; base of SAE 1010 steel with a lining of aluminum alloy with chemical composition (percent by weight): tin 10 to 15, lead 1 to 3, copper 0.7 to 1.3, silicon 1.8 to 3.5, chromium 0.1 to 0.7 and other materials less than 1; meeting the requirements of SAE standard 788 for bearing and bushing alloys.

Product 14 Flat–rolled coated SAE 1009 steel in coils, with thickness not less than 0.915 mm but not over 0.965 mm, width not less than 19.75 mm or more but not over 20.35 mm; with a two–layer coating; the first layer consisting of tin 9 to 11%, lead 9 to 11%, zinc less than 1%, other materials (other than copper) not over 1% and balance copper; the second layer consisting of lead 45 to 55%, molybdenum disulfide (MoS2) 3 to 5%, other materials not over 2%, balance PTFE.

Product 15 Flat–rolled coated SAE 1009 steel in coils with thickness not less than 0.915 mm or more but not over 0.965 mm; width not less than 18.65 mm or more but not over19.25 mm; with a two–layer coating; the first layer consisting of tin 9 to 11%, lead 9 to 11%, zinc less than 1%, other materials (other than copper) not over 1%, balance copper; the second layer consisting of lead 33 to 37%, aromatic polyester 13 to 17%, other materials other than PTFE less than 2%, balance PTFE.

Product 16 Flat–rolled coated SAE 1009 steel in coils with thickness not less than 0.920 mm or more but not over 0.970 mm; width not less than 21.35 mm or more but not over 21.95 mm; with a two–layer coating; the first layer consisting of tin 9 to 11%, lead 9 to 11%, zinc less than 1%, other materials (other than copper) not over 1%, balance copper; the second layer consisting of lead 33 to 37%, aromatic polyester 13 to 17%, other materials (other than PTFE) less than 2%, balance PTFE.

Product 17 Flat–rolled coated SAE 1009 steel in coils with thickness not less than 1.80 mm or more but not over 1.85 mm, width not less than 14.7 mm or more but not over 15.3 mm; with a lining consisting of tin 2.5 to 4.5%, lead 21.0 to 25.0%, zinc less than 3%, iron less than 0.35%, other materials (other than copper) less than 1%, balance copper.

Product 18 Flat–rolled coated SAE 1009 steel in coils with thickness 1.59 mm or more but not over 1.64 mm; width 14.5 mm or more but not over 15.1 mm; with a lining consisting of tin 2.3 to 4.2%, lead 20 to 25%, iron 1.5 to 4.5%, phosphorus 0.2 to 2.0%, other materials (other than copper) less than 1%, balance copper.

Product 19 Flat–rolled coated SAE 1009 steel in coils with thickness not less than 1.75 mm or more but not over 1.8 mm; width not less than 18.0 mm or

more but not over 18.6 mm; with a lining consisting of tin 2.3 to 4.2%, lead 20 to 25%, iron 1.5 to 4.5%, phosphorus 0.2 to 2.0%, other materials (other than copper) less than 1%, balance copper.
Product 20 Flat–rolled coated SAE 1009 steel in coils with thickness 1.59 mm or more but not over 1.64 mm; width 13.6 mm or more but not over 14.2 mm; with a lining consisting of tin 2.3 to 4.2%, lead 20 to 25%, iron 1.5 to 4.5%, phosphorus 0.2 to 2.0%, other materials (other than copper) less than 1%, with a balance copper.
Product 21 Flat–rolled coated SAE 1009 steel in coils with thickness 1.59 mm or more but not over 1.64 mm; width 11.5 mm or more but not over 12.1 mm; with a lining consisting of tin 2.3 to 4.2%, lead 20 to 25%, iron 1.5 to 4.5%, phosphorus 0.2 to 2.0%, other materials (other than copper) less than 1%, balance copper.
Product 22 Flat–rolled coated SAE 1009 steel in coils with thickness 1.59 mm or more but not over 1.64 mm; width 11.2 mm or more but not over 11.8 mm, with a lining consisting of copper 0.7 to 1.3%, tin 17.5 to 22.5%, silicon less than 0.3%, nickel less than 0.15%, other materials less than 1%, balance aluminum.
Product 23 Flat–rolled coated SAE 1009 steel in coils with thickness 1.59 mm or more but not over 1.64 mm; width 7.2 mm or more but not over 7.8 mm; with a lining consisting of copper 0.7 to 1.3%, tin 17.5 to 22.5%, silicon less than 0.3%, nickel less than 0.15%, other materials (other than copper) less than 1%, balance copper.
Product 24 Flat–rolled coated SAE 1009 steel in coils with thickness 1.72 mm or more but not over 1.77 mm; width 7.7 mm or more but not over 8.3 mm; with a lining consisting of copper 0.7 to 1.3%, tin 17.5 to 22.5%, silicon less than 0.3%, nickel less than 0.15%, other materials (other than copper) less than 1%, balance copper. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part: Certain Corrosion–Resistant Carbon Steel Flat Products From Japan*, 70 FR 5137 (Feb. 1, 2005).

Adverse Facts Available

On December 9, 2005, Nippon Steel responded to the Department's questionnaire with a letter stating they would not participate in the AR. On January 17, 2006, the Department issued a letter to Nippon Steel stating that nonparticipation could result in the application of AFA pursuant to section 776(a) and (b) of the Act. *See Letter to Nippon Steel: Nonparticipation in Administrative Review (A–588–824)*, Jan. 17, 2006. Since its December 9, 2005, letter, Nippon steel has not responded further to the questionnaire nor otherwise participated in this review.

Section 776(a)(2) of the Act provides that the Department shall use facts available (''FA'') when a party withholds information that has been requested by the Department; does not provide the Department with information by the established deadline or in the form and manner requested by the Department; significantly impedes a proceeding; or provides such information but the information cannot be verified. Because of Nippon Steel's refusal to participate in this AR, the Department must make its determination based upon FA.

In addition, section 776(b) of the Act provides that adverse inferences may be used in selecting from among facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103–316, at 870, (1994) (''SAA''), *reprinted in* 1994 U.S.C.C.A.N. 4040, 4198–4199; *Nippon Steel Corp. v. United States*, 337 F.3d. 1373, 1380–1383 (Fed. Cir. 2003). Nippon Steel's refusal to participate demonstrates that Nippon Steel has failed to act to the best of its ability, as described in section 776(b) of the Act. Thus, we have determined to apply an adverse inference in the selection of FA.

When applying an adverse inference, section 776(b) of the Act authorizes the Department to use, as AFA, information derived from the petition, a final investigation determination, a previous administrative review, or any other information placed on the record (so–called ''secondary information''). No preference among the four alternatives is suggested by section 776(b) of the Act; the only requirement is that secondary information relied upon must be corroborated ''to the extent practicable'' with information that is ''reasonably'' at the Department's disposal. In reviews, it is the Department's practice to select, as AFA, the highest rate determined for any respondent in any segment of the proceeding. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review and Final Partial Rescission: Certain Cut–to-Length Carbon Steel Plate from Romania*, 71 FR 7008, 7010–11 (Feb. 10, 2006), and accompanying Issues and Decision Memorandum, Issue 1; *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504, 19506 (Apr. 21, 2003) (*citing Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (Apr. 22, 2002)). The U.S. Court of International Trade (''CIT'') and the U.S. Court of Appeals for the Federal Circuit (''Federal Circuit'') have consistently upheld this practice. *See Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330,1339 (Fed. Cir. 2002) (*citing Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990)); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less–than-fair–value (''LTFV'') investigation); *Kompass Food Trading Int'l v. United States*, 24 CIT 678, 682–84 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d. 1339, 1347–48 (CIT 2005) (upholding a 223.01percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See, e.g., Carbon and Certain Alloy Steel Wire Rod from Brazil: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances*, 67 FR 55792 (Aug. 30, 2002); *Static Random Access Memory Semiconductors from Taiwan: Final Determination of Sales at Less than Fair Value*, 63 FR 8909 (Feb. 23, 1998). Additionally, the Department's practice has been to assign the highest margin determined for any party in the LTFV investigation or in any administrative review of a specific order to respondents who have failed to cooperate with the Department. *See, e.g., Sigma Corp. v. United States*, 117 F.3d 1401, 1411 (Fed. Cir. 1997).

In order to ensure that the margin is sufficiently adverse so as to induce Nippon Steel's cooperation, the Department is assigning an AFA rate of 36.41 percent *ad valorem*, the highest rate determined in this proceeding, and the margin calculated for Nippon in the

original LTFV investigation using information provided by Nippon. *See Antidumping Duty Orders: Certain Corrosion–Resistant Carbon Steel Flat Products From Japan*, 58 FR 44163 (Aug. 19, 1993) (''AD Orders from Japan'').

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate ''secondary information'' used for FA by reviewing independent sources reasonably at its disposal. Secondary information is information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751of the Act, concerning the subject merchandise. *See* SAA at 870. Thus, information from a prior segment of the proceeding, such as that used here, constitutes secondary information. *See, e.g., Anhydrous Sodium Metasilicate from France: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 44283 (July 28, 2003) (''Anhydrous Sodium'') (unchanged in final).

The SAA provides that to ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. To the extent practicable, the Department will examine the reliability and relevance of the information to be used. Unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive calculated dumping margins. The only source for dumping margins is administrative determinations. In an administrative review, if the Department chooses as AFA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that period. *See, Anhydrous Sodium*, 68 FR at 44284. In this case, the Department is using a calculated dumping margin from a prior segment of the proceeding, namely the investigation. Because this margin is being applied to the company for which it was originally calculated, the Department finds that using this rate is appropriate.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal regarding whether circumstances exist that would render the chosen margin irrelevant. To do so, the Department conducted research in an attempt to find data to corroborate the secondary information. We were unable to find any useful information. *See* Memorandum to the File from Christopher Hargett through James Terpstra, ''Research for Corroboration for Preliminary Results of the Administrative Review for Corrosion Resistant Steel Flat Products from Japan'' (May 3, 2006).

Further, there is no evidence indicating that the margin used as AFA in this review is not appropriate. *See Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (Feb. 22, 1996) (discarding the highest margin because it was based on another company's uncharacteristic business expenses); *D&L Supply Co. v. United States*, 113 F.3d 1220, 1224 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). Absent any other information, we find the calculated rate from the investigation to be appropriate in this case. Therefore, the requirements of section 776(c) of the Act are satisfied, and we determine that the 36.41 percent margin calculated in the LTFV investigation is appropriate as AFA and are assigning it to Nippon Steel.

The preliminary dumping margin is as follows:

Producer/manufacturer/exporter	Dumping Margin (percent)
Nippon Steel	36.41

Public Comment

Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, thirty–seven days after the date of publication of these preliminary results. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing not later than 120 days after the date of publication of these preliminary results.

Duty Assessment

Upon publication of the final results of this review, the Department will instruct CBP to assess antidumping duties on all appropriate entries. Because we are applying AFA to all exports of subject merchandise produced or exported by Nippon Steel, we will instruct CBP to assess the final percentage margin against the entered customs values on all applicable entries during the period of review. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these preliminary results of review for which the reviewed companies did not know their merchandise was destined for the United States, as well as any companies for which we are rescinding the review based on claims of no shipments. In such instances, we will instruct CBP to liquidate unreviewed entries at the All–Others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 36.41 percent, the

''All–Others'' rate established in the LTFV investigation.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice is in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 3, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–7223 Filed 5–10–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–848

Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Amended Final Results and Amended Order Pursuant to Final Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 29, 2005, the Court of International Trade (''CIT'') affirmed the Department's remand determination and entered judgment in *Crawfish Processors Alliance v. United States of America*, Slip Op. 05–166 (CIT Dec. 29, 2005) (''*Judgment*''), which challenged certain aspects of the Department of Commerce's (''the Department'') *Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China*, 67 Fed. Reg. 19,546 (April 22, 2002) (''*99/00 Final Results*''), and accompanying *Issues and Decision Memorandum* (''*Decision Memo*''). As explained below, in accordance with the order contained in the CIT's December 29, 2005, *Judgment*, the Department is amending the *99/00 Final Results* to treat Jiangsu Hilong International Trade Co., Ltd. (Jiangsu Hilong) and Ningbo Nanlian Frozen Foods Company, Ltd. (Ningbo Nanlian) as unaffiliated, non–collapsed entities.

EFFECTIVE DATE: May 11, 2006.

FOR FURTHER INFORMATION CONTACT: Scot Fullerton, AD/CVD Operations, Office 9, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 4003, Washington, DC 20230; telephone: (202) 482–1386.

SUPPLEMENTARY INFORMATION:

Background

The Department first collapsed Ningbo Nanlian and Jiangsu Hilong[1] in the 1997–1998 administrative review. *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Rescission of New Shipper Review*, 65 Fed. Reg. 20,948 (Apr. 19, 2000). The Department continued to find that Ningbo Nanlian and Jiangsu Hilong were a single entity in the administrative review covering the 1999–2000 period. *See 99/00 Final Results* and accompanying *Decision Memo* at Comment 20.

On May 6, 2004, the CIT issued an order remanding the case to the Department and ordering the Department to explain why its findings warranted the collapsing of Jiangsu Hilong and Ningbo Nanlian. *Crawfish Processors Alliance v. United States*, Slip Op. 04–47 (CIT May 6, 2004) (''*CPA Remand*''). The Department submitted its *Final Results of Redetermination Pursuant to Court Remand* on November 2, 2004. *See 99/00 Final Remand Results I*.

On September 13, 2005, the CIT issued its ruling on the Department's remand determination again remanding the case to the Department. *See Crawfish Processors Alliance v. United States of America*, Slip Op. 05–123 (CIT Sept. 13, 2005) (''*CPA Remand II*''). Specifically, the CIT remanded the case for the Department to: (1)(a) Explain with specificity how the interactions between Jiangsu Hilong and Ningbo Nanlian indicate that one company has control over the other or both, especially how the invoices from Jiangsu Hilong to Hontex created a business relationship with Ningbo Nanlian during the period of review (POR), and (b) explain with specificity how Mr. Wei's contacts with Jiangsu Hilong and Ningbo Nanlian demonstrate control of either company on behalf of the other or control over both; or (c) if the Department is unable to provide substantial evidence supporting its collapsing decision, then the Department is instructed to treat Jiangsu Hilong and Ningbo Nanlian as unaffiliated entities, and assign separate company–specific antidumping duty margins to each using verified information on the record. *See CPA Remand II*.

In its remand determination, the Department reviewed the record evidence and completed its *Draft Results of Determination Pursuant to Court Remand (''Draft Results'')* on November 23, 2005, and released these *Draft Results* for comment on November 25, 2005. The Department requested that parties submit comments on the Draft Results by close of business on December 1, 2005. No comments were received. The Department submitted the *Final Results of Remand* to the CIT on December 9, 2005.

On December 29, 2005, the CIT affirmed the remand. No appeal to the United States Court of Appeals was filed.

Amendment to the Final Determination

Because there is now a final and conclusive court decision, effective as of the publication date of this notice, we are amending the *99/00 Final Results* and establishing the following revised weighted–average dumping margins:

FRESHWATER CRAWFISH TAIL MEAT FROM THE PRC

Manufacturer/Exporter	Weighted–Average Margin (Percent)
Ningbo Nanlian Frozen Foods Company, Ltd.	62.51

The antidumping duty rate for respondent Ningbo Nanlian was unchanged from the *99/00 Final Results*, as the rate in the *99/00 Final Results* for the Ningbo Nanlian/Jiangsu Hilong single entity was based solely on Ningbo Nanlian's sales. Because the Department did not initiate a review of Jiangsu Hilong for the 99/00 period of review (no such review was requested by any party), but only reviewed the company's information as part of the Ningbo Nanlian/Jiansgu Hilong single entity, the Department cannot calculate a margin for Jiangsu Hilong as a separate entity in this segment of the proceeding. The Department will issue assessment instructions directly to U.S. Customs and Border Protection.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

[1] Huaiyin Foreign Trade Corporation (5) became Jiangsu Hilong International Trading Company Ltd. on January 10, 2001.

Dated: May 4, 2006.

David Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–7232 Filed 5–10–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–588–707

Granular Polytetrafluoroethylene Resin From Japan: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on granular polytetrafluoroethylene resin (PTFE) from Japan manufactured and exported by Asahi Glass Fluoropolymers, Ltd. (Asahi), in response to a request from Asahi. This review covers the period August 1, 2004, through September 30, 2005.

We have preliminarily determined that Asahi sold the subject merchandise to the United States at prices below normal value during the period of review. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: May 11, 2006.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos at (202) 482–1757 or Richard Rimlinger at (202) 482–4477, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 1988, the Department of Commerce (the Department) published in the **Federal Register** the antidumping duty order on PTFE from Japan. See *Notice of Antidumping Duty Order: Granular Polytetrafluoroethylene Resin from Japan*, 53 FR 32267 (August 24, 1988). On August 1, 2005, we published in the **Federal Register** a notice of opportunity to request an administrative review of this order covering the period August 1, 2004, through September 30, 2005. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 44085 (August 1, 2005). On August 24, 2005, Asahi and AGC Chemicals America, Inc. (AGC), requested that the Department conduct an administrative review of their sales. On September 28, 2005, the Department published in the **Federal Register** a notice of initiation of this administrative review. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005). The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). For a detailed analysis of the Department's calculation for this case see the Analysis Memorandum from the case analyst to the file dated May 3, 2006 (Analysis Memorandum).

Scope of Order

The merchandise covered by the antidumping duty order is PTFE, filled or unfilled. The order excludes PTFE dispersions in water, fine powders, and reprocessed PTFE powder. PTFE is currently classifiable under subheading 3904.61.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). This order covers all PTFE, regardless of its tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the order remains dispositive.

Comparisons to Normal Value

To determine whether sales of PTFE from Japan were made in the United States at less than normal value, we compared the United States price to the normal value. When making comparisons in accordance with section 771(16) of the Act, we considered all comparable products sold in the home market that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales.

Constructed Export Price

For all sales to the United States, we calculated constructed export price (CEP), as defined in section 772(b) of the Act, because all sales to unaffiliated parties were made after importation of the subject merchandise into the United States through the respondent's affiliate, AGC. We based CEP on the packed, delivered prices to unaffiliated purchasers in the United States, net of billing adjustments. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit expenses) and indirect selling expenses. We made deductions, consistent with section 772(c)(2)(A) of the Act, for movement expenses and for CEP profit under section 772(d)(3) of the Act.

Normal Value

A. Home–Market Viability

Based on a comparison of the aggregate quantity of home–market and U.S. sales, we determined that the quantity of foreign like product sold by Asahi in Japan was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Asahi's quantity of sales in the home market was greater than five percent of its sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the prices at which the foreign like product was first sold for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade.

B. Calculation of Normal Value

Because we were able to find contemporaneous home–market sales made in the ordinary course of trade for a comparison to all CEP sales, in accordance with section 773(a)(1)(B) of the Act we based normal value on the prices at which the foreign like product was sold for consumption in the home market. Home–market prices were based on delivered prices to unaffiliated purchasers. We made adjustments for differences in packing and for movement expenses, as appropriate, in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 by deducting home–market direct selling expenses from normal value. We also made an adjustment for the CEP offset in accordance with section 773(a)(7)(B) of the Act (see *Level of Trade*).

Level of Trade

Asahi reported two channels of distribution in the home market, the large industrial–user (OEM) channel and the service–market (distributor) channel. We examined the differences in selling functions Asahi reported in its responses with regard to the two channels of distribution in the home market. We found that the selling activities associated with sales to OEMs differed significantly from activities associated with sales to distributors in terms of sales forecasting, distributor/dealer training, and use of direct sales personnel. Specifically, Asahi provides sales–forecasting services and direct sales personnel to its OEM customers

but not to its distributor customers and Asahi provides distributor dealer training to its distributor customers but not to its OEM customers. Based on these differences we found that the two home–market channels constituted two different levels of trade.

In the U.S. market, based on our overall analysis we found that there were significant differences between the selling activities associated with the CEP level of trade and those associated with each of the home–market levels of trade. For example, the CEP level of trade involved no advertising, sales promotion, market research, and technical assistance - selling activities offered at both home–market levels of trade. Therefore, we consider the CEP level of trade to be different from either home–market level of trade and at a less advanced stage of distribution than either home–market level of trade. Consequently, we could not match U.S. sales to sales at the same level of trade in the home market nor could we determine a level–of-trade adjustment based on Asahi's home–market sales of the foreign like product because the CEP level is not identical to either home–market level of trade. We also have no other information that provides an appropriate basis for determining a level–of-trade adjustment. Thus, for AGC's CEP sales, to the extent possible, we determined normal value at the same level of trade as the U.S. sale to the unaffiliated customer and made a CEP–offset adjustment in accordance with section 773(a)(7)(B) of the Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine that a margin of 41.96 percent exists for Asahi for the period August 1, 2004, through July 31, 2005.

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. A hearing, if requested, will be held at the main Department building. We will notify parties of the exact date, time, and place for any such hearing.

Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. Case briefs from interested parties may be filed no later than 30 days after publication of this notice. Rebuttal briefs, limited to the issues raised in case briefs, may be submitted no later than five days after the deadline for filing case briefs. Parties who submit case or rebuttal briefs are requested to submit with each argument a statement of the issue and a brief summary of the argument with an electronic version included.

The Department will issue a notice of final results of this administrative review, which will include the results of its analysis of issues raised in the case briefs, within 120 days from the date of publication of these preliminary results.

Assessment

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate instructions directly to the CBP within 15 days of the publication of the final results of this review.

In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. For Asahi's CEP sales we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct CBP to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries during the review period. See 19 CFR 351.212(b).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by Asahi for which Asahi did not know that its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit

Further, the following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of PTFE entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash–deposit rate for Asahi will be the rate established in the final results of review; (2) for previously reviewed or investigated companies not mentioned above, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value (LTFV) investigation but the manufacturer is, then the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this review, a prior review, or the LTFV investigation, the cash–deposit rate shall be 91.74 percent, the all–others rate established in the LTFV investigation. See *Notice of Final Determination of Sales at Less Than Fair Value: Granular Polytetrafluoroethylene Resin From Japan*, 53 FR 25191 (July 5, 1988). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 3, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–7233 Filed 5–10–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–533–820)

Certain Hot–Rolled Carbon Steel Flat Products from India: Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 11, 2006.

FOR FURTHER INFORMATION CONTACT: Kavita Mohan or Jeff Pedersen, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, NW, Washington, DC 20230; telephone: (202) 482–3542 or (202) 482–2769, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 2005, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products (HRS) from India covering shipments of HRS by Essar Steel Limited (Essar) to the United States for the period December 1, 2003, through November 30, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 4818 (January 31, 2005). On January 12, 2006, the Department published in the **Federal Register** the preliminary results of review. *See Certain Hot–Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018 (January 12, 2006). The final results of review are currently due no later than May 12, 2006.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination in an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination), respectively.

Extension of Time Limit for Final Results of Review

We have determined that it is not practicable to complete the final results of this review within the original time limit because the Department needs additional time to consider a complex issue relating to the U.S. price adjustment for countervailing duties imposed to offset export subsidies. Therefore, the Department is extending the time limit for completion of the final results by 60 days. We intend to issue the final results of review no later than July 11, 2006.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: May 5, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–7227 Filed 5–10–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–201–827)

Revocation of Antidumping Duty Order: Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 2, 2005, the Department of Commerce (the Department) initiated its sunset reviews of the antidumping duty orders on certain large diameter seamless standard, line, and pressure pipe (seamless pipe) from Japan and Mexico. *See Initiation of Five–year (''Sunset'') Reviews*, 70 FR 22632 (May 2, 2005). Pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (the Commission), in its sunset reviews, determined that revocation of the order on seamless pipe from Mexico would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From the Czech Republic, Japan, Mexico, Romania, and South Africa*, 71 FR 24860 (April 27, 2006). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1)(iii), the Department is revoking the antidumping duty order on seamless pipe from Mexico.

EFFECTIVE DATE: August 11, 2005

FOR FURTHER INFORMATION CONTACT: Robert James, AD/CVD Operations Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0649.

SUPPLEMENTARY INFORMATION:

Scope of the Orders

The products covered by this order are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials (ASTM) A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and the American Petroleum Institute (API) 5L specifications and meeting the physical parameters described below, regardless of application, with the exception of the exclusions discussed below. The scope of this order also includes all other products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification, with the exception of the exclusions discussed below. Specifically included within the scope of this order are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall–thickness, manufacturing process (hot finished or cold–drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this order are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.31.60.50, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.60, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States (HTSUS).

Specifications, Characteristics, and Uses: Large diameter seamless pipe is used primarily for line applications such as oil, gas, or water pipeline, or utility distribution systems. Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes in large diameters is for use as oil and gas distribution lines for commercial applications. A more minor application for large diameter seamless pipes is for use in pressure piping systems by refineries, petrochemical plants, and chemical plants, as well as in power generation plants and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

The scope of this order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the exclusions discussed below, whether or not also certified to a non–covered specification. Standard, line, and pressure applications and the above–listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of this order.

Specifically excluded from the scope of this order are:

A. Boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications.

B. Finished and unfinished oil country tubular goods (OCTG), if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

C. Products produced to the A–335 specification unless they are used in an application that would normally utilize ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications.

D. Line and riser pipe for deepwater application, *i.e.*, line and riser pipe that is (1) Used in a deepwater application, which means for use in water depths of 1,500 feet or more; (2) intended for use in and is actually used for a specific deepwater project; (3) rated for a specified minimum yield strength of not less than 60,000 psi; and (4) not identified or certified through the use of a monogram, stencil, or otherwise marked with an API specification (*e.g.*, ''API 5L'').

With regard to the excluded products listed above, the Department will not instruct the U.S. Customs Service (U.S. Customs) to require end–use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being utilized in a covered application. If such information is provided, the Department will require end–use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in a covered application as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A–335 specification is being used in an A–106 application, it will require end–use certifications for imports of that specification. Normally the Department will require only the importer of record to certify to the end–use of the imported merchandise. If it later proves necessary for adequate implementation, the Department may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, our written description of the merchandise subject to this scope is dispositive.

Background

On August 11, 2000, the Department published the antidumping duty order on large diameter (defined as greater than 4 ½ inches) seamless pipe from Mexico. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico*, 65 FR 49227 (August 11, 2000).

On May 2, 2005, the Department initiated, and the Commission instituted, sunset reviews of the antidumping duty orders on seamless pipe from Japan and Mexico. *See Initiation of Five–year (''Sunset'') Reviews*, 70 FR 22632 (May 2, 2005). As a result of its review the Department found that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping, and notified the Commission of the magnitude of the margin likely to prevail were the orders to be revoked. *See Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and Mexico; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 70 FR 53159 (September 7, 2005). On April 6, 2006, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on seamless pipe from Mexico

would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from the Czech Republic, Japan, Mexico, Romania, and South Africa*, 71 FR 24860 (April 27, 2006) and USITC Publication 3850 (April 2006), entitled *Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from the Czech Republic, Japan, Mexico, Romania, and South Africa* (Inv. Nos. 731–TA–846–850 (Review). As a result of the determination by the Commission that revocation of this order is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d) of the Act, is revoking the order on seamless pipe from Mexico. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is August 11, 2005, *i.e.*, the fifth anniversary of the date of publication in the **Federal Register** of the notice of the antidumping duty order.

The Department will notify U.S. Customs and Border Protection to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after August 11, 2005, the effective date of revocation of the antidumping duty order. The Department will complete any pending administrative reviews of the order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

These five–year sunset reviews and notice are in accordance with section 751(d)(2) of the Tariff Act and published pursuant to section 777(i)(1) of the Tariff Act.

Dated: May 5, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–7224 Filed 5–10–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–851–802, A–791–808)

Revocation of Antidumping Duty Orders: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from the Czech Republic and South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 2, 2005, the Department of Commerce (the Department) initiated its sunset reviews of the antidumping duty orders on small diameter seamless standard, line, and pressure pipe (seamless pipe) from the Czech Republic, Japan, Romania and South Africa. *See Initiation of Five–year (''Sunset'') Reviews*, 70 FR 22632 (May 2, 2005). Pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (the Commission) in its sunset reviews determined that revocation of the orders on seamless pipe from the Czech Republic and South Africa would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From the Czech Republic, Japan, Mexico, Romania, and South Africa*, 71 FR 24860 (April 27, 2006). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1)(iii), the Department is revoking the antidumping duty orders on seamless pipe from the Czech Republic and South Africa.

EFFECTIVE DATE: June 26, 2005 for South Africa; August 14, 2005 for the Czech Republic.

FOR FURTHER INFORMATION CONTACT: Robert James, AD/CVD Operations Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0649.

SUPPLEMENTARY INFORMATION:

Scope of the Orders

The products covered by the orders are seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and the API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of the orders also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of the orders are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall–thickness, manufacturing process (hot finished or cold–drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to the orders are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

Specifications, Characteristics, and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gases in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various ASME code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line

pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes is use in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical–fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or ''hollow profiles'' of carbon or alloy steel transformed by hot rolling or cold drawing/ hydrostatic testing or other methods to enable the material to be sold under ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications.

The scope of the orders includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the specific exclusions discussed below, and whether or not also certified to a non–covered specification. Standard, line, and pressure applications and the above–listed specifications are defining characteristics of the scope of the orders. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below. For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, with the exception of the specific exclusions discussed below, such products are covered by the scope of the orders.

Specifically excluded from the scope of the orders are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished oil country tubular goods (OCTG) are excluded from the scope of the orders, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

With regard to the excluded products listed above, the Department will not instruct U.S. Customs and Border Protection (CBP) to require end–use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being used in a covered application. If such information is provided, we will require end–use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in covered applications as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A–161 specification is being used in a standard, line or pressure application, we will require end–use certifications for imports of that specification. Normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

Background

On June 26, 2000, the Department published the antidumping duty orders on small–diameter (defined as less than or equal to 4 ½ inches) seamless pipe from South Africa. *See Notice of Antidumping Duty Orders: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa*, 65 FR 39360 (June 26, 2000). On August 14, 2000, the Department issued the antidumping duty order on seamless pipe from the Czech Republic. *See Notice of Antidumping Duty Order: Certain Small–Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from the Czech Republic*, 65 FR 49539 (August 14, 2000).

On May 2, 2005, the Department initiated, and the Commission instituted, sunset reviews of the antidumping duties orders on seamless pipe from the Czech Republic and South Africa. *See Initiation of Five–year (''Sunset'') Reviews*, 70 FR 22632 (May 2, 2005). As a result of its review, the Department found that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping, and notified the Commission of the magnitude of the margin likely to prevail were the orders to be revoked. *See Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4 ½ inches) from the Czech Republic, Japan, Romania, and South Africa; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 70 FR 53151 (September 7, 2005). On April 6, 2006, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on seamless pipe from the Czech Republic and South Africa would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from the Czech Republic, Japan, Mexico, Romania, and South Africa*, 71 FR 24860 (April 27, 2006) and USITC Publication 3850 (April 2006), entitled *Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from the Czech Republic, Japan, Mexico, Romania, and South Africa* (Inv. Nos. 731–TA–846–850 (Review). As a result of the determination by the Commission that revocation of these orders is not likely to lead to continuation or recurrence of

material injury to an industry in the United States, the Department, pursuant to section 751(d) of the Act, is revoking the orders on small diameter seamless pipe from the Czech Republic and South Africa. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is June 26, 2005, for the antidumping duty order on South Africa, and August 14, 2005, for the antidumping duty order on the Czech Republic (*i.e.*, the fifth anniversary of the date of publication in the **Federal Register** of the notices of the antidumping duty orders on the South Africa and the Czech Republic, respectively).

The Department will notify CBP to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after June 26, 2005, and August 14, 2005, the effective dates of revocation of the respective antidumping duty orders. The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

These five–year sunset reviews and notice are in accordance with section 751(d)(2) of the Tariff Act and published pursuant to section 777(i)(1) of the Tariff Act.

Dated: May 5, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–7231 Filed 5–10–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–428–830)

Notice of Extension of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 11, 2006.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Natalie Kempkey, at (202) 482–0182 or (202) 482–1698, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2006, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping order on stainless steel bar from Germany for the period March 1, 2004, through February 28, 2005 (*See Stainless Steel Bar from Germany: Preliminary Results of Antidumping Administrative Review*, 71 FR 5811 (February 3, 2006) (''*Preliminary Results*'')). The current deadline for the final results of this review is June 5, 2006.

Extension of Time Limit for Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue (1) the preliminary results of a review within 245 days after the last day of the month in which occurs the anniversary of the date of publication of an order or finding for which a review is requested, and (2) the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and the final results to a maximum of 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results. *See* 19 CFR 351.213(h)(2).

We determine that it is not practicable to complete the final results of this review within the original time limits. Due to the complexity of issues present in this administrative review, such as BGH's claim of a downward adjustment to normal value for home market commissions and the Department's upward adjustment to BGH's cost of manufacture, the Department needs more time to address these items and evaluate the issues more thoroughly. Therefore, we are extending the deadline for the final results of this review by 30 days. Accordingly, the final results will be issued no later than July 3, 2006.

This extension is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: May 5, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–7225 Filed 5–10–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmosphere Administration

[I.D. 050806C]

Magnuson-Stenves Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject exempted fishing permit (EEP) application contains all the required information and warrants further consideration. The EEP, which would enable researchers to investigate the feasibility of using a raised footnote trawl to catch haddock and pollock while limiting cod and flounder by catch, would allow for exemptions from the FMP as follows: Gulf of Maine (GOM) Rolling Closure Areas II and IV; and the minimum mesh size for trawl gear. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determinations is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP is issued that would allow two commercial fishing vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before May 26, 2006.

ADDRESSES: Written comments should be sent to Patrick A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on the GOM High Opening Raised Footrope Trawl for Haddock and Pollock.'' Comments may also be sent via fax to (978) 281–9135, or be submitted via e-mail to the following address: *DAG–091@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Grant, Fishery Management Specialist, phone 978–281–9273.

SUPPLEMENTARY INFORMATION: A complete application for an EFP was submitted on April 11, 206, by Dr. Pingguo He of the University of New Hampshire (UNH) for a Northeast Consortium contract project. The primary goal of the research is to design and test a high opening haddock raised footrope trawl for potential use in the Regulator B Days-at-Sea (DAS) program in the GOM.

The proposed work is the second year of a two-year project. Year one included flume tank tails and at-sea trails by one vessel to test net configurations. During the second year of the project, two vessels, the F/V North Star (Federal permit number 270699) and the F/V Persistence (Federal permit number 230290), would be involved in the at-sea research. During the first year, researches were unable to complete all 10 days of the at-sea trails authorized by a previous EFP. For this year's EFP, the researchers have requested that one vessel be exempted from Rolling Closure Areas III and IV, and the minimum mesh size requirements for the GOM RMA under this EFP for up to seven DAS during the 2006 fishing year in order to complete those trails. Subsequent to these trails, two vessels would engage in side-by-side trawling using 12 DAS each. One vessel would use the experimental net and the other would use a regulation commercial net as a control. All trails would occur in the area north of 42°50′ N. lat., and wet of 69°00′W. long. in inshore waters of the GOM, excluding the Western GOM Closure Area. Researchers have asked for an exemption to the regulations at § 648.81(f)(1)(iii) and (iv), establishing GOM Rolling Closure Areas III and IV, for both vessels because they believe that an optimum mixture of haddock, pollock, cod, and flounder will be present in the waters of the Western GOM during May and June to test the experimental gear. Because the aim of the project is to develop gear that could separate haddock and pollock from cod and flounder before the fish are brought onboard, an exemption from GOM Rolling Closures III and IV is important to the success of the study. Researchers have also requested an exemption from the minimum mesh size requirement for the GOM Regulated Mesh Area (RMS) at § 648.809(a)(3)(i) for seven DAS. During these seven DAS, net configuration trails will be conducted. Use of a small mesh cod end, or liner, is necessary to collect fish released from the trawl in order to quantify the effect o the separator trawl and make effective comparisons of the net configurations tested.

Net configuration trails would consist of a maximum of four 1-hour tows per DAS. Side-by-side trawling trails would consist of a maximum of four 2-hour tows by each vessel per DAS. Additionally, researchers would use remote underwater video observation and acoustic gear geometry monitoring to assess the success of the net during the at-sea trials. The design of the net would consist of long drop-chains hanging between the fishing ling and the sweep (raised footrope), creating a space for cod, flounders, and other benthic animals to escape or fall under the fishing line while the vessel targets primarily haddock and pollock. The trawl would incorporate large meshes in the wings and belly, and kites in the square near the headline. Kites may also be used near the ends of the wings to expand the trawl.

The weight of all haddock, pollock, cod, and flounder will be determined for each control and experimental tow. If available, 70 of each major groundfish species, both legal and sub-legal sizes, would be measured from alternating control and experimental tows. The overall fishing mortality for the experimental net is estimated to be 30 percent of the average commercial fishing mortality on a DAS due to both the species-selective design of the net and the reduced amount of time spent towing each day. The overall fishing mortality for the commercial net is estimated to be 50 percent of the average commercial fishing mortality on a DAS due to the reduced amount of time spent towing each day. The researcher anticipates that a total of 18,978 lb (8,608 kg) of fish, including 6,612 lb (2,999 kg) of cod, would be sacrificed throughout the course of the study (see Tables 1 and 2 below). All research would be conducted using A DAS, even though daily fishing mortality is estimated to be less than 50 percent of commercial fishing mortality.

TABLE 1.—NET CONFIGURATION TESTING MORTALITY ESTIMATES

Species	Experimental trawl	
	lb	kg
Cod	1,812	822
Haddock	22	10
Dab	175	79
Yellowtail	55	25
Blackback	32	15
Grey sole	985	447
Hake	90	41
Pollock	6	3

TABLE 2.—SIDE-BY-SIDE TRAWLING MORTALITY ESTIMATES

Species	Experimental trawl		Commercial trawl	
	lb	kg	lb	kg
Cod	1,200	544	3,600	1,633
Haddock	2,400	1,089	1,200	544
Dab	60	27	600	272
Yellowtail	60	27	600	272
Blackback	60	27	600	272
Grey sole	60	27	600	272
Hake	200	91	200	91
Pollock	2,400	1,089	1,200	544

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

Dated: May 8, 2006.

James P. Burgess,

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

[FR Doc. 06–4414 Filed 5–10–06; 8:45am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

Technology Administration

National Medal of Technology Nomination Evaluation Committee; Notice of Charter Renewal; Renewal of the President's National Medal of Technology Nomination Evaluation Committee Charter

AGENCY: Technology Administration, U.S. Department of Commerce.

ACTION: Notice of the renewal of the National Medal of Technology Nomination Evaluation Committee Charter.

SUMMARY: Please note that the Secretary of Commerce, with the concurrence of the General Services Administration, has renewed the Charter for the National Medal of Technology Nomination Evaluation Committee on March 17, 2006. It has been determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Mildred Porter, Director and Designated Federal Official, National Medal of Technology Program, Technology Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4817, Washington, DC 20230, telephone (202) 482–1424; E-mail: *NMT@technology.gov*.

Dated: May 3, 2006.

Mildred Porter,

Director and Designated Federal Official, National Medal of Technology.

[FR Doc. E6–7160 Filed 5–10–06; 8:45 am]

BILLING CODE 3510–18–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of a Commercial Availability Request under the African Growth and Opportunity Act (AGOA)

May 5, 2006.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Denial of the request alleging that certain cotton/cashmere yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA.

SUMMARY: On March 6, 2006, the Chairman of CITA received a petition from Shibani Inwear alleging that a certain combed and ring-spun yarn, of a 92-percent cotton and 8-percent cashmere blend, comprised of 2/32 Nm resulting in a 16 Nm yarn size, classified in subheading 5205.42.00.20 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requested that men's knit sweaters made of such yarn be eligible for preferential treatment under the AGOA. CITA has determined that the subject yarn can be supplied by the domestic industry in commercial quantities in a timely manner and, therefore, denies the request.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA; Presidential Proclamation 7350 of October 2, 2000; Section 1 of Executive Order No. 13191 of January 17, 2001.

Background:

The AGOA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The AGOA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191 (66 FR 7271), CITA has been delegated the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA. On March 6, 2001, CITA published procedures that it will follow in considering requests (66 FR 13502).

On March 6, 2006, the Chairman of CITA received a petition from Shibani Inwear alleging that a certain combed and ring-spun yarn, of a 92-percent cotton and 8-percent cashmere blend, comprised of 2/32 Nm resulting in a 16 Nm yarn size, classified in HTSUS subheading 5205.42.00.20, cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requested that men's knit sweaters made of such yarn be eligible for preferential treatment under the AGOA.

On March 15, 2006, CITA published a notice in the **Federal Register** requesting public comments on the petition (71 FR 13359), particularly with respect to whether this yarn can be supplied by the domestic industry in commercial quantities in a timely manner. On March 31, 2006, CITA and USTR offered to hold consultations with the House Ways and Means Committee and the Senate Finance Committee, but no consultations were requested. We also requested advice from the U.S. International Trade Commission (ITC) and the relevant Industry Trade Advisory Committees.

Based on the information and advice CITA received, public comments, and the report from the ITC, CITA found that there is domestic capacity and ability to supply the subject yarn in commercial quantities in a timely manner. North Carolina Spinning Mills currently makes cashmere blend yarns and can supply the subject yarn in the quantities specified by the petitioner.

On the basis of currently available information and our review of this request, CITA has determined that there is domestic capacity to supply the subject yarn in commercial quantities in a timely manner. The request from Shibani Inwear is denied.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E6–7226 Filed 5–10–06; 8:45 am]

BILLING CODE 3510–DS

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0081]

Proposed Collection; Comment Request

AGENCY: DoD, Washington Headquarters Services (WHS), Planning and Evaluation Directorate, Quality Management Division.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the DoD Washington Headquarters Services, Planning and Evaluation Directorate, Quality Management Division announces the proposed extension of a public information collection and seeks

public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 10, 2006.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http:www.regulations.gov* as they are received without change, including any personal identifiers or contact information:

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the DoD WHS Planning and Evaluation Directorate, Quality Management Division, ATTN: Mr. Ed Loy, 1777 North Kent Street, RPN, Suite 13038, Arlington, VA 22209–2133, or call the DoD WHS Planning and Evaluation Directorate, Quality Management Division at (703) 588–8150.

Title and OMB Number: Interactive Customer Evaluation (ICE) System; OMB Number 0704–0420.

Needs and Uses: The Interactive Customer Evaluation System automates and minimizes the use of the current manual paper comment cards and other customer satisfaction collection medium, which exist at various customer service locations throughout the Department of Defense. Members of the public have the opportunity to give automated feedback to the service provider on the quality of their experience and their satisfaction level. This is a management tool for improving customer services.

Affected Public: Individuals or Households; Business or Other For-Profit.

Annual Burden Hours: 190

Number of Respondents: 3,800.

Responses per Respondent: 1.

Average Burden per Response: 3 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Members of the public who respond on the Interactive Customer Evaluation system are authorized customers and have been provided a service through DoD customer service organizations. They have the opportunity to give automated feedback to the service provider on the quality of their experience and their satisfaction level. They also have the opportunity to provide any comments that might be beneficial in improving the process and in turn the service to the customer. This is a management tool for improving customer services.

Dated: May 2, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–4378 Filed 5–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0080]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 10, 2006.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness)/Military Community and Family Policy/Educational Opportunities Directorate, ATTN: Marc Mossburg, 1525 Wilson Blvd., Rm. 225, Arlington, VA 22209, or call Dr. Marc Mossburg at (703) 588–0899.

Title, Associated Form, and OMB Control Number: Application for Department of Defense Impact Aid for Children with Severe Disabilities; SD Form 816 and SD Form 816C, OMB Control Number 0704–0425.

Needs and Uses: Department of Defense funds are authorized for local educational agencies (LEA)s that educate military dependent students with severe disabilities and meet certain criteria. Eligible LEAs are determined by their responses to the U.S. Department of Education (ED) from information they submitted on children with disabilities, when they completed the Impact Program form for the Department of Education. This application will be requested of LEAs who educate military dependent students with disabilities, who have been deemed eligible for the U.S. Department of Education Impact Aid program, to determine if they meet the criteria to receive additional funds from the Department of Defense due to high special education costs of the

military dependents with severe disabilities that they serve.

Affected Public: State, local or tribal government.

Annual Burden Hours: 400.

Number of Respondents: 50.

Responses per Respondent: 1.

Average Burden per Response: 8.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The National Defense Authorization Act for Fiscal Year 2001, Public Law 106–398, Section 363, authorizes the Secretary of Defense to make payments to each local educational agency (LEA) eligible to receive a payment for a qualifying military dependent child. In order for a local education agency (LEA) to be determined eligible to receive a payment for costs incurred in providing a free appropriate public education to each military [as described in subparagraph (A)(i), (B), (D)(ii) of section 8003(a)(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(a)(1))], the LEA must provide educational and related services to two or more children with severe disabilities, and satisfy certain criteria. Payments will be made by the Department of Defense to LEAs only on behalf of each such child whose individual educational or related services costs exceeds either (a) five times the national or State average per pupil expenditure (whichever is lower) for an out-of-district special education (SPED) program, or (b) three times the State average per pupil expenditure for SPED programs offered by the district or within the district boundaries. The Application for Department of Defense Impact Aid for Children with Severe Disabilities, SD Form 816 and SD Form 816C, provides the format for eligible LEAs to submit information on high costs of educating military dependent children with severe disabilities. When the appropriate information is received, the Department of Defense will be able to determine eligibility and calculate payments for eligible LEAs who have high costs for educating military dependent children with severe disabilities.

Dated: May 2, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–4379 Filed 5–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0079]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed extension of a public information collection and seeks pubic comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 10, 2006.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness) (Military Community and Family Policy) Education Opportunities Directorate, ATTN: Rebecca Posante, 241 18th Street South, Suite 302, Arlington, Virginia 22202, or call Rebecca Posante at (703) 602–4949 x 114.

Title, Applicable Form, and OMB Control Number: Exceptional Family Member Program, Exceptional Family Member Medical Summary Form; DD Form 2792 and Exceptional Family Member Educational Summary Form; DD Form 2792–1, OMB Control Number 0704–0411.

Needs and Uses: This information collection requirement is necessary to screen members of military families to determine if they have special medical or educational conditions so that these conditions can be taken into consideration when the Service member is being assigned to a new location with his/her family. The information is used by the personnel system to identify special considerations necessary for future assignments. The DD form 2792, Exceptional Family Member Medical Summary and DD Form 2792–1, Exceptional Family Member Educational Summary associated with this information collection, will also be used by civilian personnel offices to identify family members of civilian employees who have special needs in order to advise the civilian employee of the availability of services in the location where they will be potentially employed. Local and state school personnel will complete DD Form 2792–1 for children requiring special educational services.

Affected Public: Individuals or households; State, local or tribal government.

Annual Burden Hours: 20,014.

Number of Respondents: 44,476.

Responses per Respondent: 1.

Average Burden per Response: 27 minutes.

Frequency: Tri-annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Military Departments of the Department of Defense screen all family members prior to a Service member and Federal employee being assigned to an overseas location and to some assignments in the United States. DD Form 2792, Exceptional Family Member Medical Summary Form and/or DD Form 2792–1. Exceptional Family Member Educational Summary Form, will be completed for family members who have been identified with a special medical and/or educational need to document the medical and/or educational needs and service requirements. Their needs will be matched to the resources available at the

overseas location to determine the feasibility of receiving appropriate services in that location. The information is used by the Military Service's personnel offices for purposes of assignment only. DD Form 2792 and/or DD 2792–1 will also be completed for family members of civilian employees to document their special health and/or educational needs in order to advise the civilian employee of the availability of the needed services.

Dated: May 2, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 06–4380 Filed 5–10–06; 8:45am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–HA–0016]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by June 12, 2006.

Title and OMB Number: Viability of TRICARE Standard Survey; OMB Control Number 0720–0031.

Type of Request: Revision.

Number of Respondents: 40,000.

Responses per Respondent: 1.

Annual Responses: 40,000.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 3,333.

Needs and Uses: As mandated by Congress, confidential surveys of civilian physicians will be completed in TRICARE market areas within the United States to determine how many accept new TRICARE Standard patients in each market area. At least 20 TRICARE market areas in the United States will be conducted each fiscal year until all TRICARE market areas in the United States have been surveyed.

Affected Public: Individuals and households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, DoD Health Desk Officer, Room 10102, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: May 2, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–4383 Filed 5–10–06; 8:45am]

BILLING CODE 5001–06–M1

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–29]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–29 with attached transmittal and policy justification.

May 4, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

02 MAY 2006

In reply refer to:
I-06/004488

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-29, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Japan for defense articles and services estimated to cost $147 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-29

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Japan

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$147 million
TOTAL	$147 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** four sets of Airborne Early Warning (AEW) and Command, Control and Communications (C^3) mission equipment/Radar System Improvement Program (RSIP) Group A and B kits, for subsequent installation and checkout in four previously procured E-767 Airborne Warning and Control Systems (AWACS). In addition, this proposed sale will include related spare and repair parts, support equipment, publications and technical documentation, services and other related program elements to ensure complete AWACS mission equipment supportability.

(iv) **Military Department:** Air Force (QDE)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** None

(viii) **Date Report Delivered to Congress:** 02 MAY 2006

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Japan – Mission Equipment for AWACS Aircraft

The Government of Japan has requested a possible sale of four sets of Airborne Early Warning (AEW) and Command, Control and Communications (C^3) mission equipment/Radar System Improvement Program (RSIP) Group A and B kits, for subsequent installation and checkout in four previously procured E-767 Airborne Warning and Control Systems (AWACS). In addition, this proposed sale will include related spare and repair parts, support equipment, publications and technical documentation, services and other related program elements to ensure complete AWACS mission equipment supportability. The estimated cost is $147 million.

Japan is one of the major political and economic powers in East Asia and the Western Pacific and a key ally of the United States in ensuring peace and stability in that region. It is vital to the U.S. national interest to assist Japan to develop and maintain a strong and ready self-defense capability, which will contribute to an acceptable military balance in the region. This proposed sale is consistent with these U.S. objectives and with the 1960 Treaty of Mutual Cooperation and Security.

Japan previously purchased four sets of AWACS mission equipment and needs this additional mission equipment to continue its development of an extended Airborne Early Warning (AEW) capability as well as enhanced command, control and communications (C^3). Japan will have no difficulty absorbing the additional AWACS aircraft into its armed forces.

The prime contractor will be Boeing Aerospace Company in Seattle, Washington. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government and contractor representatives to Japan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

0 4 MAY 2006
In reply refer to:
I-06/004488

MEMORANDUM FOR DIRECTOR, WASHINGTON HEADQUARTERS SERVICES

SUBJECT: Publication of 36(b)(1) Notification in the Federal Register

Public Law 104-164, dated 21 July 1996, requires 36(b)(1) arms sales notifications to be published in the Federal Register.

It is requested that the attached 36(b)(1) notification, Transmittal No. 06-29, be published in the Federal Register. Also, attached are copies of internal documents indicating DSCA General Counsel and DOD/OGC concurrences.

My POC is Janet M. Hurd, DSCA/DBO/ADM, Phone 703-604-6575. Please forward a copy of the federal register published transmittal to Defense Security Cooperation Agency, Business Operations, Administration & Management, 201 12th Street South, Suite 203, Arlington, VA 22202-5408.

Keith B. Webster
Principal Director
Business Operations

Enclosures:
1. USDP Staff Summary Sheet
2. DoD Document Notice
3. Formal Notification Package

[FR Doc. 06–4381 Filed 5–10–06; 8:45am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Base Closure and Realignment

AGENCY: Department of Defense, Office of Economic Adjustment.

ACTION: Notice.

SUMMARY: This Notice is provided pursuant to section 2905(b)(7)(B)(ii) of the Defense Base Closure and Realignment Act of 1990. It provides a partial list of military installations closing or realigning pursuant to the 2005 Defense Base Closure and Realignment (BRAC) Report. It also provides a corresponding listing of the Local Redevelopment Authorities (LRAs) recognized by the Secretary of Defense, acting through the Department of Defense Office of Economic Adjustment (OEA), as well as the points of contact, addresses, and telephone numbers for the LRAs for those installations. Representatives of state and local governments, homeless providers, and other parties interested in the redevelopment of an installation should contact the person or organization listed. The following information will also be published simultaneously in a newspaper of general circulation in the area of each installation. There will be additional Notices providing this same information about LRAs for other closing or realigning installations where surplus government property is available as those LRAs are recognized by the OEA.

DATES: *Effective Date:* May 9, 2006.

FOR FURTHER INFORMATION CONTACT: Director, Office of Economic Adjustment, Office of the Secretary of Defense, 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704, (703) 604–6020.

Local Redevelopment Authorities (LRAs) for Closing and Realigning Military Installations

Arkansas

Installation Name: Jonesboro USARC.
LRA Name: ARC Jonesboro Local Redevelopment Authority.
Point of Contact: Tony E. Thomas, Project Administrator, City of Jonesboro,
Address: City Hall, 515 West Washington, P.O. Box 1845, Jonesboro, AR 72403–1845.
Phone: (870) 932–1052.

Installation Name: Rufus N. Garrett Jr. USARC.
LRA Name: City of El Dorado Local Redevelopment Authority.
Point of Contact: Toby Anderson, Director, El Dorado Housing Authority.
Address: P.O. Box 486, El Dorado, AR 71731.
Phone: (870) 863–4070.

Connecticut

Installation Name: Paul J. Sutcovoy USARC.
LRA Name: Waterbury Development Corporation.
Point of Contact: Michael L. O'Connor, CEO, Waterbury Development Corporation.
Address: 24 Leavenworth Street, Waterbury, CT 06702.
Phone: (203) 346–2607, ext. 101.

Iowa

Installation Name: Cedar Rapids AFRC.
LRA Name: Cedar Rapids Local Redevelopment Authority.
Point of Contact: Lyle K. Hanson, Special Projects Manager, Department of Community Development, City of Cedar Rapids.
Address: 50 Second Avenue Bridge, 6th Floor, City Hall, Cedar Rapids, IA 52401–1256.
Phone: (319) 286–5070.

Louisiana

Installation Name: Bossier City USARC.
LRA Name: Bossier City Local Redevelopment Authority.
Point of Contact: Sam Marsiglia, Executive Director, Bossier City-Parish Metropolitan Planning Commission.
Address: 620 Benton Road, Bossier City, LA 71111.
Phone: (318) 741–8824.

Massachusetts

Installation Name: Arthur MacArthur USARC.
LRA Name: Springfield Redevelopment Authority.
Point of Contact: David B. Panagore, Chief Development Officer, Finance Control Board, City of Springfield.
Address: 70 Tapley Street.
Phone: (413) 787–6565.

Installation Name: Westover AFRC.
LRA Name: Westover Armed Forces Reserve Center Local Redevelopment Authority.
Point of Contact: Kate Brown, Director of Planning & Development, City of Chicopee.
Address: Chicopee City Hall Annex, 274 Front Street, 4th Floor, Chicopee, MA 01013.
Phone: (413) 594–1516.

New York

Installation Name: BG Theodore Roosevelt, Jr., USARC.
LRA Name: BG Theodore Roosevelt, Jr., USARC Local Redevelopment Authority.
Point of Contact: Daniel J. Gulizio, Deputy Commissioner of Comprehensive Planning, Nassau County Planning Commission.
Address: 400 County Seat Drive, Mineola, NY 11501.
Phone: (516) 571–0461.

West Virginia

Installation Name: 1LT Harry B. Colborn USARC.
LRA Name: Fairmont Planning Commission.
Point of Contact: Jay Rogers, Director of Planning and Development, City of Fairmont.
Address: 200 Jackson Street, P.O. Box 1428, Fairmont, WV 26555–1428.
Phone: (304) 366–6211, ext. 308.

Dated: May 4, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–4377 Filed 5–10–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Software Assurance will meet in closed session on May 16, 2006; at Science Applications International Corporation (SAIC), 4001 N, Fairfax Drive, Arlington, VA. This meeting is to continue charting the direction of the study and assessing the current capabilities and vulnerabilities of DoD software.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Assess the risk that DoD runs as a result of foreign influence on its software and to suggest technology and other measures to mitigate the risk.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: LCDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil,* or via phone at (703) 571–0083.

Due to scheduling and work burden difficulties, there is insufficient time to provide timely notice required by Section 10(a) of the Federal Advisory Committee Act and Subsection 102–3.150(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR part 102–3.150(b), which further requires publication at least 15 calendar days prior to the meeting.

Dated: May 3, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–4384 Filed 5–10–06; 8:45am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on VTOL/STOL will meet in closed session on May 24–25, 2006; at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. This meeting continues the task force's work and will consist of classified, privileged, FOUO, and proprietary briefings on current technologies and programs.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Assess the features and capabilities VTOL/STOL aircraft should have in order to support the nation's defense needs through at least the first half of the 21st century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: LCDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil,* or via phone at (703) 571–0083.

Dated: May 3, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–4385 Filed 5–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Technology Vectors will meet in closed session on May 15 and 16, 2006; at Strategic Analysis, Inc. (SAI), 3601 Wilson Boulevard, Suite 500, Arlington, VA. This meeting will be a plenary meeting used to map the study's direction and begin discussion on what will be the Technology Vectors DoD will need for the 21st century.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Review previous attempts by DoD to identify critical technologies in order to derive lessons that would help illuminate the current challenge; identify the National Security objectives for the 21st century and the operational missions that U.S. military will be called upon to support these objectives; identify new operational capabilities needed for the proposed missions; identify the critical science technology, and other related enablers of the desired capabilities; assess current S&T investment plans' relevance to the needed operational capabilities and enablers and recommend needed changes to the plans; identify mechanisms to accelerate and assure the transition of technology into U.S. military capabilities; and review and recommend changes as needed, the current processes by which national security objectives and needed operational capabilities are used to develop and prioritize science, technology, and other related enablers, and how those enablers are then developed.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: LCDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil*, or via phone at (703) 571–0083.

Due to scheduling and work burden difficulties, there is insufficient time to provide timely notice required by Section 10(a) of the Federal Advisory Committee Act and Subsection 102–3.150(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR part 102–3.150(b), which further requires publication at least 15 calendar days prior to the meeting.

Dated: May 3, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–4386 Filed 5–10–06; 8:45am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

[DoD–2006–OS–0078]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, DoD.

ACTION: Notice a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving notice to the record subjects of a computer matching program between the Department of Veterans Affairs (VA) and DoD that their records are being matched by computer. The purpose of this agreement is to verify an individual's continuing eligibility for VA benefits by identifying VA disability benefit recipients who return to active duty and to ensure that benefits are terminated if appropriate.

DATES: This proposed action will become effective June 12, 2006 and matching may commence unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget objections. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr., at telephone (703) 607–2942.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and VA have concluded an agreement to conduct a computer matching program between the agencies. The purpose of this agreement is to verify an individual's continuing eligibility for VA benefits by identifying VA disability benefit recipients who return to active duty and to ensure that benefits are terminated if appropriate.

The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining the information needed by the VA to identify ineligible VA disability compensation recipients who have returned to active duty. This matching agreement will identify those veterans who have returned to active duty, but are still receiving disability compensation. If this identification is not accomplished by computer matching, but is done manually, the cost would be prohibitive and it is possible that not all individuals would be identified.

A copy of the computer matching agreement between VA and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Department of Veterans Affairs, Veterans Benefit Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on April 30, 2006, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records about Individuals,'' dated February 8, 1996 (61 FR 6435).

Dated: May 4, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program Between the Department of Veterans Affairs and the Department of Defense for Verification of Disability Compensation

A. Participating Agencies

Participants in this computer matching program are the Department of Veterans Affairs (VA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The VA is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. Purpose of the Match

The purpose of this agreement is to verify an individual's continuing eligibility for VA benefits by identifying VA disability benefit recipients who return to active duty and to ensure that benefits are terminated if appropriate. VA will provide identifying information on disability compensation recipients to DMDC to match against a file of active duty (including full-time National Guard and Reserve) personnel. The purpose is to identify those recipients who have returned to active duty and are ineligible to receive VA compensation so that benefits can be adjusted or terminated, if in order.

C. Authority for Conducting the Match

The legal authority for conducting the matching program for use in the administration of VA's Compensation and Pension Benefits Program is contained in 38 U.S.C. 5304(c), Prohibition Against Duplication of Benefits, which precludes pension, compensation, or retirement pay on account of any person's own service, for any period for which he receives active duty pay. The head of any Federal department or agency shall provide, pursuant to 38 U.S.C. 5106, such information as requested by VA for the purpose of determining eligibility for, or amount of benefits, or verifying other information with respect thereto.

D. Records To Be Matched

The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

VA will use the system of records identified as ''VA Compensation, Pension and Education and Rehabilitation Records—V (58 VA 21/22),'' first published at 41 FR 9294, March 3, 1976, and last amended at 70 FR 34186, June 13, 2005, with other amendments, as cited therein. Attachment 4 is a copy of the system notice with the appropriate routine use, i.e., RU 46, annotated.

DoD will use the system of records identified as S322.10 DMDC, entitled, ''Defense Manpower Data Center Data Base,'' last published at 69 FR 31974, June 8, 2004, as amended by 69 FR 67117, November 16, 2004. Attachment 5 is a copy of the system notice with the appropriate routine use, i.e., RU 1(d)(1), annotated.

E. Description of Computer Matching Program

The Veterans Benefits Administration will provide DMDC with an electronic file which contains specified data elements of individual VA disability compensation recipients. Upon receipt of the electronic file, DMDC will perform a computer match using all nine digits of the SSNs in the VA file against a DMDC computer database. The DMDC database consists of personnel records of active duty (including full-time National Guard and Reserve) military members. Matching records, ''hits'' based on the SSN, will produce the member's name, branch of service, and unit designation, and other pertinent data elements. The hits will be furnished to the Veterans Benefits Administration which is responsible for verifying and determining that the data on the DMDC electronic reply file are consistent with the source file and for resolving any discrepancies or inconsistencies on an individual basis. The Veterans Benefits Administration will also be responsible for making final determinations as to positive identification, eligibility for benefits, and verifying any other information with respect thereto.

The electronic file provided by VA will contain information on approximately 2.5 million disability compensation recipients.

The DMDC computer database file contains approximately 1.5 million records of active duty military members, including full-time National Guard and Reserve.

F. Inclusive Dates of the Matching Program

This computer matching program is subject to public comment and review by Congress and the Office of Management and Budget. If the mandatory 30 day period for comment has expired and no comments are received and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange at a mutually agreeable time and thereafter on a quarterly basis. By agreement between VA and DMDC, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. Address for Receipt of Public Comments or Inquiries

Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512. Telephone (703) 607–2943.

[FR Doc. 06–4382 Filed 5–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–768–000]

Akula Energy, LLC; Notice of Issuance of Order

May 3, 2006.

Akula Energy, LLC (Akula) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy and capacity at market-based rates. Akula also requested waiver of various Commission regulations. In particular, Akula requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Akula.

On April 21, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Akula should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is May 22, 2006.

Absent a request to be heard in opposition by the deadline above, Akula is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Akula, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Akula's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7184 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–341–000]

ANR Pipeline Company; Notice of Tariff Filing

May 4, 2006.

Take notice that on May 1, 2006, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Forty-Fourth Revised Sheet No. 17, to be effective on June 1, 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 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 online 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. E6–7174 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–342–000]

Cheyenne Plains Gas Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2006.

Take notice that on May 1, 2006, Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne Plains) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 201, to become effective June 1, 2006.

Cheyenne Plains states that copies of its filing have been sent to all parties of record in this proceeding and affected state commissions.

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. E6–7175 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–343–000]

Cheyenne Plains Gas Pipeline Company, LLC; Notice of Tariff Filing

May 4, 2006.

Take notice that on May 1, 2006, Cheyenne Plains Gas Pipeline Company, LLC (Cheyenne Plains) tendered for filing a revised firm Transportation Service Agreement with OGE Energy Resources, Inc. to become effective May 1, 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 in accordance with the provisions of § 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. E6–7176 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–66–000]

Cincinnati Gas and Electric Company; Notice of Declaratory Order

May 1, 2006.

Take notice that on April 18, 2006, Cincinnati Gas and Electric Company d/b/a/ Duke Energy Ohio, *et al.* submitted a request that the Commission issue a declaratory order finding that the payment of dividends described in this petition does not violate section 305(a) of the Federal Power Act.

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, 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 comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

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 online 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 May 11, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7189 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR06–16–000]

Crosstex North Texas Pipeline, L.P.; Notice of Petition for Rate Approval

May 3, 2006.

Take notice that on April 19, 2006, Crosstex North Texas Pipeline, L.P. filed a petition for rate approval for NGPA section 311 maximum transportation rates for firm and interruptible transportation services, pursuant to section 284.123(b)(1)(i)(A) of the Commission's regulations.

Any person desiring to participate in this rate proceeding must file a motion 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 online 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, May 19, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7180 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–12–001]

Egan Hub Storage, LLC; Notice of Application

May 4, 2006.

Take notice that on April 26, 2006, Egan Hub Storage, LLC, 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP03–12–001 an application pursuant to section 7 of the Natural Gas Act (NGA), as amended, to amend its certificate authorization by reconfiguring its certificated compression units and installing related facilities at the Egan Gas Storage Facility in Acadia Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to Steven E. Tillman, General Manager, Regulatory Affairs, Egan Hub Storage, LLC, 5400 Westheimer Court, Houston, Texas 77251 at (713) 627–5113.

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

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

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

The Commission strongly encourages electronic filings of comments protests and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web (*http://www.ferc.gov*) site under the ''e-Filing'' link.

Comment Date: May 25, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7164 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–698–000; ER06–698–001]

First Commodities, Ltd.; Notice of Issuance of Order

May 3, 2006.

First Commodities, Ltd. (First Commodities) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. First Commodities also requested waiver of various Commission regulations. In particular, First Commodities requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by First Commodities.

On May 2, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by First Commodities should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is June 1, 2006.

Absent a request to be heard in opposition by the deadline above, First Commodities is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of First Commodities, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of First Commodities' issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7182 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–059]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rate

May 4, 2006.

Take notice that on May 1, 2006, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 8.02, reflecting an effective date of May 1, 2006.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

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 online 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. E6–7170 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG06–37–000; EG06–38–000; FC06–1–000; FC06–2–000]

KGen Enterprise LLC; TransCanada Energy Ltd.; Orzunil I de Electricidad Limitada; OrPower, 4 Inc.I; Ormat Momotomo Power Company; Ormat Leyte Co., Ltd.; OrTitlan Limitada; Macquarie Bank Limited; Macquarie International Infrastructure Fund Ltd.; Holleben Wind Farm KG; Bippen Wind Farm KG; Diversified Utility and Energy Trust No. 1; Diversified Utility and Energy Trust No. 2; MEIF Luxembourg Holdings SA; Macquarie Power Income Fund; Global Infrastructure Fund; Korea Power Investments Company, Ltd.; SK Energy Company, Ltd.; UWR GmbH and Co KG; Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status

May 5, 2006.

Take notice that during the month of April 2006, 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. E6–7193 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–741–000; ER06–742–000; ER06–749–000; ER06–750–000; ER06–751–000; ER06–752–000; ER06–753–000; ER06–754–000; ER06–755–000; ER06–756–000]

KIAC Partners; Nissequogue Cogen Partners; Carville Energy LLC; Morgan Energy Center, LLC; Columbia Energy LLC; Pine Bluff Energy, LLC; CPN Pryor Funding Corporation; Auburndale Power Partners, L.P.; Calpine Gilroy Cogen, L.P.; Los Medanos Energy Center, LLC; Notice of Issuance of Order

May 3, 2006.

Carville Energy, LLC, Morgan Energy Center, LLC, Columbia Energy LLC, Pine Bluff Energy, LLC, Auburndale Power Partners, L.P., CPN Pryor Funding Corporation, KIAC Partners, Nissequogue Cogen Partners, Calpine Gilroy Cogen, LP and Los Medanos Energy LLC (the Calpine Entities) filed applications for market-based rate authority, with accompanying tariffs. The proposed market-based rate tariffs provide for the sale of energy, capacity and ancillary services at market-based rates. The Calpine Entities also requested waiver of various Commission regulations. In particular, the Calpine Entities requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by the Calpine Entities.

On April 24, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by the Calpine Entities should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is April 24, 2006.

Absent a request to be heard in opposition by the deadline above, the Calpine Entities are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the Calpine Entities, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of the Calpine Entities' issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7183 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–6–055; EL04–135–057; EL02–111–075; EL03–212–071]

Midwest Independent Transmission System; Ameren Services Co., et al.; Errata Notice

May 4, 2006.

Take notice that on May 1, 2006, the Commission issued a notice of filing in Docket Nos. ER05–6–055. *Combined Notice of Filings #1,* (May 1, 2006). Docket Nos. EL04–135–057, EL02–111–075 and EL03–212–071 were inadvertently omitted from the caption of the proceeding. This notice corrects the caption to include all the Docket Nos. in the above-captioned proceeding.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7177 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG06–47–000]

MMC Chula Vista LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

May 5, 2006.

Take notice that on April 18, 2006, MMC Chula Vista LLC, tendered for filing a notice of self-certification of its status as an exempt wholesale generator.

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, 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 comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

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 online 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 May 12, 2006.

Magalie R. Salas,
Secretary.
[FR Doc. E6–7194 Filed 5–10–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–338–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2006.

Take notice that on May 1, 2006, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets to be effective November 1, 2006:

25 Revised Sheet No. 54
23 Revised Sheet No. 63
22 Revised Sheet No. 64

Northern states that this filing establishes the Market Area fuel rates to be effective November 1, 2006, based on actual data for the five-month period November 1, 2005, through March 31, 2006.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

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. E6–7171 Filed 5–10–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–339–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2006.

Take notice that on May 1, 2006, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, First Revised Sheet No. 66D, with an effective date of June 1, 2006.

Northern states that it is filing the above-referenced tariff sheet to submit a Rate Schedule TFX service agreement for Commission acceptance as a non-conforming agreement.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

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 online 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. E6–7172 Filed 5–10–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–340–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2006.

Take notice that on May 1, 2006, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of June 1, 2006:

Eighth Revised Sheet No. 135
Fourth Revised Sheet No. 135A
Fourth Revised Sheet No. 135B
Fourth Revised Sheet No. 135C

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

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 § 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 online 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. E6–7173 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–826–000; ER06–826–001]

PJM Interconnection, L.L.C.; Notice of Filing

May 3, 2006.

Take notice that on April 27, 2006, PJM Interconnection, L.L.C. filed revised tariff sheets in reference to its Market Monitoring Plan filed with the Commission on April 3, 2006. PJM proposes a new effective date of July 17, 2006 for the revised 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, 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 comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

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 online 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 June 8, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7185 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2150]

Puget Sound Energy, Inc.; Notice of Authorization for Continued Project Operation

May 5, 2006.

On April 30, 2004, Puget Sound Energy, Inc., licensee for the Baker River Hydroelectric Project, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Baker River Project is located on the Baker River in Whatcom and Skagit Counties, Washington.

The license for Project No. 2150 was issued for a period ending April 30, 2006. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2150 is issued to Puget Sound Energy, Inc. for a period effective May 1, 2006 through April 30, 2007, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 30, 2007, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise. If the project is not subject to section 15 of the FPA, notice is hereby given that Puget Sound Energy, Inc., is authorized to continue operation of the Baker River Project until such time as the Commission acts on its application for a subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7197 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–413–003; CP04–414–000; CP04–415–000]

Rockies Express Pipeline, L.L.C.; Notice of Application

May 4, 2006.

On April 26, 2006, Rockies Express Pipeline, L.L.C. (Rockies Express), 370 Van Gordon Street, Lake Wood, Colorado 80228–8304, formerly Entrega Gas Pipeline LLC, filed in Docket Nos. CP04–413–003, CP04–414–000 and CP04–415–000, an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, as amended, requesting to amend its certificate of public convenience and necessity issued on August 9, 2005 (August 9 order). This filing is 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, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

In the August 9 Order, the Commission authorized Rockies Express to use a 100 foot wide nominal construction right-of-way (ROW). Rockies Express seeks to amend its certificate to obtain authorization to expand its construction ROW by 25 feet along the entire length of the Phase I, Segment 2 pipeline segment from Wamsutter Hub to the Cheyenne Hub, except in certain areas that have been identified as requiring a narrow ROW for protection of cultural or environmental resources.

Any questions regarding this application should be directed to B J. Becker, 370 Van Gordon Street, Lake Wood, Colorado 80228–8304, phone: (303) 763–3496, Fax: (303) 763–3115, or Bentley W. Beland, 370 Van Gordon Street, Lake Wood, Colorado 80228–8304, phone: (303) 763–3581, Fax: (303) 763–3116.

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 in the proceeding with the Commission and must mail a copy to the applicant and to every other party. 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.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: May 12, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7165 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 67–110 and 2175–013]

Southern California Edison Company; Notice of Petition for Declaratory Order and Soliciting Comments, Motions To Intervene, and Protests

May 4, 2006.

On April 26, 2006, Southern California Edison Company (SCE) filed a petition for a declaratory order to resolve whether a 12,000 volt substation located on the other side of Big Creek from Powerhouse Nos. 2 (part of Project No. 2175) and 2A (part of Project No. 67) is within the Commission's jurisdiction under the Federal Power Act. The projects are on Big Creek in Fresno County, California.

The petition contends that the Commission does not have jurisdiction because the 12 KV substation serves the SCE distribution system in the local area and the Commission does not license distribution facilities.

Any person desiring to be heard or to protest the petition should file comments, a protest, or a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.210, 385.211 and 385.214. In determining the appropriate action to take, the Commission will consider all protests and other comments, but only those who file a motion to intervene may become parties to the proceeding. Comments, protests, or motions to intervene must be filed within 10 days of publication of this notice in the **Federal Register** and must bear in all capital letters the title ''COMMENTS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and Project Nos. 67–110 and 2175–013.

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.

Send the filings (original and 8 copies) to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Copies of the petition for declaratory order are on file with the Commission

and are available for public inspection in Room 2A and may also be viewed on the Web at *http://www.ferc.gov/onlinerims.htm.* For assistance, call (202) 502–8222 or for TTY, (202) 208–1659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7168 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–344–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2006.

Take notice that on May 1, 2006, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective June 2, 2006:

Fourth Revised Sheet No. 179B
Second Revised Sheet No. 181
First Revised Sheet No. 181A
Third Revised Sheet No. 182
First Revised Sheet No. 182A
First Revised Sheet No. 184
First Revised Sheet No. 185
Second Revised Sheet No. 186
Seventh Revised Sheet No. 225
Eighth Revised Sheet No. 226
Third Revised Sheet No. 226A
Third Revised Sheet No. 226B
Third Revised Sheet No. 233
Fourth Revised Sheet No. 368
Third Revised Sheet No. 369
Second Revised Sheet No. 730
Second Revised Sheet No. 731

Williston Basin states that it is proposing to make certain tariff modifications which it believes are necessary to correct and/or clarify terms used in its tariff.

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 online 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. E6–7166 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 199–212]

Herbert Butler, et al., Complainants v. South Carolina Public Service Authority, Respondent; Notice Dismissing Complaint

May 3, 2006.

On February 21, 2006, Herbert Butler, et al. (Complainants) filed a complaint against South Carolina Public Service Authority (Public Service), licensee for the Santee-Cooper Project No. 199, located on the Santee and Cooper Rivers, in Berkeley, Calhoun, Clarendon, Orangeburg, and Sumter Counties, South Carolina.[1] On March 31, 2006, Public Service filed an answer to the complaint. On March 30, 2006, the United States Army Corps of Engineers (Corps) filed comments.

The Complainants contend that Public Service has and continues to operate the project in violation of its license so as to cause unnecessary floods on the Complainants land. They have asked the Commission to investigate and to stop Public Service from its continuing violations of its license. The Complainants specifically allege that it is Public Service's operation of the Corps' St. Stephen Hydroplant[2] that is causing flooding on their land.[3]

The Commission's regulations provide that a complaint may be filed seeking Commission action against any person alleged to be ''in contravention or violation of any statute, rule, order, or other law administered by the Commission or for any other alleged wrong over which the Commission may have jurisdiction.''[4] The regulations further provide that the complaint must [c]learly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements.''[5]

The crux of Complainants' allegations is that flooding has been caused by the operation of the Corps' St. Stephen's project. Because the Corps' project is a Federal project, which is outside the Commission's jurisdiction, and since the Complainants do not allege that Public Service is in violation of its license, the Federal Power Act, or the

[1] The existing 118-megawatt (MW) Santee Cooper Project consists of: The 2.2 mile-long Santee Dam on the Santee River; the 1.2 mile-long Pinopolis Dam on the Cooper River; the 5-mile-long Diversion Canal which connects Lake Marion and Lake Moultrie; the Santee Spillway Hydroelectric Station with one 2.0–MW turbine; the Pinopolis Hydroelectric Station with one 8.0-MW turbine and four 27.0-MW turbines; the 43-mile-long Lake Marion Reservoir, located on the Santee River; and the 12-mile-long Lake Moultrie Reservoir, located on the Cooper River.

[2] The St. Stephen Hydroplant is a Corps-owned power project that is operated by Public Service. Congress authorized the construction of a rediversion project which included a rediversion canal to connect Lake Moultrie to the Santee River, reducing the flow of fresh water into Charleston Harbor through the Cooper River. The St. Stephen powerhouse was built as part of this project. Public Service operates the St. Stephen's project pursuant to a 1977 contract between it and the Corps.

[3] Complainants also allege, without elaboration, that Public Service violated Articles 38, 40 and 53 of its license. Article 38 requires Public Service to implement and modify when appropriate the emergency action plan on file with the Commission. The plan is designed to provide an early warning to upstream and downstream inhabitants and property owners if there should be an impending or actual sudden release of water caused by an accident to, or failure of, the Santee Cooper Project works. It also requires Public Service to monitor upstream or downstream conditions for the purpose of making appropriate changes to the emergency action plan. Article 40 requires the installation and operation of notification and warning devices that may be needed to warn the public of fluctuations in flow from the Santee Cooper Project. Article 53 requires Public Service to obtain flowage easements over land inundated by project waters within the Santee Cooper Project boundary. Complainants have not demonstrated any violation of these articles, nor of any other requirement of its license.

[4] *See* 18 CFR 385.206(a)(2005).

[5] *Id.*

Commission's regulations, the complaint must be dismissed.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7188 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12053–002]

Nicholas Josten; Notice Dismissing Complaint

May 3, 2006.

On April 10, 2006, Stephen J. Bruzzone and Linda L. Bruzzone filed a complaint against Nicholas Josten, applicant for an exemption for the West Valley A&B Hydroelectric Project No. 12053.[1] The project is proposed to be located on the South Fork of the Pit River in Modoc County, California. The project would be located on approximately 31 acres of federal lands, managed by Forest Service and Bureau of Land Management. The pleading generally alleges that Nicholas Josten has made misrepresentations in information he filed in support of his application for exemption.[2]

The issues raised in the pleading relate to consideration of the application for exemption. As such, they are not properly the subject of a formal complaint. Accordingly, the complaint is dismissed and the comments raised in the pleading will be considered in the exemption proceeding.[3]

Magalie R. Salas,

Secretary.

[FR Doc. E6–7186 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

[1] The proposed project would consist of two developments, West Valley A and West Valley Alternative B–1. West Valley A would be a run-of-river development with a capacity of 1.0 MW and would consist of: An existing concrete diversion structure; an existing intake structure; 11,600 feet of an existing open canal; a proposed concrete overflow structure; proposed 2,800 feet of new canal; a proposed 400-foot-long penstock; a proposed powerhouse; a proposed tailrace pipe; a proposed 3,000-foot-long, 12.3-kilovolt (kV) transmission line; and appurtenant facilities.

West Valley Alternative B–1 would be a run-of-river development with a capacity of 1.36 MW and would consist of: The existing West Valley Dam and outlet works; a new bypass valve attached to the existing dam outlet pipe; a proposed 2,850-foot-long penstock; a proposed powerhouse; a proposed tailrace canal; a proposed 4.5-mile-long, 12.3-kV transmission line; and appurtenant facilities.

[2] In particular, they assert that Mr. Josten provided the Commission with misleading information regarding water flow tables submitted on March 23, 2006.

[3] On April 20, 2006, Commission staff issued a notice that the application was ready for environmental analysis and soliciting comments, terms and conditions and recommendations. Comments are due by June 19, 2006.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–68–000]

North Star Steel Company; Complainant v. Arizona Public Service Company; California Independent System Operator Corporation; Enron Power Marketing, Inc.; Nevada Power Company; PacifiCorp; Powerex Corp.; Public Service Company of New Mexico; Tucson Electric Power Company; Respondents; Notice of Complaint

May 3, 2006.

Take notice that on May 2, 2006, North Star Steel (North Star) filed a formal complaint against the Arizona Public Service Company, California Independent System Operator, Enron Power Marketing, Nevada Power Company, PacifiCorp, Powerex Corp., Public Service Company of New Mexico, and Tucson Electric Power Company (Respondents), pursuant sections 205 and 206 of the Federal Power Act and Rule 206 of the Commission's Rule of Practice and Procedure, 18 CFR 385.206. North Star petitions the Commission for an order directing the Respondents to return to North Star amounts paid to them for electric energy in excess of market clearing price between January 1, 2000 and June 20, 2001.

North Star states that copies of the complaint were served on Respondents.

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 comment date. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 on May 23, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7181 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–826–000, *et al.*]

PJM Interconnection, L.L.C., *et al.*; Electric Rate and Corporate Filings

May 4, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Vermont Electric Power Company and Vermont Transco LLC

[Docket Nos. EC06–115–000]

Central Vermont Public Service Corporation and Green Mountain Power Corporation

[EC06–116–000]

Vermont Electric Power Company, Vermont Transco LLC, ISO New England, Inc., Central Vermont Public Service Corporation, Vermont Electric Cooperative, Inc.

[ER06–900–000]

Vermont Electric Power Company and Vermont Transco LLC

[AC06–107–000]

Take notice that on April 20, 2006, Vermont Electric Power Company (VELCO) tendered for filing an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby virtually all of its transmission assets will be transferred to Vermont Transco LLC, a limited liability company being created under Vermont law, in exchange for a membership interest and other consideration. VELCO further states that in conjunction with the transaction, VELCO and VTransco proposed to transfer, cancel and/or modify several rate schedules that pre-date the provision of service under an open access transmission tariff and several service agreements executed under VELCO's local OATT, which are currently under VELCo's local service schedule in ISO New England's FERC Electric Tariff No. 3. VELCO and VTransco requests authorization to treat the costs associated with the transactions as regulatory assets that will be amortized and recovered over fifteen years.

ISO New England Inc., Central Vermont Public Service Corporation, Green mountain Power Corporation and Vermont Electric Cooperative, Inc. have joined in this filing for the limited purpose of proposing modifications to the regional documents in New England, including the ISO New England's FERC Electric Tariff No. 3, including several local service schedules contained in Schedule 21. In addition, Central Vermont and Green Mountain Power requests authorization pursuant to section 203 of the Federal Power Act to acquire membership units that are being issued by VTransco.

Comment Date: 5 p.m. Eastern Time on May 15, 2006.

2. Indeck Energy Services of Silver Springs, Inc.

[Docket No. EG06–40–000]

Take notice that on April 3, 2006, Indeck Energy Services of Silver Springs, Inc. filed an amendment to its notice of self certification of exempt wholesale generator status filed on March 10, 2006.

Comment Date: 5 p.m. Eastern Time on May 18, 2006

3. PJM Interconnection, L.L.C.

[Docket Nos. ER06–826–000 and ER06–826–001]

Take notice that on April 27, 2006, PJM Interconnection, L.L.C filed revised tariff sheets in reference to its Market Monitoring Plan filed with the Commission on April 3, 2006. PJM proposes a new effective date of July 17, 2006 for the revised tariff sheets.

Comment Date: 5 p.m. Eastern Time on June 8, 2006.

4. PJM Transmission Owners

[Docket No. ER06–880–000]

Take notice that on April 20, 2006 PJM Transmission Owners jointly filed modifications to Schedule 12 of the PJM Open Access Transmission Tariff to clarify the allocations of transmission expansion costs to merchant transmission owners and the calculations of transmission enhancement charges for point-to-point transmission customers.

Comment Date: 5 p.m. Eastern Time on May 12, 2006.

5. Catalyst Vidalia Corporation, Catalyst Vidalia Holding Corporation, Catalyst Vidalia Acquisition Corporation, The Catalyst Group, Inc.

[Docket No. PH06–44–000]

Take notice that on April 26, 2006, Catalyst Vidalia Corporation, Catalyst Vidalia Holding Corporation, Catalyst Vidalia Acquisition Corporation, and The Catalyst Group, Inc. filed a notification of exemption pursuant to Order Nos. 667 and 667–A and 18 CFR 366.3(b) and 366.4(b)(1), seeking exemption from the requirements of the Public Utility Holding Company Act of 2005.

Comment Date: 5 p.m. Eastern Time on May 17, 2006.

6. New Jersey Resources Corporation

[Docket No. PH06–45–000]

Take notice that on April 27, 2006 New Jersey Resources Corporation filed a notice of petition for exemption from the requirements of public utility holding company act of 2005, pursuant to 18 CFR 366.3(b) and 366.4(b)(1).

Comment Date: 5 p.m. Eastern Time on May 15, 2006.

7. Green Mountain Power Corporation

[Docket No. PH06–46–000]

Take notice that on May 1, 2006 Green Mountain Power Corporation (GMP) on behalf of itself and its partially owned subsidiary, Vermont Electric Power Company, Inc. (VELCO) submitted a notice of petition for waiver of the Commission's regulations under the Public Utility Holding Company Act of 2005 pursuant to 18 CFR 366.3(c)(1) because GMP and VELCO are single-state holding company.

Comment Date: 5 p.m. Eastern Time on May 22, 2006.

Standard Paragraph

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, 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 comment date. On or before the comment date, it is not necessary to 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. E6–7158 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 5, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Number: ER01–1418–005; ER02–1238–006; ER01–2928–008; ER01–1419–005; ER01–1310–006; ER03–398–006.

Applicants: Effingham County Power, LLC; MPG Generating, LLC; Progress Ventures, Inc.; Rowan County Power, LLC; Walton County Power, LLC; Washington County Power, LLC.

Description: Progress Energy Service Co on behalf of Effingham County Power, LLC et al. submits revisions to the market-based rate tariffs of the Progress Affiliates.

Filed Date: April 28, 2006.

Accession Number: 20060503–0155.

Comment Date: 5 p.m. Eastern Time on Friday, May 19, 2006.

Docket Numbers: ER02–2551–003.

Applicants: Cargill Power Markets, LLC.

Description: Cargill Power Markets, LLC submits a revision to its triennial market power analysis filed February 28, 2006 and a revised page to its market-based rate wholesale power sale tariff, Original Rate Schedule FERC No. 1.

Filed Date: April 25, 2006.

Accession Number: 20060428–0379.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 16, 2006.

Docket Numbers: ER03–1341–003.

Applicants: Michigan Electric Transmission Co., LLC.

Description: Michigan Electric Transmission Company, LLC submits schedules showing its actual weighted average cost of long-term debt for the calendar year 2005 and actual average capital structure for 2005.

Filed Date: April 28, 2006.

Accession Number: 20060503–0154.

Comment Date: 5 p.m. Eastern Time on Friday, May 19, 2006.

Docket Numbers: ER06–18–003.

Applicants: Midwest Independent Transmission System Operator, Inc. System Operator, Inc submits Second Substitute Original Sheet No. 1849 to FERC Electric Tariff, Third Revised Volume No. 1.

Filed Date: April 28, 2006.

Accession Number: 20060501–0366.

Comment Date: 5 p.m. Eastern Time on Friday, May 19, 2006.

Docket Numbers: ER06–439–001.

Applicants: Otter Tail Corporation.

Description: Otter Tail Power Co submits a filing in compliance with letter order dated February 24, 2006.

Filed Date: April 25, 2006.

Accession Number: 20060501–0339.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 16, 2006.

Docket Numbers: ER06–538–002.

Applicants: Llano Estacado Wind, LP.

Description: Llano Estacado Wind, LP submits a tariff amendment to the Second Substitute Original Sheet 1 designated as FERC Electric Tariff, First Revised Volume 1 under ER06–538.

Filed Date: April 25, 2006.

Accession Number: 20060428–0119.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 16, 2006.

Docket Numbers: ER06–549–001.

Applicants: Wheelabrator Ridge Energy Inc.

Description: Wheelabrator Ridge Energy Inc submits revised tariff sheets and additional information regarding the notice of succession filed on January 25, 2006 under ER06–549.

Filed Date: April 28, 2006.

Accession Number: 20060501–0368.

Comment Date: 5 p.m. Eastern Time on Friday, May 19, 2006.

Docket Numbers: ER06–557–001.

Applicants: EL Paso Electric Company.

Description: El Paso Electric Co responds to FERC's March 23, 2006 request for additional information re its January 27, 2006 filing of a Power Purchase and Sale Agreement.

Filed Date: April 20, 2006.

Accession Number: 20060427–0133.

Comment Date: 5 p.m. Eastern Time on Thursday, May 11, 2006.

Docket Numbers: ER06–619–002; ER96–110–019; ER99–2774–011; ER03–956–008; ER03–185–006; ER03–17–006; ER01–545–008; ER00–1783–008; ER02–795–006; ER96–2504–013; ER05–1367–002; ER05–1368–002; ER05–1369–003; ER00–826–005; ER00–828–005; ER98–421–016; ER98–4055–013; ER01–1337–008; ER02–177–009; ER03–1212–007.

Applicants: Duke Power Company LLC; Duke Energy Trading and Marketing, L.L.C.; Duke Energy Marketing America, LLC; Duke Energy Fayette, LLC; Duke Energy Hanging Rock, LLC; Duke Energy Lee, LLC; Duke Energy Vermillion, LLC; Duke Energy Washington, LLC; Cincinnati Gas & Electric Co.; PSI Energy, Inc.; Union Light Heat & Power Company, Cinergy Marketing & Trading, LP; Brownsville Power I, L.L.C.; Caledonia Power I, L.L.C.; CinCap IV, LLC; CinCap V, LLC; Cinergy Capital & Trading, Inc.; Cinergy Power Investments, Inc.; St. Paul Cogeneration, LLC.

Description: Duke Power Company, LLC et al. submits Substitute Original Sheet 6 et al to FERC Electric Tariff, Third Revised Volume No. 3.

Filed Date: April 18, 2006.

Accession Number: 20060426–0255.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 9, 2006.

Docket Numbers: ER06–669–001.

Applicants: TME Energy Services.

Description: TME Energy Services submits revised FERC Electric Rate Schedule No. 1.

Filed Date: April 26, 2006.

Accession Number: 20060503–0153.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 17, 2006.

Docket Numbers: ER06–895–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Co submits revised rate schedule sheets pursuant to section 205 of the Federal Power Act.

Filed Date: April 28, 2006.

Accession Number: 20060501–0340.

Comment Date: 5 p.m. Eastern Time on Friday, May 19, 2006.

Docket Numbers: ER06–896–000.

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy, Inc submits an interconnection and parallel operations agreement with Public Utility District No. 1 of Chelan County, Washington.

Filed Date: April 28, 2006.

Accession Number: 20060501–0380.

Comment Date: 5 p.m. Eastern Time on Friday, May 19, 2006.

Docket Numbers: ER06–897–000.

Applicants: Texas-New Mexico Power Company.

Description: Texas-New Mexico Power Co submits an executed service agreement between TNMP and Tri-State Generation & Transmission Association Inc under PNM Resources OATT, effective April 1, 2006.

Filed Date: April 28, 2006.

Accession Number: 20060501–0381.

Comment Date: 5 p.m. Eastern Time on Friday, May 19, 2006.

Docket Numbers: ER06–898–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Co submits revised rate schedule sheets for its agreement to provide qualifying facility transmission service w/ Mosaic Fertilizer, LLC et al.

Filed Date: April 28, 2006.

Accession Number: 20060501–0382.

Comment Date: 5 p.m. Eastern Time on Friday, May 19, 2006.

Docket Numbers: ER06–899–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Co submits Fifth Revised Sheet Nos. 70 and 71 to First Revised Schedule 62, effective May 1, 2006.

Filed Date: April 28, 2006.
Accession Number: 20060501–0383.
Comment Date: 5 p.m. Eastern Time on Friday, May 19, 2006.

Docket Numbers: ER06–901–001.
Applicants: DeGreeff DP, LLC.
Description: DeGreeff DP, LLC submits a notice of non-material change in status in compliance with the reporting requirements of Order 652.
Filed Date: April 25, 2006.
Accession Number: 20060501–0373.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 16, 2006.

Docket Numbers: ER97–2846–009.
Applicants: Florida Power Corporation.
Description: Florida Power Corp dba Progress Energy Florida Inc notifies FERC that they have entered into a contract effective March 17, 2006 for the purchase of capacity from Reliant Energy.
Filed Date: April 25, 2006.
Accession Number: 20060501–0384.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 16, 2006.

Docket Numbers: ER98–1643–009.
Applicants: Portland General Electric Company.
Description: Portland General Electric Co submits notice of change in status.
Filed Date: April 28, 2006.
Accession Number: 20060503–0152.
Comment Date: 5 p.m. Eastern Time on Friday, May 19, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,
Secretary.
[FR Doc. E6–7202 Filed 5–10–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 4, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER00–2687–008.
Applicants: Union Electric Company.
Description: Union Electric Co dba AmerenUE notifies FERC of certain changes in status relevant to its continued authorization to sell power at market-based rates.
Filed Date: 4/27/2006.
Accession Number: 20060501–0364.
Comment Date: 5 p.m. eastern time on Thursday, May 18, 2006.

Docket Numbers: ER02–1406–013; ER99–2928–009; ER01–1099–012.
Applicants: Acadia Power Partners, LLC; Cleco Evangeline LLC; Cleco Power LLC.
Description: Acadia Power Partners, LLC, et al. notify FERC of a change in status resulting from acquired control of generation facilities it owns as a consequence of amendments to the purchase agreement with Tenaska Power Services Co.
Filed Date: 4/21/2006.
Accession Number: 20060502–0055.
Comment Date: 5 p.m. eastern time on Friday, May 12, 2006.

Docket Numbers: ER03–354–001.
Applicants: Ormet Power Marketing, LLC.
Description: Ormet Power Marketing, LLC submits its triennial market-power update pursuant to FERC's directive in its 2/24/03 order.
Filed Date: 4/21/2006.
Accession Number: 20060502–0053.
Comment Date: 5 p.m. eastern time on Friday, May 12, 2006.

Docket Numbers: ER04–994–002; ER04–657–007; ER04–660–007; ER04–659–007.
Applicants: Boston Generating, LLC; Mystic I, LLC; Mystic Development, LLC; Fore River, LLC.
Description: Boston Generating, LLC on behalf of itself and Mystic I LLC et al. submits a notification of a non-material change in status relating to their authorizations to sell power at market-based rates.
Filed Date: 4/27/2006.
Accession Number: 20060501–0365.
Comment Date: 5 p.m. eastern time on Thursday, May 18, 2006.

Docket Numbers: ER05–6–057; EL04–135–059; EL02–111–077, EL03–212–073.
Applicants: PJM Transmission Owners.
Description: PJM Transmission Owners submit FERC Electric Tariff, Sixth Revised Volume 1 to its OATT, pursuant to section 205 of the Federal Power Act.
Filed Date: 4/24/2006.
Accession Number: 20060501–0362.
Comment Date: 5 p.m. eastern time on Monday, May 15, 2006.

Docket Numbers: ER05–1233–002.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Co. submits substituted pro forma revised tariff sheets to its Open Access Transmission Tariff, pursuant to Order 614.
Filed Date: 04/24/2006.
Accession Number: 20060502–0052.
Comment Date: 5 p.m. eastern time on Monday, May 15, 2006.

Docket Numbers: ER05–1501–002.
Applicants: California Independent System Operator.
Description: California Independent System Operator submits an errata to its compliance filing in response to comments.
Filed Date: 4/27/2006.
Accession Number: 20060501–0367.
Comment Date: 5 p.m. eastern time on Thursday, May 11, 2006.

Docket Numbers: ER06–439–001.

Applicants: Otter Tail Corporation.
Description: Otter Tail Power Co submits its compliance filing, pursuant to Commission letter order dated 2/24/06.
Filed Date: 4/25/2006.
Accession Number: 20060501–0339.
Comment Date: 5 p.m. eastern time on Tuesday, May 16, 2006.

Docket Numbers: ER06–538–002.
Applicants: Llano Estacado Wind, LP
Description: Llano Estacado Wind, LP submits a tariff amendment designated as FERC Electric Tariff, First Revised Volume 1, Second Substitute Original Sheet 1.
Filed Date: 4/25/2006.
Accession Number: 20060428–0119.
Comment Date: 5 p.m. eastern time on Tuesday, May 16, 2006.

Docket Numbers: ER06–550–003.
Applicants: Pacific Gas & Electric Company.
Description: Pacific Gas and Electric Co submits a compliance filing, pursuant to the Commission's 2/24/06 addressing two modification to its tariff sheets.
Filed Date: 4/24/2006.
Accession Number: 20060501–0369.
Comment Date: 5 p.m. eastern time on Monday, May 15, 2006.

Docket Numbers: ER06–554–001.
Applicants: Virginia Electric and Power Company.
Description: Virginia Electric and Power Co dba Dominion Virginia Power submits corrected heating loss calculations for Clover Units 1 and 2 and a revised revenue requirement in compliance with FERC's 3/28/06 order.
Filed Date: 4/27/2006.
Accession Number: 20060501–0370.
Comment Date: 5 p.m. eastern time on Thursday, May 18, 2006.

Docket Numbers: ER06–593–001.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits a revised executed Agreement to Sponsor Facilities Upgrades with Redbud Energy, LP and Oklahoma Gas and Electric Co. pursuant to the Commission's order issued 3/31/06.
Filed Date: 4/26/2006.
Accession Number: 20060501–0371.
Comment Date: 5 p.m. eastern time on Wednesday, May 17, 2006.

Docket Numbers: ER06–889–000.
Applicants: PSEG Nuclear LLC; PSEG Fossil LLC; PSEG Energy Resources & Trade LLC.
Description: PSEG Fossil, LLC, PSEG Nuclear, LLC and PSEG Energy Resources & Trade, LLC submits a petition of waiver Part 35 Subparts B and C etc. of the Commission regulations.
Filed Date: 4/26/2006.
Accession Number: 20060502–0051.
Comment Date: 5 p.m. eastern time on Wednesday, May 17, 2006.

Docket Numbers: ER06–890–000.
Applicants: Hampton Lumber Mills-Washington, Inc.
Description: Hampton Lumber Mills-Washington Inc. submits a petition for acceptance of its market-based rate authority for Rate Schedule No. 1, waivers and blanket authority.
Filed Date: 4/26/2006.
Accession Number: 20060501–0375.
Comment Date: 5 p.m. eastern time on Wednesday, May 17, 2006.

Docket Numbers: ER06–891–000.
Applicants: Gauley River Power Partners, L.P.
Description: Gauley River Power Partners, L.P. submits a notice of cancellation of FERC Rate Schedule No. 1.
Filed Date: 4/27/2006.
Accession Number: 20060501–0376.
Comment Date: 5 p.m. eastern time on Thursday, May 18, 2006.

Docket Numbers: ER06–892–000.
Applicants: CHI Power Marketing Inc.
Description: CHI Power Marketing, Inc. submits a notice of cancellation of FERC Rate Schedule No. 1.
Filed Date: 4/27/2006.
Accession Number: 20060501–0377.
Comment Date: 5 p.m. eastern time on Thursday, May 18, 2006.

Docket Numbers: ER06–893–000.
Applicants: Western New York Wind Corp.
Description: Western New York Wind Corp submits a notice of cancellation of FERC Rate Schedule No. 1.
Filed Date: 4/27/2006.
Accession Number: 20060501–0378.
Comment Date: 5 p.m. eastern time on Thursday, May 18, 2006.

Docket Numbers: ER06–894–000.
Applicants: Entergy Services Inc.; Entergy Operating Companies; City of Prescott, Arkansas.
Description: Entergy Services Inc., agent for Entergy Operating Companies and the City of Prescott submit their executed Network Operating Agreement and Network Integrated Transmission Service Agreement, effective 5/1/06.
Filed Date: 4/27/2006.
Accession Number: 20060501–0379.
Comment Date: 5 p.m. eastern time on Thursday, May 18, 2006.

Docket Numbers: ER95–216–027.
Applicants: Aquila Merchant Services, Inc.
Description: Aquila Merchant Services, Inc. submits Substitute First Revised Sheet 1 to its FERC Electric Tariff, First Revised Volume 1, pursuant to FERC's 3/17/06 order.
Filed Date: 4/21/2006.
Accession Number: 20060502–0054.
Comment Date: 5 p.m. eastern time on Friday, May 12, 2006.

Docket Numbers: ER95–1018–009; EL05–111–005.
Applicants: Kohler Company.
Description: Kohler Company submits an amendment to its Annual Market Power Analysis in response to the deficiency order issued 2/1/06.
Filed Date: 4/27/2006.
Accession Number: 20060501–0363.
Comment Date: 5 p.m. eastern time on Thursday, May 18, 2006.

Docket Numbers: ER97–2846–009.
Applicants: Florida Power Corporation.
Description: Florida Power Corp. dba Progress Energy Florida Inc. notifies FERC that it has entered into a contract effective 3/17/06 for the purchase of capacity from Reliant Energy.
Filed Date: 4/25/2006.
Accession Number: 20060501–0384.
Comment Date: 5 p.m. eastern time on Tuesday, May 16, 2006.

Docket Numbers: ER99–3426–006.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Co. submits a report of change in status pursuant to Order 652.
Filed Date: 4/27/2006.
Accession Number: 20060501–0385.
Comment Date: 5 p.m. eastern time on Thursday, May 18, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor

must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7204 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–360–000; CP05–357–000; CP05–358–000; CP05–359–000]

Creole Trail LNG, L.P.; Cheniere Creole Trail Pipeline Company; Notice of Availability of the Final Environmental Impact Statement for the Creole Trail LNG Terminal and Pipeline Project

May 5, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this final Environmental Impact Statement (EIS) for the construction and operation of the liquefied natural gas (LNG) import terminal and natural gas pipeline facilities, referred to as the Creole Trail LNG Terminal and Pipeline Project (Creole Trail Project), as proposed by Creole Trail LNG, L.P. and Cheniere Creole Trail Pipeline Company [1] (collectively referred to as Creole Trail) in the above-referenced dockets.

The final EIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the Creole Trail Project, with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The final EIS evaluates alternatives to the proposal, including system alternatives, alternative sites for the LNG import terminal, and pipeline alternatives.

The purpose of the Creole Trail Project is to provide the facilities necessary to meet growing demand for natural gas in the United States by providing access to a reliable and stable supply of natural gas from diverse areas of the world and to allow natural gas delivery to the Gulf of Mexico coast, midwest, northeast, and Atlantic markets using existing interstate and intrastate natural gas pipeline systems.

The final EIS addresses the potential environmental effects of the construction and operation of the following facilities in Cameron, Calcasieu, Beauregard, Allen, Jefferson Davis, and Acadia Parishes, Louisiana: [2]

- A ship unloading slip with two protected berths, each equipped with three liquid unloading arms and one vapor return arm;
- Four LNG storage tanks, each with a usable volume of 1,006,400 barrels (160,000 cubic meters (m^3));
- Twenty-one high pressure LNG sendout pumps, each with a capacity of 1,686 gallons per minute (384 m^3 per hour);
- Twenty-one high pressure submerged combustion vaporizers, each with a capacity of 183 million cubic feet per day;
- Three boil-off gas compressors;
- Ancillary utilities, buildings, and service facilities at the LNG terminal;
- 116.8 miles of dual 42-inch-diameter natural gas pipeline;
- 17 meter and regulation facilities; and
- Associated pipeline facilities including pig launcher and receiver facilities, and eight MLVs along each of the individual pipelines in the dual pipeline system.

The final EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426. (202) 502–8371.

A limited number of copies of the final EIS are available from the Public Reference Room identified above. In addition, copies of the final EIS have been mailed to Federal, state, and local agencies; elected officials; public interest groups; individuals and affected landowners who requested a copy of the EIS; libraries; newspapers; and parties to these proceedings.

In accordance with the Council on Environmental Quality's (CEQ) regulations implementing NEPA, no agency decision on a proposed action may be made until 30 days after the U.S. Environmental Protection Agency (EPA) publishes a notice of availability of a final EIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal process that allows other agencies or the public to make their views known. In such cases, the agency decision may be made at the same time the notice of the final EIS is published, allowing both periods to run concurrently. Should the FERC issue Creole Trail authorizations for the proposed project, it would be subject to a 30-day rehearing period.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at: *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY at (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links

[1] On March 23, 2006, Cheniere Creole Trail Pipeline Company filed a letter with the Commission stating that on or about March 31, 2006, Cheniere Creole Trail Pipeline Company will be merged under Delaware law into Creole Trail Pipeline, L.P. Creole Trail Pipeline L.P. will be formed solely for the purpose of acquiring Cheniere Creole Trail Pipeline Company and will be the surviving legal entity. Cheniere Creole Trail Pipeline Company requests in its letter that the Commission issue a certificate of public convenience and necessity to Creole Trail Pipeline, L.P.

[2] Since the draft EIS was issued in December 2005, Creole Trail filed a project amendment to withdraw a 6.8-mile-long 20-inch-diameter lateral pipeline, referred to in the draft EIS as the Hackberry lateral.

to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,
Secretary.
[FR Doc. E6–7199 Filed 5–10–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9185–009-WI]

Flambeau Hydro, LLC; Notice of Availability of Environmental Assessment

May 5, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for a subsequent license for the Clam River Hydroelectric Project, located on the Clam River, 9.5 miles northwest of Webster, Wisconsin in Burnett County, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyze the potential environmental effects of relicensing the project and conclude that issuing a subsequent license for the project, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''Clam River Project No. 9185–009'' to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. For further information, contact Patrick Murphy at (202) 502–8755.

Magalie R. Salas,
Secretary.
[FR Doc. E6–7191 Filed 5–10–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–396–000]

Sabine Pass LNG, LP; Notice of Availability of the Environmental Assessment for the Proposed Sabine Pass LNG Terminal Phase II Project

May 5, 2006.

The staff of the Federal Energy Regulatory Commission (Commission or FERC) has prepared an environmental assessment (EA) on the liquefied natural gas (LNG) facilities proposed by Sabine Pass LNG, L.P. (SPLNG) in the above-referenced docket. The Sabine Pass LNG Terminal Phase II Project (Project) would be located in Cameron Parish, Louisiana.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed Project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment. This EA evaluates alternatives to the proposal, including system alternatives and site layout alternatives for the LNG import terminal, impact of Ambient Air Vaporizers, and air emissions.

The U.S. Army Corps of Engineers (COE), U.S. Coast Guard (Coast Guard), and U.S. Fish and Wildlife Service (FWS) have all participated as cooperating agencies in the preparation of the EA.

The EA assesses the potential environmental effects of the construction and operation of the following facilities:

- Sixteen (16) ambient air vaporization trains (AAV Trains), one of which would be installed significantly before the others as a pilot AAV Train for testing purposes;
- Eight (8) SCV Trains;
- One (1) pilot AAV Train;
- Three (3) LNG storage tanks;
- Two (2) LNG transfer lines;
- Two (2) BOG compressors;
- Two (2) BOG condensing systems;
- Four (4) shell and tube heat exchangers;
- Two (2) vapor return blowers;
- One (1) simple cycle gas turbine generator; and
- Two (2) 30-inch natural gas pipelines from the Project process area to new main meters.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies are available from the FERC's Public Reference Room identified above. In addition, copies of the EA have been mailed to Federal, state, and local government agencies; elected officials; Native American tribes; local libraries and newspapers; intervenors in the FERC's proceeding; individuals who provided scoping comments; and affected landowners and individuals.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Branch 2, PJ11.2;
- Reference Docket No. CP05–396–000; and
- Mail your comments so that they will be received in Washington, DC on or before June 5, 2006.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments, you will need to create a free account, which can be created by clicking on ''Sign-up.''

Additional information about the Project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary

link also provides access to the texts of the formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service call eSubscription, which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–7192 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2111]

PacifiCorp; Notice of Authorization for Continued Project Operation

May 4, 2006.

On April 28, 2004, PacifiCorp, licensee for the Swift No. 1 Hydroelectric Project, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Swift No. 1 Project is located on the Lewis River in Skamania County, Washington.

The license for Project No. 2111 was issued for a period ending April 30, 2006. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2111 is issued to PacifiCorp for a period effective May 1, 2006 through April 30, 2007, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 30, 2007, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise. If the project is not subject to section 15 of the FPA, notice is hereby given that PacifiCorp, is authorized to continue operation of the Swift No. 1 Project until such time as the Commission acts on its application for a subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7167 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 935]

PacifiCorp; Notice of Authorization for Continued Project Operation

May 4, 2006.

On April 28, 2004, PacifiCorp, licensee for the Merwin Hydroelectric Project, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Merwin Project is located on the Lewis River in Clark and Cowlitz County, Washington.

The license for Project No. 935 was initially issued for a period ending December 11, 2009. On April 8, 1999, the Commission amended the license and accelerated the Merwin project expiration date to April 30, 2006. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 935 is issued to PacifiCorp for a period effective May 1, 2006 through April 30, 2007, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 30, 2007, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise. If the project is not subject to section 15 of the FPA, notice is hereby given that PacifiCorp, is authorized to continue operation of the Merwin Project until such time as the Commission acts on its application for a subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7169 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

May 3, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12660–000.

c. *Date Filed:* March 13, 2006.

d. *Applicant:* TDX Power, Inc.

e. *Name and Location of Project:* The proposed Chakachamna Hydroelectric Project would be located at the existing Chakachamna Lake on the Chakachamna River in Kenai Peninsula Borough, Alaska.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Nicholas Goodman, TDX Power, Inc., 4300 B Street, Suite 402, Anchorage, AK 99503, (907) 278–2312.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for Filing Comments, Protests, and Motions to Intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12660–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Proposed Project:* The proposed project would operate in run-of-river mode using the existing Chakachamna Lake, having a surface area of 17,842 acres at the historic maximum normal water surface elevation of 1,155 feet. The proposed project would raise the lake from its present 1,142-foot elevation level to its historic maximum normal water surface elevation of 1,155 feet and would consist of the following new facilities: (1) A proposed 49-foot-high, 600-foot-long rock-fill dam at the Chakachamna Lake outlet, (2) spillway with a crest elevation of 1,155 feet, (3) a 10-mile-long, 24-foot-diameter concrete power tunnel, (4) four 10-foot-diameter steel-lined penstocks with upstream gates located in a gate chamber adjacent to the powerhouse, (5) a powerhouse containing four generating units with a total installed capacity of 330 megawatts, (6) two 230-kilovolt transmission lines, each approximately 42 miles long each, connecting to an existing power line, and (7) appurtenant facilities.

k. *Location of Applications:* A copy of the application is available for inspection and reproduction 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file

comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7187 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 5, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License.

b. *Project No.:* 11068–006.

c. *Date Filed:* April 19, 2006.

d. *Applicant:* Orange Cove Irrigation District.

e. *Name of Project:* Fishwater Release Project.

f. *Location:* The project is located at the Bureau of Reclamation's Friant Dam on the San Joaquin River in Fresno County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* John Roldan, District Manager, Orange Cove Irrigation District, 1130 Park Boulevard, Orange Cove, California 93646, telephone: (559) 626–4461, fax: (559) 626–4463.

i. *FERC Contact:* Any questions on this notice should be addressed to Ms. Linda Stewart at (202) 502–6680, or e-mail address: *linda.stewart@ferc.gov.*

j. *Deadline for Filing Comments and or Motions:* June 5, 2006.

k. *Description of Request:* Orange Cove Irrigation District proposes to construct a new powerhouse to increase total generating capacity by utilizing flow releases at the Friant Dam site. The proposed powerhouse would contain a single turbine generator unit with an installed capacity of 1.8 megawatts (MW) and hydraulic capacity of 130 cubic feet per second (cfs). The total installed capacity of the project would increase from 0.51 MW to 2.31 MW and the total hydraulic capacity of the project would increase from 35 cfs to 165 cfs.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. Information about this filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–7195 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 5, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License.

b. *Project No.:* 2058–045.

c. *Date Filed:* April 14, 2006.

d. *Applicant:* Avista Utilities.

e. *Name of Project:* Clark Fork Hydroelectric Project .

f. *Location:* The project is located on the Clark Fork River, in Bonner County, Idaho and Sanders County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. John Hamill, Avista Utilities, P.O. Box 3727, Spokane, Washington 99220–3727, Phone: (509) 495–4611, Fax (509) 777–9292.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Anumzziatta Purchiaroni at (202) 502–6191, or e-mail address: *anumzziatta.purchiaroni@ferc.gov.*

j. *Deadline for Filing Comments and or Motions:* June 5, 2006. k. Description of Request: Avista Utilities (Avista) filed a non-capacity-related amendment request for its license. Avista is proposing to amend the authorized installed capacity of its project as follows: (1) Increase the installed capacity at the Cabinet Gorge Development by 6.5 MW due to the proposed upgrade of its Turbine Unit No. 4;

(2) Increase the installed capacity at the Noxon Rapids Development by 6.3 MW due to the upgrade of its generator Unit No. 3 that was completed in March

2005. These modifications will result in an increase of the overall installed capacity of the Clark Fork Project from 722.9 MW to 735.7 MW; however, the total hydraulic capacity will continue within the authorized range. Avista is not proposing any changes to the project operation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. Information about this filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–7196 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2213]

Public Utility District No. 1 of Cowlitz County, WA; Notice of Authorization for Continued Project Operation

May 5, 2006.

On April 23, 2004, Public Utility District No. 1 of Cowlitz County, licensee for the Swift No. 2 Hydroelectric Project, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Swift No. 2 Project is located on the North Fork Lewis River in Cowlitz and Skamania County, Washington.

The license for Project No. 2213 was issued for a period ending April 30, 2006. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable Section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2213 is issued to PacifiCorp for a period effective May 1, 2006 through April 30, 2007, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 30, 2007, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise. If the project is not subject to section 15 of the FPA, notice is hereby given that Public Utility District No. 1 of Cowlitz County, is authorized to continue operation of the Swift No. 2 Project until such time as the Commission acts on its application for a subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E6–7198 Filed 5–10–06; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

May 4, 2006.

SUMMARY: The Federal Communications Commission, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, and as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 12, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Leslie F. Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov*. If you would like to obtain or view a copy of this revised information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Leslie F. Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0387.

Title: Section 15.201(d), On Site Verification of Field Disturbance Sensors.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 200.

Estimated Time per Response: 18 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirement.

Annual Burden: 3,600 hours.

Total Estimated Cost: $40,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Commission rules permit the operation of field disturbance sensors in the low VHF region of the spectrum. In order to monitor non-licensed field disturbance sensors operating in the low VHF television bands, a unique procedure for on-site equipment testing of the systems is required to ensure suitable safeguards for the operation of these devices. Data are retained by the holder of the equipment authorized/issued by the Commission and made available only at the request of the Commission.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–7229 Filed 5–10–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

April 26, 2006.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Jennifer Mock, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–7234 or via the Internet at *Jennifer.Mock@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1090.

OMB Approval Date: 4/26/2006.

OMB Expiration Date: 4/30/2009.

Title: Order and Implementing Public Notices Requiring BRS Channels 1 and/or 2/2A Licensees to File Data on the Construction Status and/or Operational Parameters of Each System.

Form No.: N/A.

Estimated Annual Burden: 150 respondents; 131 annual burden hours; .50–1.25 hours per respondent.

Needs and Uses: The Commission has received OMB approval for a collection contained in an *Order* (FCC 05–172) which requires licensees of Broadband Radio Services (BRS) Channels 1 and 2/2A to file information on the construction status and/or operation parameters of each system. The Commission is seeking information on non-subscriber locations and operating characteristics of BRS receivers and other system characteristics of BRS incumbents (including operations by lessees) not currently collected on FCC Form 601 for this service.

This one-time collection is necessary because BRS Channels 1 and/or 2/2A are currently licensed at 2150–2150/62 MHz, which the Commission has designated for Advanced Wireless Services (AWS). The Commission also has announced that it intends to auction AWS licenses for 2150–2155 MHz, among other bands, starting in June 2006. Future AWS licensees will be obligated to relocate incumbent BRS operations in the 2150–2160/62 MHz band to comparable facilities, most likely within the newly restructured 2.5 GHz band.

In the *Order,* the Commission concluded that reliable, public data on each incumbent BRS system that will be subject to relocation is essential in advance of this planned spectrum auction and that neither the Commission nor the public has reliable, up-to-date information on the construction status and/or operational parameters of these BRS systems.

Accordingly, the Commission ordered licensees of BRS Channels 1 and 2/2A to submit information, listed in the *Order,* after the staff issues Public Notice(s) setting forth the specific data required, deadlines, and the procedures for filing this information electronically on the Commission's Universal Licensing System (ULS), where it will be available to the public. To assist in determining the scope of the new AWS entrants' relocation obligations, the Commission ordered BRS licensees in the 2150–2160/62 MHz band to provide the required data within 60 days and 120 days of the effective date of its *Order,* noting that these dates would correspond to OMB approval of the information collection, *i.e.*, PRA requirements for the ULS.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–7230 Filed 5–10–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Notice of Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, May 16, 2006 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 06–4481 Filed 5–9–06; 2:42 pm]

BILLING CODE 6715–01–M

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 May 26, 2006.

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

1. John E. Vick, Andalusia, Alabama; Claire Vick Leuengerger and Patricia Vick Moody, Auburn, Alabama; and Amanda Lee Vick, Decatur, Georgia; to retain additional voting shares of Southern National Corporation, Andalusia, Alabama, and thereby indirectly retain voting shares of Covington County Bank, Andalusia, Alabama.

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

1. Hoffman, Inc., Arapahoe, Nebraska; to acquire voting shares of Central Bancshares, Inc., Cambridge, Nebraska, and thereby indirectly acquire voting shares of First Central Bank, Cambridge, Nebraska, and First Central Bank McCook, McCook, Nebraska.

Board of Governors of the Federal Reserve System, May 8, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–7220 Filed 5–10–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

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

Section 7A of the Clayton Act, 15 U.S.C. 18a, 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 7A(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—04/19/2006			
20060799	Abbott Laboratories	Boston Scientific Corporation	Boston Scientific Corporation.
20060822	Armor Holdings, Inc	Stewart & Stevenson Services, Inc	Stewart & Stevenson Services, Inc.
20060845	Hanson PLC	General Dynamics Corporation	Material Service Corporation.
20060874	Dell Inc	Allenware Corporation	Allenware Corporation.
20060906	AO–ASIF Foundation	Synthes, Inc	Synthes, Inc.
20060907	Synthes, Inc	AO–ASIF Foundation	AO–ASIF Foundation.
20060915	AG Private Equity Partners III, L.P	Marks and Spencer Group p.l.c	Kings Super Markets, Inc., Marks and Spencer Finance Inc.
20060923	Warburg Pincus Private Equity IX, L.P.	The Lightyear Fund, L.P	LY Telmar Holdings Corp.
20060925	Boston Scientific Corporation	Guidant Corporation	Guidant Corporation.
Transactions Granted Early Termination—04/20/2006			
20060920	EQT IV No. 1 LP	Gambro AB	Gambro AB.
Transactions Granted Early Termination—04/21/2006			
20060850	Verisign, Inc	m-Qube, Inc	m-Qube, Inc.
20060921	U.S. Premium Beef, LLC	Brawley Beef, LLC	Brawley Beef, LLC.
20060933	AT&T Inc	Deutsche Telekom AG	T-Mobile USA, Inc.
20060934	Deutsche Telekom AG	AT&T Inc	Cingular Wireless LLC.
20060941	William H. Gates III	Magnum Coal Company	Magnum Coal Company.
20060943	Macquarie Bank Limited	Macquarie Global Infrastructure Fund A.	Macquarie North American Infrastructure Inc.
20060944	Macquarie Bank Limited	Macquarie Global Infrastructure Fund B.	Macquarie North American Infrastructure Inc.
20060954	Wolseley plc	Steve Menzies	DSI Inc., Efficient Enterprises, Inc., United Plumbing, LLC.

Trans No.	Acquiring	Acquired	Entities
20060956	Quincy Newspapers, Inc	Raycom Media, Inc	KWWL License Subsidiary, LLC, KWWL, LLC.
Transactions Granted Early Termination—04/24/2006			
20060939	Cerberus FIM Investors, LLC	General Motors Corporation	General Motors Acceptance Corporation, LLC.
20060955	Pogo Producing Company	Warburg Pincus Private Equity VIII	Latigo Petroleum, Inc.
20060957	President and Fellows of Harvard College.	Sempra Energy	Energy Pacific Glendale, Energy Pacific Las Vegas, Sempra Facilities Management.
20060966	Nautic Partners V, L.P	Paul & Pamela Roy	Big Train, Inc.
20060967	Nautic Partners V, L.P	Craig Meyers and Francine Meyers	Big Train, Inc.
20060974	CHS Private Equity V, LP	Allied Capital Corporation	STS Operating, Inc.
Transactions Granted Early Termination—04/25/2006			
20060871	Linsalata Capital Partners Fund IV, L.P.	W. Randall Holloway	Holloway Group, Inc., Holloway Sportswear, Inc.
20060887	Fisher Scientific International Inc	Clintrak Pharmaceutical Services, LLC.	Clintrak Pharmaceutical Services, LLC.
20060919	SAP AG	Virsa Systems, Inc	Virsa Systems, Inc.
20060927	Macquarie Infrastructure Company Trust.	Loving Enterprises, Inc	Loving Enterprises, Inc.
20060940	Mr. William J. McEnery	Isle of Capri Casinos, Inc	CSNO, L.L.C., IOC Holdings, L.L.C., Louisiana Riverboat Gaming Partnership, LRGP Holdings, L.L.C., Riverboat Corporation of Mississippi-Vicksburg.
20060950	Red Hat, Inc	JBoss Inc	JBoss Inc.
20060951	Marc Fleury	Red Hat, Inc	Red Hat, Inc.
20060968	L'Oreal S.A	The Body Shop International PLC	The Body Shop International PLC.
20060972	Arctic Glacier Income Fund	Steven C. Gabriel and Dana M. Gabriel.	Diamond Newport Corporation, Mountain Water Ice Company.
20060976	Camcem, S.A. de C.V	Floyd R. Hardesty	Alliance Transportation, Inc., The Hardesty Company, Inc.
Transactions Granted Early Termination—04/26/2006			
20060883	Northern Border Partners, L.P	Guardian Pipeline, L.L.C	Guardian Pipeline, L.L.C.
20060913	James F. McCann	Fannie May Confections Brands, Inc	Fannie May Confections Brands, Inc.
20060952	FC–THC Acquisition LLC	Behrman Capital II L.P	Tandem Health Care, Inc.
20060965	Parametric Technology Corporation	Edison Venture Fund IV, L.P	Mathsoft Corporate Holdings, Inc.
Transactions Granted Early Termination—04/28/2006			
20060958	Li & Fung Limtied	Oxford Industries, Inc	Oxford Industries, Inc.
20060978	The Southern Company	Progress Energy, Inc	DeSoto County Generating Company, LLC.
20060984	Kohlberg Investors V, L.P	KIPB Group Holdings, LLC	KIPB Group Holdings, LLC.
20060985	TPG Partners II, L.P	LSI Logic Corporation	LSI Logic Corporation.
20060999	Smart Hydrogen Inc	Plug Power Inc	Plug Power Inc.

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. 06–4406 Filed 5–10–06; 8:45am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[FMR Amendment 2005–03, Supplement 1]

Federal Management Regulation; Real Property Policies Update

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: This Notice extends the implementation date of Real Property Policies, titled ''**What standards must facilities subject to the Architectural Barriers Act meet?**'', published in the **Federal Register** at 70 FR 67846, on November 8, 2005. The implementation date of the section, currently May 8, 2006, is hereby extended to August 7, 2006, but only with respect to leasing actions. The May 8, 2006 implementation date remains unchanged with respect to Federal construction or alteration projects. Except as expressly modified by this Notice, all other terms and conditions of the Architectural Barriers Act standards remain in full force and effect.

EFFECTIVE DATE: May 11, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Stanley C. Langfeld, Director, Regulations Management Division (MPR), General Services Administration, Washington,

DC 20405; *stanley.langfeld@gsa.gov*, (202) 501–1737. Please cite FMR Bulletin 2005–03.

Dated: May 5, 2006.

John G. Sindelar

Acting Associate Administrator, Office of Governmentwide Policy.

[FR Doc. E6–7221 Filed 5–10–06; 8:45 am]

BILLING CODE 6820–RH–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panels (SEP): Childhood Immunization, RFA–IP06–005, IP06–007, and IP06–008

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

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Childhood Immunization, RFA–IP06–005, IP06–007, and IP–06–008.

Time and Date: 1 a.m.–4 p.m., June 16, 2006 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: To conduct expert review of scientific merit of grant applications in response to Childhood Immunization, RFA–IP06–005, IP06–007, and IP06–008.

For Further Information Contact: George Bockosh, B.S., M.S., Scientific Review Administrator, Pitt Building 20, Room 313, MS P05, Pittsburgh, PA 15236, Telephone 412–386–6465.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 5, 2006.

Alvin Hall,

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

[FR Doc. E6–7208 Filed 5–10–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panels (SEP): Intervention Research Grants To Promote the Health of People With Disabilities (Panel A), RFA–DD06–004

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

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Intervention Research Grants to Promote the Health of People with Disabilities (Panel A), RFA–DD06–004.

Time and Date: 11:30 p.m.–5:30 p.m., June 12, 2006 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: To conduce expert review of scientific merit of research applications in response to: Intervention Research Grants to Promote the Health of People with Disabilities, (Panel A), RFA–DD06–004.

For Further Information Contact: Juliana Cyril, PhD, Scientific Review Administrator, CDC, 1600 Clifton Road NE., Mailstop D72, Atlanta, GA 30333, Telephone 404–639–0920.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 5, 2006.

Alvin Hall,

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

[FR Doc. E6–7212 Filed 5–10–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC); 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 (CDC) announces the following meeting.

Name: Healthcare Infection Control Practices Advisory Committee (HICPAC).

Times and Dates: 8:30 a.m.–5 p.m., June 1, 2006; 8:30 a.m.–4 p.m., June 2, 2006.

Place: CDC Roybal Campus, Bldg. 19, Auditorium B3, 1600 Clifton Road, Atlanta, GA 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding: (1) The practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.,* nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters To Be Discussed: Informatics and healthcare-associated infections; process for updating guidelines; updates on pandemic flu; updates on antimicrobial resistance and updates on CDC activities of interest to the committee.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Harriette Lynch, Committee Management Specialist, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, l600 Clifton Road, NE, M/S A–07, Atlanta, Georgia 30333, telephone 404–639–4035.

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.

Dated: May 5, 2006.

Alvin Hall, M.S.,

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

[FR Doc. E6–7211 Filed 5–10–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control, the Science and Program Review Subcommittee: 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 (CDC)

announces the following subcommittee and committee meetings.

Name: Science and Program Review Subcommittee (SPRS).

Times and Dates: 6:30 p.m.–9:30 p.m., June 12, 2006. 8 a.m.–11:30 a.m., June 13, 2006.

Place: Doubletree Hotel Atlanta, 3342 Peachtree Road, NE., Atlanta, GA 30326.

Status: Open: 6:30 p.m.–7 p.m., June 12, 2006. Closed: 7 p.m.–9:30 p.m., June 12, 2006. Closed: 8 a.m.–10 a.m., June 13, 2006. Open: 10 a.m.–11:30 a.m., June 13, 2006.

Purpose: The SPRS provides advice on the needs, structure, progress and performance of programs of the National Center for Injury Prevention and Control (NCIPC), as well as second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The SPRS also advises on priorities for research to be supported by contracts, grants, and cooperative agreements and provides concept review of program proposals and announcements.

Matters to be Discussed: The subcommittee will meet June 12–13 to provide a secondary review, discuss, and evaluate grant applications and cooperative agreements received in response to eight Request for Applications (RFAs) related to the following individual applications: #06001, Research Grants to Prevent Unintentional Injuries; #06002, Dissertation Grant Awards for Violence Injury Research in Minority Communities; #06003, Research Grants to Describe Traumatic Brain Injury Consequences; #06004, Grants for Violence-Related Injury Prevention Research; #06005, Research Grants for the Care of the Acutely Injured; #06006, Using Technology to Augment Effectiveness of Parenting Programs; #06007, Evaluation of Community-Based Approaches to Increasing Seat Belt Use among Adolescents and Their Passengers; #06008, Urban Partnership Academic Centers of Excellence. This portion of the meeting (7 p.m.–9:30 p.m., June 12, 2006, and 8 a.m.–10 a.m., June 13, 2006) will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Name: Advisory Committee for Injury Prevention and Control.

Times and Dates: 1 p.m.–5:30 p.m., June 13, 2006. 8:30 a.m.–12 p.m., June 14, 2006.

Place: Doubletree Hotel Atlanta, 3342 Peachtree Road, NE., Atlanta, GA 30326.

Status: Closed: 1 p.m.–1:45 p.m., June 13, 2006. Open: 1:45 p.m.–5:30 p.m., June 13, 2006. Open: 8:30 a.m.–12 p.m., June 14, 2006.

Purpose: The committee advises and makes recommendations to the Secretary, Department of Health and Human Services, the Director, CDC, and the Director, NCIPC, regarding feasible goals for the prevention and control of injury. The committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control.

Matters to be Discussed: From 1 p.m.–1:45 p.m., June 13, 2006 the full committee will vote on the results of secondary review. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552(b)(4) and (6), title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463. Following the closed session, the meeting will open to the public.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Ms. Louise Galaska, Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE., M/S K02, Atlanta, Georgia 30341–3724, telephone (770) 488–4694.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 5, 2006.

Alvin Hall,

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

[FR Doc. E6–7209 Filed 5–10–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0425]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 10, 2006 (71 FR 7052), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0183. The approval expires on April 30, 2009. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: May 4, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–7157 Filed 5–10–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0157]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Adverse Drug Experience Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Adverse Drug Experience Reporting'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 7, 2006 (71 FR 6281), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0230. The approval expires on April 30, 2009. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: May 4, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–7159 Filed 5–10–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0038]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 12, 2006.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Irradiation in the Production, Processing, and Handling of Food—(OMB Control Number 0910–0186)—Extension

Under sections 201(s) and 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s) and 348), food irradiation is subject to regulation under the food additive premarket approval provisions of the act. The regulations providing for uses of irradiation in the production, processing, and handling of food are found in part 179 (21 CFR part 179). To ensure safe use of a radiation source, § 179.21(b)(1) requires that the label of sources bear appropriate and accurate information identifying the source of radiation and the maximum energy of radiation emitted by x-ray tube sources. Section 179.21(b)(2)(i) requires that the label or accompanying labeling bear adequate directions for installation and use. Section 179.25(e) requires that food processors who treat food with radiation make and retain, for 1 year past the expected shelf life of the products up to a maximum of 3 years, specified records relating to the irradiation process (e.g., the food treated, lot identification, scheduled process, etc.) The records required by § 179.25(e) are used by FDA inspectors to assess compliance with the regulation that establishes limits within which radiation may be safely used to treat food. The agency cannot ensure safe use without a method to assess compliance with the dose limits, and there are no practicable methods for analyzing most foods to determine whether they have been treated with ionizing radiation and are within the limitations set forth in part 179. Records inspection is the only way to determine whether firms are complying with the regulations for treatment of foods with ionizing radiation.

In the **Federal Register** of February 6, 2006 (71 FR 6075), FDA published a 60-day notice requesting public comment on the information collection provisions. FDA received one letter in response which contained several comments and suggestions. These suggestions and FDA's responses follow.

The comment expresses concern that records maintained under the regulation must only be retained for a maximum of 3 years. The comment asserts that irradiation of food is a new process, the long-term effects of which are unknown. The comment recommends that the required records be retained for 7 years.

FDA disagrees. The records required by § 179.25(e) must be retained for a period of time that exceeds the shelf life of the irradiated food product by 1 year, up to a maximum of 3 years, whichever period is shorter. There is no need to retain the information longer than 1 year after the end of the shelf life of the irradiated food because by that time the food has either been consumed or discarded. Thus, it is unnecessary for FDA to require firms to retain the records for a longer period of time.

The comment also suggested that FDA permit comments to the docket to be filed by e-mail and suggested that food treated under part 179 of the regulations should be labeled with the word, ''Irradiated.''

FDA agrees that irradiated food should be labeled and notes that labeling requirements for irradiated foods are found at § 179.26(c). These comments are outside the scope of the four collection of information topics on which the notice solicits comments and, thus, will not be addressed further.

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
179.25(e)	6	120	720	1	720

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 4, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–7178 Filed 5–10–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Children's Study Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Children's Study Advisory Committee.

Date: May 31–June 1, 2006.

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

Agenda: For questions or to register, please call Circle Solutions (703) 902–1339 or visit *http://www.circlesolutions.com/ncs/ncsac.* Registration deadline is 5/23/06. Agenda will include an update of the Study status and protocol; gene-environment interaction, social-behavioral determinants, and environmental exposure assessment; recruitment and retention; and human subjects activities.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Marion Balsam, MD, Executive Secretary, National Children's Study Advisory Committee, 6100 Executive Boulevard, Bethesda, MD 20892, 301–594–9147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 2, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4400 Filed 5–10–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 on Drug Abuse Special Emphasis Panel, Member Conflict Meeting.

Date: May 1, 2006.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Mark R. Green, PhD, Deputy Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1431, *mgreen1@nida.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Health Services Research Subcommittee.

Date: June 6–7, 2006.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Madison Hotel, 15th & M Streets, NW., Washington, DC 20005.

Contact Person: Meenaxi Hiremath, PhD, Health Scientist Administrator, Office of Extramural affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Blvd., Suite 220, MSC 8401, Bethesda, MD 20892, 301–402–7964, *mh392g@.nih.gov.*

Name of Committee: National Institute on Drug Abuse Initial Review Group, Medication Development Research Subcommittee.

Date: June 6, 2006.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Housing Center, 1201 15th Street, NW., Washington, DC 20005.

Contact Person: Paul A. Coulis, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401, 301–443–2105.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Treatment Research Subcommittee.

Date: June 6–7, 2006.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Madison, 1177 15th & M Streets, NW., Washington, DC 20005.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301)435–1432.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Member Conflict.

Date: June 6, 2006.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Housing Center, 1201 15th Street, NW., Washington, DC 20005.

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd., Bethesda, MD 20892–8401, 301–402–6626, *gm145a@nih.gov.*

Name of Committee: National Institute on Drug Abuse Initial Review Group, Training and Career Development Subcommittee.

Date: July 18–20, 2006.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue. Bethesda, MD 20814.

Contact Person: Eliane Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Room 220, MSC 8401, Bethesda, MD 20892–8401, 301–451–4530, *el6r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse national Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, national Institutes of Health, HHS)

Dated: May 2, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4401 Filed 5–10–06; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

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 meeting.

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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis panel, The Science of Addiction for Deaf High School Students.

Date: May 11, 2006.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 2, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4402 Filed 5–10–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

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 meeting.

The meting 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 Biomedical Imaging and Bioengineering Special Emphasis Panel; ZEB1 OSR C A (S) 2006.

Date: May 24, 2006.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH/NIBIB Conference Room, Democracy II, 6707 Democracy Boulevard, Room 242, Bethesda, MD 20892.

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, Bethesda, MD 20892. (301) 496–8633. *atreyapr@mail.nih.gov.*

Dated: May 3, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4403 Filed 5–10–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council. The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Neurological Disorders and Stroke Council; Council Training Career Development, and Special Programs Subcommittee.

Date: May 24, 2006.

Time: 8 p.m. to 10 p.m.

Agenda: To discuss the training programs of the Institute.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Stephen J. Korn, PhD, Training and Special Programs Officer, National Instute of Neurological, Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2154, MSC 9527, Bethesda, MD 20892–9527. (301) 496&4188.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 3, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4405 Filed 5–10–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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 commerical 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: Center for Scientific Review Special Emphasis Panel; Colon Cancer Chemoprevention.

Date: May 25, 2006.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Eva Petrakova, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892. 301–435–1716. *petrakoe@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Vestibular and Memory.

Date: June 2, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Edwin C. Clayton, PhD, Scientific Review Administrator, Intern, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5095C, MSC 7844, Bethesda, MD 20892. 301–402–1304. *claytone@mail.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group; cancer Molecular Pathobiology Study Section.

Date: June 4–6, 2006.

Time: 6 p.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: The Sheraton Suites Alexandria, 801 North Asaph Street, Alexandria, VA 22314.

Contact Person: Elaine Sierra-Rivera, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892. 301–435–1779. *riverase@mail.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroscience and Disease Study Section.

Date: June 5–6, 2006.

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

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892. (301) 435–1246. *etcheber@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Computational Biophysics.

Date: June 8, 2006.

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

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7849, Bethesda, MD 20892. 301–435–1220. *chackoge@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Pregnancy and Neonatology Study Section.

Date: June 12–13, 2006.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892. (301) 435–1046. *knechtm@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—A Study Section.

Date: June 12–13, 2006.

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

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892. (301) 435–1151. *pyperj@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Synthetic and Biological Chemistry A Study Section.

Date: June 14–15, 2006.

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

Agenda: To review and evaluate grant applications.

Place: Clarion Hotel, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kathryn M. Koeller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892. 301–435–2681. *koellerk@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group; Cancer Genetics Study Section.

Date: June 19–20, 2006.

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

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Zhiqiang Zou, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892 (301) 451–0132. *zouzhiq@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Development of Methods for In Vivo Imaging and Bioengineering Research.

Date: June 19–20, 2006.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 430 Military Road, NW., Washington, DC 20015.

Contact Person: Behrouz Shabestari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892. (301) 435–2409. *shabestb@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group; Vascular Cell and Molecular Biology Study Section.

Date: June 19–20, 2006.

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

Agenda: To review and evaluate grant applications and/or proposals.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892 (301) 435–1210. *chaudahaa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business Cardiovascular Devices.

Date: June 19–20, 2006.

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

Agenda: To review and evaluate grant applications.

Place: Bethesda, Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Robert J. Matus, MD, Scientific Review Administrator, Center for Scientific Review, National Instituets of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892. (301) 435–2204. *matsur@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavior Mechanisms of Emotion, Stress and Health Study Section.

Date: June 19–20, 2006.

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

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7759, Bethesda, MD 20892. (301) 594–3163. *champoum@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group; Cancer Etiology Study Section.

Date: June 19–20, 2006.

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

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1515 Rhode Island Ave., NW., Washington, DC 20005.

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7804, Bethesda, MD 20892. (301) 435–3504. *fungvi@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Central Visual Processing Study Section.

Date: June 20–21, 2006.

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

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center

for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892. 301–435–1247. *steinmem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biology of Plasmodium and Trypanosome Vectors.
Date: June 20, 2006.
Time: 1:30 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Tera Bounds, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3015–D, MSC 7808, Bethesda, MD 20892. 301–435–2306. *boundst@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurodifferentiation, Plasticity, and Regeneration Study Section.
Date: June 21–22, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: DoubleTree Hotel, 1515 Rhode Island Avenue NW., Washington, DC 20005.
Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5204, MSC 7850, Bethesda, MD 20892.301–435–1178. *fujiij@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Prokaryotic Cell and Molecular Biology Study Section.
Date: June 21–22, 2006.
Time: 8:30 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Diane L. Stassi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892. (301) 435–2514. *stassid@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.
Date: June 21–23, 2006.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015.
Contact Person: Julius Cinque, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892. (301) 435–1252. *cinquej@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group; Cancer Biomarkers Study Section.
Date: June 21–23, 2006.
Time: 6:30 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.
Contact Person: Mary Bell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7804, Bethesda, MD 20892. 301–451–8754. *bellmar@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function B Study Section.
Date: June 22–23, 3006.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Nancy Lamontagne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892. 301–435–1726. *lamontan@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group; Electrical Signaling, Ion Transport, and Arrhythmias Study Section.
Date: June 22–23, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.
Contact Person: Rajiv Kumar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892. 301–435–1212. *kumarra@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Risk and Disease Prevention Study Section.
Date: June 22–23, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Helix, 1430 Rhode Island Avenue, NW., Washington, DC 20005.
Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892. 301–435–1258. *micklinm@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biomaterials and Biointerfaces Study Section.
Date: June 22–23, 2006.
Time: 8 a.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Alexander Gubin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892. 301–435–29002.

Name of Committee: Health of the Population Integrated Review Group; Nursing Science: Adults and Older Adults Study Section.
Date: June 22–23, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Tysons Corner, 1960 Chain Bridge Road, McLean, VA 22102.
Contact Person: Gertrude K. McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892. (301) 435–1784. *mcfarlag@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group; Development—2 Study Section.
Date: June 22–23, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: Neelakanta Ravindranath, PhD, MVSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7843, Bethesda, MD 20892. (301) 435–1034. *ravindrn@csr.nih.gov.*

Name of Committee: Hematology Integrated Review Group; Hemostasis and Thrombosis Study Section.
Date: June 22–23, 2006.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel and Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892. (301) 435–1739. *gangulyc@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group; Aging Systems and Geriatrics Study Section.
Date: June 22–23, 2006.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Francois Boller, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5040Q, MSC 7843, Bethesda, MD 20892. (301) 594–6421. *bollerf@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 2, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–4404 Filed 5–10–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of applications.

SUMMARY: We announce our receipt of applications to conduct certain activities pertaining to enhancement of survival of endangered species.

DATES: Written comments on these permit applications must be received by June 12, 2006.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director—Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; facsimile 303–236–0027. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act [5 U.S.C. 552A] and Freedom of Information Act [5 U.S.C. 552], by any party who submits a request for a copy of such documents within 20 days of the date of publication of this notice to Kris Olsen, by mail or by telephone at 303–236–4256. All comments received from individuals become part of the official public record.

SUPPLEMENTARY INFORMATION: The following applicants have requested issuance of enhancement of survival permits to conduct certain activities with endangered species pursuant to Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Applicant: Larval Fish Laboratory, Colorado State University, Fort Collins, Colorado, TE–046795. The applicant requests a renewed permit to take Colorado pikeminnow (*Ptychocheilus lucius*) and razorback sucker (*Xyrauchen texanus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: Jeff Hagener, Montana Department of Fish, Wildlife and Parks, Helena, Montana, TE–047250. The applicant requests a permit amendment to add surveys for Interior least tern (*Sterna antillarum athalassos*) and piping plover (*Charadrius melodus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: Bradley Preheim, Vermillion Basin Water Development District, Centerville, South Dakota, TE–124861. The applicant requests a permit to take Topeka shiner (*Notropis topeka*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Sam Stukel, South Dakota Game, Fish and Parks, Yankton, South Dakota, TE–124904. The applicant requests a permit to take pallid sturgeon (*Scaphirhynchus albus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Dated: April 18, 2006.

James J. Slack,

Deputy Regional Director, Denver, Colorado.

[FR Doc. E6–7106 Filed 5–10–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Two Applications for Incidental Take Permits for Construction of Single-Family Homes in Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Debra Jorden and Edward Webster (Applicants) each request an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicants anticipate taking a total of about 0.48 acre of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging habitat incidental to lot preparation for the construction of two single-family homes and supporting infrastructure, each over a one-year term, in Brevard County, Florida (Projects). The destruction of 0.48 acre of foraging habitat is expected to result in the take of two families of scrub-jays. The Applicants' Habitat Conservation Plans (HCP) describe the mitigation and minimization measures proposed to address the effects of the Projects to the Florida scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments on the ITP applications and HCPs should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before June 12, 2006.

ADDRESSES: Persons wishing to review the applications and HCPs may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Please reference permit number TE111878–0 for Jorden, and permit number TE111877–0 for Webster, in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216–0912.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: (404) 679–7081; or Ms. Paula Sisson, General Biologist, Jacksonville Field Office, Jacksonville, Florida (see **ADDRESSES** above), telephone: 904/232–2580, ext. 126.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE111878–0 for Jorden, and permit number TE111877–0 for Webster, in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov.* Please also include your name and return address in your Internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed below (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to

xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

The decline in the number and distribution of scrub-jays in east-central Florida has been exacerbated by tremendous urban growth in the past 50 years. Much of the historic commercial and residential development has occurred on the dry soils which previously supported scrub-jay habitat.

Residential construction for Debra Jorden is proposed within Section 05, Township 29 South, Range 37 East, Palm Bay, Brevard County, Florida. Lot 8, Block 339, is within 438 feet of locations where scrub-jays were sighted during surveys for this species from 1999 to 2002. Residential construction for Edward Webster is proposed within Section 16, Township 29 South, Range 37 East, Palm Bay, Brevard County, Florida. Lot 16, Block 765, is within 438 feet of locations where scrub-jays were sighted during surveys for this species from 1999–2000.

Construction of the Applicants' infrastructure and facilities will result in harm to scrub-jays, incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with the proposed residential construction projects will reduce the availability of foraging habitat for two families of scrub-jays. On-site minimization measures are not practicable as the footprint of the two homes; infrastructure and landscaping will utilize all the available land area. The two lots encompass about 0.48 acre. Retention of scrub-jay habitat on these two sites may not be a biologically viable alternative due to increasing negative demographic effects caused by urbanization.

The Applicants propose to mitigate for the loss of 0.48 acre of scrub-jay habitat by contributing a total of $6,736 to the Florida Scrub-jay Conservation Fund administered by the National Fish and Wildlife Foundation. Funds in this account are ear-marked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management. The $6,736 is sufficient to acquire and perpetually manage 0.96 acre of suitable occupied scrub-jay habitat based on a replacement ratio of two mitigation acres per one impact acre.

The Service has determined that the Applicants' proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and qualifies as a categorical exclusion under the National Environmental Policy effect'' project and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. Low-effect HCPs are those involving: (1) Minor or negligible effects on Federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicants' HCP qualifies for the following reasons:

1. Approval of the HCPs would result in minor or negligible effects on the Florida scrub-jay population as a whole. We do not anticipate significant direct or cumulative effects to the Florida scrub-jay population as a result of the construction projects.

2. Approval of the HCPs would not have adverse effects on known unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCPs would not result in any significant adverse effects on public health or safety.

4. The projects do not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor do they threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the Plans would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If it is determined that those requirements are met, the ITP will be issued for incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP. This notice is provided pursuant to section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

Dated: April 13, 2006.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E6–7210 Filed 5–10–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of a meeting of the Native American Graves Protection and Repatriation Review Committee (Review Committee). The Review Committee will meet on May 30–31, 2006, at the Westmark Baranof Hotel, 127 North Franklin Street, Juneau, AK 99801, telephone (907) 586–2660. Meeting sessions will begin at 8:30 a.m. and end at 5 p.m each day.

The agenda for the meeting includes an overview of activities of the National NAGPRA Program since the Review Committee's last meeting; a review of documentation submitted as part of a possible dispute between the White Mountain Apache and the Field Museum; a request for a recommendation regarding the disposition of culturally unidentifiable human remains from the State of Iowa; the Review Committee's 2005 report to the Congress; and presentations and statements by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public.

To schedule a presentation to the Review Committee during the meeting, submit a written request with an abstract of the presentation and contact information for the presenters. Persons also may submit written statements for consideration by the Review Committee during the meeting. Send requests and statements to the Designated Federal Officer, NAGPRA Review Committee by U.S. Mail to the National Park Service, 1849 C Street NW. (2253), Washington, DC 20240; or by commercial delivery to the National Park Service, 1201 Eye Street NW., 8th floor, Washington, DC 20005. Because increased security in the Washington, DC, area may delay delivery of U.S. Mail to Government offices, copies of mailed requests and statements should also be faxed to (202) 371–5197.

Transcripts of Review Committee meetings are available approximately eight weeks after each meeting at the National NAGPRA Program office, 1201 Eye Street NW., Washington, DC. To request electronic copies of meeting transcripts, send an e-mail message to Tim__McKeown@nps.gov. Information about NAGPRA, the Review Committee, and Review Committee meetings is available at the National NAGPRA Web site, http://www.cr.nps.gov/nagpra; for the Review Committee's meeting procedures, select ''Review Committee,'' then select ''Procedures.''

The Review Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3001 *et seq.* Review Committee members are appointed by the Secretary of the Interior. The Review Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such human remains; consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations; consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items. The Review Committee's work is completed during meetings that are open to the public.

Dated: April 27, 2006

C. Timothy McKeown,

Designated Federal Officer,Native American Graves Protection and Repatriation Review Committee.

[FR Doc. E6–7190 Filed 5–10–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Arizona State Land Department, Phoenix, AZ, and Arizona State Museum, University of Arizona, Tucson, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the Arizona State Land Department, Phoenix, AZ, and in the physical custody of the Arizona State Museum, University of Arizona, Tucson, AZ. The human remains and associated funerary objects were removed from Pinal County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Arizona State Museum professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico. The Gila River Indian Community of the Gila River Indian Reservation, Arizona is acting on behalf of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona; and themselves.

In June 1985, human remains representing a minimum of one individual were removed from site AZ U:15:110 ASM, near Florence in Pinal County, AZ, during legally authorized archeological investigations conducted by the Cultural Resources Management Division of the Arizona State Museum. The human remains consist of a human tooth that was brought to the museum for curation. No known individual was identified. No associated funerary objects are present.

The ceramic assemblage included a high percentage of Santa Cruz Red-on-buff wares. On this basis the site has been identified as being associated with the Santa Cruz phase of the late Colonial period of the Hohokam archeological tradition, which spanned the years A.D. 700–900.

In June 1985, human remains representing a minimum of one individual were removed from site AZ U:15:111 ASM, near Florence in Pinal County, AZ, during legally authorized archeological investigations conducted by the Cultural Resources Management Division of the Arizona State Museum. The fragmentary cremated human remains were brought to the Arizona State Museum for analysis and curation. No known individual was identified. No associated funerary objects are present.

The ceramic assemblage included a high percentage of Santa Cruz Red-on-buff wares. On this basis, as well as attributes of architectural technology, this site has been identified as being associated with the Santa Cruz phase of the late Colonial period of the Hohokam archeological tradition, which spanned the years A.D. 700–900.

In May and July 1989, human remains representing a minimum of three individuals were removed from site AZ U:15:134 ASM, near Florence in Pinal County, AZ, during legally authorized archeological investigations conducted by the Cultural Resources Management Division of the Arizona State Museum. The fragmentary cremated human remains were brought to the Arizona State Museum for analysis and curation. No known individuals were identified. The 36 associated funerary objects are 35 ceramic sherds and 1 hammerstone.

The ceramic assemblage at this site, included mostly Santa Cruz Red-on-buff or early Sacaton Red-on-buff wares. This indicates a date at the transition between the Santa Cruz phase of the late Colonial period and the Sacaton phase of the early Sedentary period of the Hohokam archeological tradition, around A.D. 900. Attributes of the mortuary program and architectural style are consistent with this identification.

Continuities of mortuary practices, ethnographic materials, and technology indicate affiliation of Hohokam settlements with present-day O'odham (Piman), Pee Posh (Maricopa), and Puebloan cultures. Documentation submitted by representatives of the Gila River Indian Community of the Gila River Indian Reservation, Arizona on August 4, 2000, addresses continuities between the Hohokam and the O'odham and Pee Posh tribes. Furthermore, oral traditions that are documented for the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt

River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico support affiliation with Hohokam sites in central Arizona during both the Santa Cruz phase and late Colonial period

Officials of the Arizona State Land Department and Arizona State Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of five individuals of Native American ancestry. Officials of the Arizona State Land Department and Arizona State Museum also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 36 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Arizona State Land Department and Arizona State Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact John Madsen, Repatriation Coordinator, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 621–4795, before June 12, 2006. Repatriation of the human remains and associated funerary objects to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Arizona State Museum is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: April 26, 2006

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–7179 Filed 5–10–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Notice of Intent to Repatriate a Cultural Item: Minnesota Historical Society, St. Paul, MN

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the Minnesota Historical Society, St. Paul, MN, that meets the definition of ''sacred object'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations in this notice.

The one cultural item is a tree-dweller effigy figure (#6277.1). It is approximately 6 inches in height carved from birch or possibly poplar of a male figure in Santee Sioux style. Inked on the back of the figure with a quill pen nib is ''. . . 200 years in the Wabasha family.''

In 1922, the cultural item was acquired by the Minnesota Historical Society as a gift from the estate of Stephen Jewett, vice-president of the Security Bank of Faribault, Faribault, MN. The cultural item came into the collections wrapped in a sheet of Mueller & Faribault Real Estate and Financial Agents letterhead with handwritten comments by W. R. Faribault. It is not known how Mr. Faribault acquired the cultural item.

The cultural item is specifically documented in *Plains Indian Sculpture: A Traditional Art from America's Heartland* by John C. Ewers, which states that the cultural item ''. . . must be the oldest Tree-Dweller in any museum collection.'' Mr. Ewers also notes that the ''Santee Sioux respected the supernatural powers of Canhotdan, the Tree-Dweller, to help or harm the hunter.'' Further documentation also notes that ''. . . the owners of these images are able to make them dance magically during the rites of the (Medicine Dance) society . . .. '' (Skinner, 1925).

During consultation, a family genealogy was presented showing that Mr. Ernest Wabasha (Wabasha VI) is a lineal descendant. Other direct descendants of the Wabasha line are Mr. Wabasha's children and grandchildren: Cheyanne St. John, Forrest St. John, Leonard Wabasha, Theresa Wabasha, and Winona Wabasha. This claim is also supported by members of the extended Wabasha family: Vera Hutter and Ernestine Ryan-Wabasha (sisters); and Jeanine Hutter, Kathy Ferdig, and Yvonne Hutter (nieces). It is believed the tree-dweller effigy figure may have been released by an individual or group that did not have the authority to alienate such an object from the Wabasha family or it may have been released to provide temporary protection for the object, as many members of the Wabasha family were held in the Fort Snelling internment camp in 1853, and many personal possessions were confiscated from tribal members at that time.

Mr. Ernest Wabasha (Wabasha VI) is the recognized hereditary Chief of the Dakota People and of the Wabasha (Mdewakanton Dakota) family, as well as keeper of the sacred bundle of the Wabasha family that originally owned the cultural item. Mr. Wabasha has identified the cultural item as necessary for the continued practice of traditional Dakota ceremonies by present-day adherents and has claimed them as a lineal descendant. Furthermore, Mr. Wabasha has communicated to the Minnesota Historical Society that the cultural item is needed for the practice of on-going ceremonial and religious traditions.

Officials of the Minnesota Historical Society have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Minnesota Historical Society have also determined, pursuant to 25 U.S.C. 3005 (a)(5)(A), that Mr. Ernest Wabasha (Wabasha VI) can trace his ancestry directly and without interruption by means of the traditional kinship system of the Dakota and common law system of descent to

a known Native American individual who controlled this cultural item.

Any other lineal descendant or representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object should contact Marcia G. Anderson, NAGPRA Representative, Minnesota Historical Society, 345 Kellogg Boulevard West, St. Paul, MN 55102, telephone (651) 296–0150, before June 12, 2006. Repatriation of the sacred object to Mr. Ernest Wabasha (Wabasha VI) may proceed after that date if no additional claimants come forward.

Minnesota Historical Society is responsible for notifying Kathy Ferdig, Jeanine Hutter, Vera Hutter, Yvonne Hutter, Ernestine Ryan-Wabasha, Cheyanne St. John, Forrest St. John, Elroy Wabasha, Ernest Wabasha (Wabasha VI), Joseph Wabasha, Leonard Wabasha, Theresa Wabasha, Winona Wabasha, Lower Sioux Indian Community in the State of Minnesota, and Santee Sioux Nation, Nebraska that this notice has been published.

Dated: May 1, 2006

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–7200 Filed 5–10–06; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–538]

In the Matter of Certain Audio Processing Integrated Circuits and Products Containing Same; Notice of Commission Decision To Review Portions of an Initial Determination Finding a Violation of Section 337 of the Tariff Act of 1930 and To Deny Respondent's Motion for Leave To File a Reply to the Responses to Respondent's Petition for Review

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review certain portions of a final initial determination (''ID'') of the presiding administrative law judge (''ALJ'') finding a violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. The Commission has also denied respondent's motion for leave to file a reply in support of its petition for review.

FOR FURTHER INFORMATION CONTACT: Steven W. Crabb, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5432. Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 18, 2005, based on a complaint filed on behalf of SigmaTel, Inc. (''complainant'') of Austin, Texas. 70 FR 20172. The complaint alleged violations of section 337 in the importation into the United States, sale for importation, and sale within the United States after importation of certain audio processing integrated circuits and products containing same by reason of infringement of claim 10 of U.S. Patent No. 6,137,279 (''the '279 patent'') and claim 13 of U.S. Patent No. 6,633,187 (''the '187 patent''). *Id.* The notice of investigation named Actions Semiconductor Co. of Guangdong, China (''Actions'') as the only respondent.

On June 9, 2005, the ALJ issued an ID (Order No. 5) granting complainant's motion to amend the complaint and notice of investigation to add allegations of infringement of the previously asserted patents and to add an allegation of a violation of section 337 by reason of infringement of claims 1, 6, 9, and 13 of U.S. Patent No. 6,366,522 (''the '522 patent''). That ID was not reviewed by the Commission.

On October 13, 2005, the ALJ issued an ID (Order No. 9) granting complainant's motion to terminate the investigation as to the '279 patent. On October 31, 2005, the Commission determined not to review the ID.

On October 31, 2005, the ALJ issued an ID (Order No. 14) granting complainant's motion for summary determination that the importation requirement of section 337 has been satisfied. On November 1, 2005, the ALJ issued an ID (Order No. 15) granting complainant's motion for summary determination that complainant has satisfied the economic prong of the domestic industry requirement of section 337 for the patents in issue. Those IDs were not reviewed by the Commission.

A five-day evidentiary hearing was held from November 29, 2005, through December 3, 2005. On March 20, 2006, the ALJ issued his final ID and recommended determination on remedy and bonding. The ALJ concluded that there was a violation of section 337. Specifically, he found that claim 13 of the '187 patent was valid and infringed by Actions' accused product families 207X, 208X, and 209X. The ALJ also determined that claims 1, 6, 9, and 13 of the '522 patent were valid and infringed by Actions' accused product families 208X and 209X.

On April 3, 2006, respondent Actions petitioned for review of portions of the final ID. On April 10, 2006, complainant SigmaTel and the Commission investigative attorney (''IA'') filed responses in opposition to the petition for review.

On April 17, 2006, respondent Actions filed a motion for leave to file a reply to complainant SigmaTel's response to Actions' petition for review. On April 19, 2006, complainant SigmaTel filed a motion in opposition to Actions' motion. The Commission has determined to deny Actions' motion for leave to file a reply.

Having examined the record in this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID in part:

(1) With respect to the '187 patent, the Commission has determined to review the ALJ's construction of the claim term ''memory'' in claim 13 to remove the apparent inadvertent inclusion of the word ''firmware'' from his claim construction.

(2) With respect to the '522 patent, the Commission has determined to review the ALJ's construction of the following limitation of claims 1 and 9: ''Produce the system clock control signal and power supply control signal based on a processing transfer characteristic of the computation engine.'' The Commission has also determined to review the ALJ's findings of fact and conclusions of law concerning infringement of claims 1, 6, 9, and 13 of the '522 patent by the accused Actions chips, and to review the ALJ's findings of fact and conclusions of law concerning whether SigmaTel's chips satisfy the technical prong of the domestic industry

requirement of section 337 in regard to the '522 patent.

The Commission has determined not to review the remainder of the ID.

On review, the Commission requests briefing based on the evidentiary record on all issues under review. In particular, the Commission requests that the parties brief the following questions, with all answers supported by citations to legal authority and the evidentiary record:

1. Does Federal Circuit case law support reference to the specification of the patent to vary the plain meaning of a claim term that is a simple English word such as ''and?'' See e.g. *Phillips* v. *AWH Corporation,* 415 F.3d 1303, 1314 (Fed. Cir. 2005); *Chef America, Inc.* v. *Lamb-Weston, Inc.,* 358 F.3d 1371, 1373 (Fed. Cir. 2004).

2. Please discuss the impact on the ALJ's infringement analysis if the claim term ''produce the system clock control signal and power supply control signal based on a processing transfer characteristic of the computation engine'' in claims 1 and 9 of the '522 patent is interpreted to require that both the frequency and voltage must be adjusted.

3. Please discuss the impact on the ALJ's analysis of the technical prong of the domestic industry requirement in this investigation if the claim term ''produce the system clock control signal and power supply control signal based on a processing transfer characteristic of the computation engine'' in claim 1 of the '522 patent is interpreted to mean that both the frequency and voltage must be adjusted.

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, *In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submission should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's March 20, 2006, recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is requested to supply the expiration dates of the patents at issue and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on May 15, 2006. Reply submissions must be filed no later than the close of business on May 22, 2006. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 12 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.46).

Issued: May 5, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–7153 Filed 5–10–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–344, 391–A, 392–A and C, 393–A, 394–A, 396, and 399–A (Second Review)]

Certain Bearings From China, France, Germany, Italy, Japan, Singapore, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject five-year reviews.

DATES: *Effective Date:* May 4, 2006.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), 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 October 12, 2005, the Commission established its schedule for the conduct of the subject five-year reviews (70 FR

60556, October 18, 2005) and subsequently revised its schedule (70 FR 75482, December 20, 2005). The Commission hereby gives notice that it is further revising the schedule for its final determinations in the subject five-year reviews.

The Commission's schedule is revised as follows: The posthearing briefs are due May 15, 2006; the closing of the record and final release of information is July 24, 2006; and final comments on this information are due on or before July 27, 2006.

For further information concerning these review investigations see the Commission's notices cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These five-year reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: May 5, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–7152 Filed 5–10–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–567]

Certain Foam Footwear; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 31, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Crocs, Inc. of Niwot, Colorado. On April 27, 2006, the Commission granted complainant's request for a postponement of the Commission's determination whether to institute an investigation in order for complainant to file an amended complaint. The amended complaint was filed on April 27, 2006. The amended complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain foam footwear by reason of infringement of (1) claims 1 and 2 of U.S. Patent No. 6,993,858, (2) U.S. Design Patent No. D517,789, (3) and the Crocs Trade Dress. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent general exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: David H. Hollander, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2746.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 4, 2006, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain foam footwear by reason of infringement of claims 1 or 2 of U.S. Patent No. 6,993,858, or U.S. Design Patent No. D517,789, and whether an industry in the United States exists as required by subsection (a)(2) of section 337; or

(b) Whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain foam footwear by reason of infringement of Crocs' trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Crocs, Inc., 6273 Monarch Park Place, Niwot, Colorado 80503.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Australia Unlimited, Inc., 2638 E. Marginal Way S., Seattle, WA 98134.
Cheng's Enterprises Inc., 68 Broad Street, Carlstadt, NJ 07072.
Collective Licensing International, LLC, 800 Englewood Parkway, Englewood, CO 80110.
D. Myers & Sons, Inc., 2020 Sherwood Avenue, Baltimore, MD 21218.
Double Diamond Distribution Ltd., 3715A Thatcher Avenue, Saskatoon, SK., Canada S7R 1B8.
Effervescent Inc., 24 Scott Road, Fitchburg, MA 01420.
Gen-X Sports, Inc., 18601 Wilmington Avenue, Carson, CA 90796.
Holey Soles Holding Ltd., 1628 West 75th Avenue, Vancouver, Canada V6P 6G2.
Inter-Pacific Trading Corp., 2257 Colby Avenue, Los Angeles, CA 90064.
Pali Hawaii, 501 Sumner St., Suite 613, Honolulu, HI 96817.
Shaka Shoes, 77–6360 Halawai Place, Kailua-Kona, HI 96740.

(c) The Commission investigative attorney, party to this investigation, is David H. Hollander, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436.

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of

time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

Issued: May 8, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–4413 Filed 5–10–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–671–673 (Second Review)]

Silicomanganese From Brazil, China, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Scheduling of expedited five-year reviews concerning the antidumping duty orders on silicomanganese from Brazil, China, and Ukraine.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on silicomanganese from Brazil, China, and Ukraine 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).

DATES: *Effective Date:* April 10, 2006.

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 April 10, 2006, the Commission determined that the domestic interested party group response to its notice of institution (71 FR 135, January 3, 2006) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews. 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 June 1, 2006, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[1] 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 June 28, 2006 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 June 28, 2006. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 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 sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 5, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–7154 Filed 5–10–06; 8:45 am]

BILLING CODE 7020–02–P

[1] The Commission has found the response submitted by Eramet Marietta Inc. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[USITC SE–06–032]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 17, 2006 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–461 (Second Review) (Gray Portland Cement and

Cement Clinker from Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before May 31, 2006.)

5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 9, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–4488 Filed 5–9–06; 3:01 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on April 25, 2006, a proposed Consent Decree in *United States* v. *General Electric Company*, Civil Action No. 03CV4668 (HAA), was lodged with the United States District Court for the District of New Jersey. In that action, the United States seeks to recover from General Electric Company (''General Electric'') response costs incurred in connection with the Grand Street Mercury Superfund Site, located in Hoboken, New Jersey (''the Site''), pursuant to section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9607. A number of other lawsuits have been filed and consolidated in connection with the release of mercury at the Site.

As part of the settlement, General Electric has placed $3 million into an interest-bearing court registry account. The consent decree provides that the United States will receive $2,805,000 plus interest accrued on that amount, and that the State of New Jersey will receive $195,000 plus interest accrued on that amount. General Electric further agrees to file motions to withdraw its opposition to a consent decree that the United States and the State of New Jersey lodged in 2003 with other parties in Civil Action No. 96–3775 (HAA) and consolidated cases, and its opposition to aspects of other private settlements. General Electric further agrees to give up its claims for costs that it incurred in performing remediation at the Site and to withdraw its Petition to EPA under CERCLA section 106(b)(2), 42 U.S.C. 9606(b)(2), for reimbursement of such costs. In exchange, the Plaintiffs covenant not to sue General Electric for their past costs at the Site and provide contribution protection for all response costs and response actions at the Site.

The Department of Justice will receive comments relating to this Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, Attention: Nancy Flickinger, and should refer to *United States* v. *General Electric Co.*, DOJ #90–11–3–1769.

The Consent Decree may be examined at the Office of the United States Attorney for the District of New Jersey, 970 Broad Street, 7th Floor, Newark, NJ 07102, and at U.S. EPA Region II's Office, 290 Broadway, New York, NY 10007–1866. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mail a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $11.00 (25 cents per page reproduction cost) for a full copy of the consent decree, payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 06–4372 Filed 5–10–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Modification of the Consent Decree Entered in; *United States et al.* v. *Illinois Power Company and Dynegy Midwest Generation*

Notice is hereby given that on March 20, 2006, the United States lodged a Proposed Consent Decree Modification in the United States District Court for the Southern District of Illinois in the matter captioned *United States et al* v. *Illinois Power Company and Dynegy Midwest Generation, Inc.,* (Civil Action No. 99–833–MJR). This proposed Modifications was jointly agreed by the United States, the State of Illinois, the four citizen groups co-plaintiffs—the American Bottom Conservancy, Health and Environmental Justice—St. Louse, Inc., Illinois Stewardship Alliance, and the Prairie Rivers Network—and Dynegy Midwest Generation.

The proposed modification affects Section VI of the Consent Decree, *PM Emission Reductions and Controls,* which establishes a variety of requirements for Dynegy Midwest Generation, Inc. (''DMG'') concerning particulate matter emissions at identified units in the DMG System. Under the Consent Decree, DMG is required to operate certain electric generating units so as to achieve and maintain an emissions rate of ''not greater than 0.030 lb/mmBTU'' or to undertake an alternative procedure defined in the Decree as a ''Pollution Control Equipment Upgrade Analysis.'' Consent Decree ¶ 86. According to the proposed modification, the deadline for each of the two Hennepin Units set forth in Paragraph 86 will be changed to December 31, 2008, and the language in Paragraph 86 following the table, as well as Paragraph 88 in its entirety, will be deleted. By this change, among other things, rather than requiring the first Hennepin unit to meet the specified emission rate in 2006 and the second Hennepin unit to meet that rate in 2010, the Consent Decree will instead require DMG to ensure that both Hennepin units meet 0.030 lbs/mmBTU emissions rate by December 31, 2008.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the above-described Proposed Consent Decree Modification. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Illinois Power Company and Dynegy Midwest Generation, Inc.,* D.J. Ref. No. 90–5–2–1–06837.

During the public comment period, the proposed modification to the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed modifications may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In

requesting a copy from the Consent Decree Library, please enclose a check in the amount of $1.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariani, Jr.,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 06–4371 Filed 5–10–06; 8:45am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Jay James Jackson et al.,* Civil Action No. 8:0404cv64, was lodged on April 27, 2006 with the United States District Court for the District of Nebraska. This consent decree requires the defendants to reimburse EPA $700,000 for past response costs and to implement institutional controls.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of *States* v. *Jay James Jackson et al.,* DOJ Ref. 90–11–2–07430.

The proposed consent decree may be examined at the office of the United States Attorney, 1620 Dodge Street, Suite 1400, Omaha, NE 68102–1506 and at U.S. EPA Region 7, 901 N. 5th Street, Kansas City, KS 66101. During the comment period, the consent decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* Copies of the consent decree also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $6.25 (without attachments) or $8.75 (with attachments) for *United States* v. *Jay James Jackson, et al,* (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 06–4375 Filed 5–10–06; 8:45am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act Between the United States, the State of North Dakota, Minnkota Power Cooperative, Inc., and Square Butte Electric Cooperative

In accordance with 28 CFR 50.7, notice is hereby given that on April 25, 2006, a proposed consent decree (''Consent Decree'') between the United States, the State of North Dakota, Minnkota Power Cooperative, Inc., (''Minnkota'') and Square Butte Electric Cooperative (''Square Butte'') was lodged with the United States District Court for the District of North Dakota in Civil Action No. 1:06–CV–034.

The Consent Decree would resolve the civil claims asserted by the United States against Minnkota and Square Butte pursuant to sections 113(b) and 167 of the Clean Air Act, 42 U.S.C. 7413(b) and 7477, for injunctive relief and the assessment of civil penalties for violations of the Prevention of Significant Deterioration provisions of the Act, 42 U.S.C. 7470–92, Title V of the Act, 42 U.S.C. 7661 *et seq.,* and the federally approved and enforceable North Dakota State Implementation Plan (the ''SIP'').

The United States and the State of North Dakota also filed with the Consent Decree a complaint which alleges, among other things, that Minnkota and Square Butte modified and thereafter operated two coal-fired electricity generating units at the Milton R. Young electricity generating station in Center, North Dakota, without first obtaining a PSD permit authorizing the construction and without installing the best available technology to control emissions of sulfur dioxide (SO_2), nitrogen oxides (NO_X), and particulate matter (PM), as required by the Act, applicable federal regulations, and the SIP.

Under the terms of the proposed Consent Decree, Minnkota and Square Butte will install or upgrade pollution controls for SO_2 NO_X, and PM for the two electricity generating units at the Milton R. Young facility, at an estimated cost of over $100 million. Minnkota and Square Butte will also pay $850,000 in civil penalties and undertake $5 million in additional injunctive relief.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Deputy Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United Sates* v. *Minnkota Power Cooperative, Inc.,* DOJ Case Number 90–5–2–1–07717.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of North Dakota, 220 East Rosser Avenue, Suite 372, Bismark, ND 58501, and at U.S. EPA Region VIII, 999 18th Street, Denver, CO 80202. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514– 1547. In requesting a copy of the Consent Decree, please reference *United States* v. *Minnkota Power Cooperative, Inc.,* DOJ Case Number 90–5–2–1–07717, and enclose a check in the amount of $17.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas Mariani,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 06–4374 Filed 5–10–05; 8:45am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America* v. *County of Sacramento*, Case Number 2:06–CV–00908 GEB–GGH, was lodged with the United States District Court for the Eastern District of California on April 26, 2006.

This proposed Consent Decree concerns a complaint filed by the United States against the County of Sacramento, pursuant to 33 U.S.C. 1311(a) and 1344, to obtain injunctive

relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The propsoed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas and perform mitigation and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Edmund F. Brennan, Assistant United States Attorney, and refer to *United States of America* v. *County of Sacramento*, Case Number 2:06–CV–00908–GEB–GGH.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Eastern District of California, 501 I Street, Sacramento, California. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/open.html*.

Edmund F. Brennan,

Assistant U.S. Attorney.

[FR Doc. 06–4376 Filed 5–10–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Judgment Pursuant to Federal Water Pollution Control Act

Notice is hereby given that on April 28, 2006, a proposed Consent Judgment in *United States and State of New York* v. *County of Suffolk, et al.,* Civil Action No. CV–06–1978, was lodged with the United States District Court for the Eastern District of New York.

The United States and the State of New York sued the County of Suffolk, Suffolk County Department of Public Works, and Charles J. Bartha, Commissioner of the Suffolk County Department of Public Works (collectively, ''Suffolk'') under seciton 309(b) and (d) of the Federal Water Pollution Control Act, 33 U.S.C. 1319(b) and (d), and under State law for alleged violations of Suffolk's Industrial Waste Pretreatment Program (IPP) and its State Pollutant Discharge Elimination System (SPDES) Permits. The Consent Judgment resolves these claims and requires Suffolk to pay a civil penalty of $300,000, to fund a supplemental environmental project in the amount of $700,000, and to comply with its IPP and SPDES Permits.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States, et al* v. *County of Suffolk., et al.*, DJ No. 90–5–1–1–5065/1.

The proposed Consent Judgment may be examined at the Office of the United States Attorney, Eastern District of New York, One Pierrepont Plaza, 14th Fl., Brooklyn, New York 11201, and at the United States Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. During the public comment period, the proposed Consent Judgment may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov./enrd/open.html*. A copy of the proposed Consent Judgment may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy of the proposed Consent Judgment, please so note and enclose a check in the amount of $17.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–4373 Filed 5–10–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,063]

McLeodUSA Telecommunications Services; A Subsidiary of McLeodUSA, Inc.; Springfield, MO; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at McLeodUSA Telecommunications Services, a subsidiary of McLeodUSA, Inc., Springfield, Missouri. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–59,063; McLeodUSA Telecommunications Service, A Subsidiary of McLeodUSA, Inc., Springfield, Missouri. (May 3, 2006).

Signed at Washington, DC this 4th day of May 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 06–4416 Filed 5–10–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of April 2006.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm,

have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met, and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,145; Roland Audio Development Corporation, La Mirada, CA: March 20, 2005

TA–W–59,157; General Electric, Consumer & Industrial Division, Murfreesboro, TN: March 31, 2005

TA–W–59,186; Paul Lavitt Mills, Inc., Hickory, NC: April 11, 2005

TA–W–59,194; Artist Colony LTD, Lexington, NC: April 9, 2005

TA–W–59,207; Bernhardt Furniture Company, Upholstery—Plant #9, Leased Workers From USA Staffing, Shelby, NC: April 12, 2005

TA–W–59,207A; Bernhardt Furniture Company, Upholstery—Plant #14, Leased Workers From USA Staffing, Cherryville, NC: April 12, 2005

TA–W–59,210; Sony Logistics of America-Pittsburgh, Subsidiary of Sony Electronics, Inc., Mt. Pleasant, PA: April 12, 2005

TA–W–59,233; 3D Materials Handling, LLC, Working at Fraser NH LLC, Gorham, NH: April 17, 2005

TA–W–58,693; Lake County Greenhouse Corp., Crown Point, IN: January 14, 2005

TA–W–58,698; Plastech Engineered Products, Inc., dba Andover Industries, Andover, OH: December 30, 2004

TA–W–58,804A; Republic Engineered Products, Inc., Lackawanna, NY: February 7, 2005

TA–W–58,804B; Republic Engineered Products, Inc., Lorain, OH: February 7, 2005

TA–W–59,068; Federal Mogul Corporation, Malden, MO: March 21, 2005

TA–W–59,086; Flynn, LLC, Greenville, KY: March 24, 2005

TA–W–59,128; Value Line Textiles, Inc., Lenoir City, TN: March 30, 2005

TA–W–59,131; Penncost Corporation, Marietta, PA: March 24, 2005

TA–W–59,177; Grapevine Staffing, LLC, Automotive Seating of America, Romech Division, Red Oak, IA: April 7, 2005

TA–W–58,756; Wagner Knitting, Inc., Lowell, NC: January 30, 2005

TA–W–58,813; Masonite International Corporation, Mobile, AL: February 8, 2005

TA–W–59,213; Hexcel Corp., Reinforcements Division, Washington, GA: April 4, 2005

The following certifications have been issued. The requirements of (a) (2) (B) (shift in production) of section 222 and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,110; American Video Glass Co., A Subsidiary of Sony Electronics, Leased Workers of Staffmark, Mt. Pleasant, PA: May 14, 2005

TA–W–59,113; Sara Lee Branded Apparel, Eden, NC: March 22, 2005

TA–W–59,113A; Sara Lee Branded Apparel, Galax, VA: March 22, 2005

TA–W–59,160; 3M Touch Systems, Including Volt Services, Milwaukee, WI: April 4, 2005

TA–W–59,162; Esselte Business Corporation, Buena Park Division, Leased Workers Staffing Solutions, Buena Park, CA: March 29, 2005

TA–W–59,168; Joan Fabrics Corporation, Siler City, NC: April 5, 2005

TA–W–58,880; TG Manufacturing, Inc., Hammonton, NJ: February 21, 2005

TA–W–59,039A; Nortel, MG9K Software Design Dept. JF17, Research Triangle Park, NC: February 17, 2005

TA–W–59,049; Arlee Home Fashions, Including On-Site Leased Workers of Penmac, West Plains, MO: March 15, 2005

TA–W–59,061; Affinia Brake Parts, Inc., Rotors & Drums Departments, Leased Workers of Express Personnel, McHenry, IL: March 20, 2005

The following certification has been issued. The requirement of supplier to a trade certified firm and section 246(a)(3)(A)(ii) of the Trade Act have been met.

None

The following certification has been issued. The requirement of downstream producer to a trade certified firm and section 246(a)(3)(A)(ii) of the Trade Act have been met.

None

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–58,804; Republic Engineered Products, Inc., Canton, OH.

TA–W–59,077; Greatbatch Sierra, Inc., Carson City, NV.

TA–W–59,251; Steed Sales Co., Inc., Bowdon, GA.

The investigation revealed that criteria (a)(2)(A)(I.B.)(Sales or

production, or both, did not decline) and (a)(2)(B)(II.B) (shift in production to a foreign country) have not been met.

None

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–59,092; Rapid Precision Machining, Victor, NY.

TA–W–59,158; Progressive Screens, Inc., Gaffney, SC.

The investigation revealed that criteria (a)(2)(A)(I.C.) (Increased imports and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

None

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–59,039; Nortel, XPM GNPS, Design and Support, Research Triangle Park, NC.

TA–W–59,089; Affiliated Computer Services, Inc., Wichita, KS.

TA–W–59,221; Moore Wallace AN RR Donnelley Co., National Customer Service Center, Libertyville, IL.

TA–W–59,221A; Moore Wallace AN RR Donnelley Co., National Customer Service Center, St. Charles, IL.

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

None

Affirmative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have not been met for the reasons specified.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–58,804; Republic Engineered Products, Inc., Canton, OH.

TA–W–59,077; Greatbatch Sierra, Inc., Carson City, NV.

TA–W–59,251; Steed Sales Co., Inc., Bowdon, GA.

TA–W–59,092; Rapid Precision Machining, Victor, NY.

TA–W–59,158; Progressive Screens, Inc., Gaffney, SC.

TA–W–59,039; Nortel, XPM GNPS, Design and Support, Research Triangle Park, NC.

TA–W–59,089; Affiliated Computer Services, Inc., Wichita, KS.

TA–W–59,221; Moore Wallace AN RR Donnelley Co., National Customer Service Center, Libertyville, IL.

TA–W–59,221A; Moore Wallace AN RR Donnelley Co., National Customer Service Center, St. Charles, IL.

The Department as determined that criterion (1) of section 246 has not been met. Workers at the firm are 50 years of age or older.

None

The Department as determined that criterion (2) of section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–59,039A; Nortel, MG9K Software Design Dept. JF17, Research Triangle Park, NC.

The Department as determined that criterion (3) of section 246 has not been met. Competition conditions within the workers' industry are not adverse.

TA–W–58,880; TG Manufacturing, Inc., Hammonton, NJ.

I hereby certify that the aforementioned determinations were issued during the month of April 2006. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 4, 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 06–4418 Filed 5–10–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,770]

Thomasville Furniture Ind.; Plant #5; Conover, NC; Notice of Revised Determination on Reconsideration

By letter dated April 4, 2006, a petitioner requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination signed on March 10, 2006, was based on the finding that sales and production at the subject facility increased during the relevant time period and that job losses at the subject firm were not attributed to increased imports or a shift of production of upholstered furniture to a foreign source. The denial notice was published in the **Federal Register** on April 4, 2006 (71 FR 16834).

To support the request for reconsideration, the petitioner supplied additional information regarding production at the subject facility and company imports of like or directly competitive products with those produced at the subject firm.

The review of the case revealed that sales at the subject firm decreased from 2004 to 2005. Upon further contact with the subject firm's company official, it was revealed that the subject firm decreased domestic production of upholstered furniture while increasing its reliance on imports of upholstered furniture during the relevant time period.

In accordance with section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of section 246 of the Trade Act must be met. The Department has determined in this case that the

requirements of section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Thomasville Furniture Ind., Plant #5, Conover, North Carolina, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Thomasville Furniture Ind., Plant #5, Conover, North Carolina, who became totally or partially separated from employment on or after February 1, 2005 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 28th day of April 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 06–4417 Filed 5–10–06; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Workshop on Fostering Transformative Research—Views From Industry and Private Foundations

Date: May 16, 2006.

Place: National Science Foundation, Arlington, Virginia, Room 1235.

Contact Information: Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for updated schedule. NSB Office: Ann Ferrante, (703) 292–7000.

Status: This Workshop is open to the public.

Provisional Agenda

8 a.m.–8:30 a.m. Registration.

8:30 a.m.–8:50 a.m. Welcoming Remarks. Dr. Nina Fedoroff, Chair, Task Force on Transformative Research, NSB.

8:50 a.m.–9 a.m. Introduction and Overview. Dr. Michael Crosby, Executive Officer, NSB.

9 a.m.–11:15 a.m. Session I: Foundation Perspectives.

12:30 p.m.–2:45 p.m. Session II: Industry Perspectives.

2:45 p.m.–3 p.m. Break.

3 p.m.–4:30 p.m. Session III: Other Perspectives.

4:30 p.m.–4:45 p.m. Summaries of Discussions and Next Steps for the Task Force.

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. E6–7213 Filed 5–10–06; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–05976]

U.S. Environmental Protection Agency's Western Ecology Division, Corvallis and Newport Facilities, OR: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of environmental assessment and Finding of No Significant Impact for license amendment.

FOR FURTHER INFORMATION CONTACT: D. Blair Spitzberg, Ph.D., Chief, Fuel Cycle and Decommissioning Branch, Division of Nuclear Materials Safety, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011. Telephone: (817) 860–8100; e-mail: *dbs@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Material License No. 36–12343–02 issued to the United States Environmental Protection Agency, Western Ecology Division (EPA or the licensee). This license pertains to the following three EPA facilities located in Oregon: (1) Corvallis Environmental Research Laboratory; (2) Willamette Research Station (also in Corvallis); and (3) the Pacific Coastal Ecology Branch facility in Newport. Granting the amendment request would authorize the release of these facilities for unrestricted use, and would terminate the license as requested. In accordance with conditions in its license, the EPA was authorized to use radioactive material at its three facilities to conduct tracer studies involving marine organisms and plants (excluding animal studies); perform sample analysis; conduct tests for soil moisture; and for instrument calibration.

On November 30, 2004 (as supplemented by letter dated December 27, 2005), EPA requested that NRC release the three facilities for unrestricted use and to terminate the license. The licensee conducted radiological surveys of the subject facilities and concluded that the license termination criteria specified in subpart E to 10 CFR part 20 for unrestricted release have been met. The amendment will be issued if NRC determines that the request meets the standards specified in 10 CFR part 20 and related NRC guidance documents.

II. Environmental Assessment (EA)

Identification of Proposed Action: The proposed action is to enable the licensee to use its subject facilities in any manner without NRC restriction. The NRC proposes to accomplish this by terminating NRC License No. 36–12343–02 because the licensee has permanently ceased all licensed activities and transferred or disposed of all licensed radioactive materials.

The Need for the Proposed Action: The licensee has permanently ceased all licensed activities at its subject facilities. The EPA desires to release these facilities for unrestricted use. The facilities will continue to be used for research with non-licensed materials. When the licensing action is complete, the licensee will be in compliance with the requirements of 10 CFR 30.36, ''Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas.''

Environmental Impact of the Proposed Action: NRC Materials License No. 36–12343–02 authorizes the EPA to possess small quantities of radioactive material, in both sealed and unsealed form. Under its license, the EPA's use of licensed material included the performance of tracer studies involving marine organisms and plants (excluding animal studies), use in gas chromatographs for sample analysis, use in Troxler Model 4300 Series gauges to measure soil moisture, and use in a liquid scintillation counter for instrument calibration. By letter dated November 30, 2004, EPA requested that NRC release the subject facilities for unrestricted use and terminate the license.

A final status survey report (FSSR) was completed by the licensee, and a copy of the report was attached to the November 30, 2004, letter. During the November 2005 NRC inspection, EPA identified additional previous locations of use that had not been documented in

the November 2004 FSSR submittal. An addendum to the FSSR was attached to a letter from EPA dated December 27, 2005. As discussed below, the EPA concluded that all three facilities were sufficiently free of radioactive material to permit unrestricted release of the facilities.

As part of its amendment request, the licensee conducted a historical review of its three facilities and found that the radionuclides of concern were carbon-14, calcium-45, chromium-51, hydrogen-3, phosphorus-32, sulfur-35, nickel-63, americium-241, and barium-133. Radioactive materials were used at the two Corvallis facilities from 1977 to 2004. Radioactive materials were used at the Newport facility from 1987–1995 under NRC License No. 36–23261–01. (This license was terminated in July 1995 after NRC License No. 36–12343–02 was amended to bring the Newport facility within its scope). To demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402, the licensee developed derived concentration guideline levels (DCGLs). The NRC compared the licensee's proposed DCGLs to the screening criteria provided in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The NRC concluded that the proposed DCGLs were acceptable for use as release criteria.

The EPA's historical assessment identified two incidents that may have involved leaking sealed sources at the Corvallis Environmental Research Laboratory. One event occurred in March 1979 involving a sealed source containing a tritium-scandium foil. At the time of the event, the laboratory was cleaned and decontaminated. Significant remodeling had taken place since the laboratory had been cleaned and decontaminated, so additional NRC confirmatory surveys were not performed in this area. A second event occurred in June 1982 involving either a leaking nickel-63 sealed source detector or radiotracers injected into a gas chromatograph. The licensee believed that the detector did not leak and that the contamination was tritium, not nickel-63. The laboratory was decontaminated and the event reported to the NRC at the time.

The NRC staff reviewed the docket file records and the FSSR to identify any non-radiological hazards that may have impacted the environment. No additional hazards or impacts were identified.

The licensee's radiation safety program allowed unrestricted release of previous locations of use once the areas were shown to be free from residual contamination. Final status surveys of the former locations of use were conducted when the laboratories were removed from service. Additional limited final status surveys were performed in 12 previous locations of use within the three subject facilities during November 2004, because the historical survey records were not adequate or complete to show that the locations were free from residual contamination. Final status surveys on remaining locations of use that had not been previously released were also performed during June 2004, November 2004 and December 2005. These final status surveys were conducted in buildings and laboratories identified during the historical assessment as previous locations of use with licensed radioactive materials.

The NRC conducted a confirmatory survey of 26 separate locations in the subject facilities during the NRC's November 2005 inspection. The NRC focused these confirmatory surveys in previous locations of use that were identified in the licensee's historical assessment as locations that potentially used licensed material in unsealed form. The confirmatory survey included the site at the Corvallis Environmental Research Laboratory where a leak from a sealed source may have occurred in June 1982. These confirmatory surveys also included the licensee-identified previous locations of use that were not in the original FSSR submittal dated November 2004. The surveys included ambient gamma exposure rate measurements, as well as, fixed and removable surface contamination measurements. The removable surface contamination measurements included measurements for hydrogen-3 and carbon-14. None of the confirmatory sample results exceeded the proposed DCGLs identified in the FSSR.

In its FSSR, the licensee stated that radioactive waste material from previously licensed operations was transferred to an authorized waste contractor. All other previously licensed radioactive materials were transferred to authorized recipients. Solid waste disposal did not include on-site burial or incineration. Discharges to sewers were reviewed by inspectors during routine inspections to ensure compliance with the release limits specified in 10 CFR part 20. Accordingly, the NRC finds that surface and groundwater sources were not impacted by previous EPA operations involving licensed material at the subject facilities.

Environmental Impacts of the Alternatives of the Proposed Action: The licensee seeks NRC approval of the license termination request. The alternatives to the proposed action are: (1) The no-action alternative, or (2) to deny the license termination request and require the licensee to take some alternate action.

1. *No-Action Alternative:* One alternative available to the NRC is to take no action by denying the license termination request. The no-action alternative is not feasible because it conflicts with the NRC's regulation (10 CFR 30.36(d)) requiring licensees to decommission their facilities when licensed activities permanently cease.

2. *Environmental Impacts of Alternative 2:* A second alternative is to deny the licensee's request in favor of alternate release criteria as allowed by § 20.1403 (criteria for restricted conditions) or § 20.1404 (alternate criteria). However, the NRC's analysis of the final status survey data confirmed that the proposed DCGLs meet the license termination requirements of § 20.1402. Accordingly, the NRC has determined that the second alternative is not reasonable, and this alternative action is eliminated from further consideration.

Conclusion: Based on its review, the NRC staff concludes that the environmental impacts associated with the proposed action do not warrant denial of the license termination request. The staff believes that the proposed action will result in no significant environmental impacts. The staff has determined that the proposed action, approval of the license termination, is the appropriate alternative for selection.

Agencies and Persons Contacted: The NRC staff did not consult with the local U.S. Fish & Wildlife Service or the State Historic Preservation Officer because licensed activities occurred only within the three EPA facilities in Corvallis and Newport, Oregon. There was no evidence of use or release of radioactive material outside of these facilities. Accordingly, there was no impact to historic properties or the cultural resources, endangered species, or critical habitats outside these facilities. The State of Oregon notified the NRC by telephone on March 29, 2006 that it had no comments on the EA. This conversation was documented in a Memorandum to the Docket File dated March 29, 2006. EPA notified the NRC by letter dated March 29, 2006 that it had four clarification comments on the EA. These comments have been incorporated.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed license amendment to release the subject facilities for unrestricted use and terminate the license. On the basis of the EA, the NRC has concluded that there are no significant environmental impacts from the proposed action, and the license amendment does not warrant the preparation of an environmental impact statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are:

1. NRC, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities,'' NUREG–1496, July 1997 (ML042310492, ML042320379, and ML042330385).
2. Gile, Jay D., U.S. Environmental Protection Agency's Western Ecology Division, Cessation of Licensed Activities and Request for License Termination, November 30, 2004 (ML043620316, ML043620322, ML043620325, ML043620321).
3. Gile, Jay D., Environmental Protection Agency's Western Ecology Division, NRC Form 314 Certificate of Disposition of Materials, December 1, 2004 (ML043620317).
4. McBride, Kathy, Environmental Protection Agency's Western Ecology Division, NRC Form 314 (Certificate of Disposition of Materials) Retraction Memo, December 14, 2005 (ML060110330).
5. Burr, Dave, Environmental Protection Agency's Western Ecology Division, Decommissioning Audit Response, Addendum to the Final Status Survey Report, Certificate of Disposition of Materials and Request for License Termination, December 27, 2005 (ML060110298, ML060110337, ML060110472, ML060110496).
6. NRC Inspection Report 030–05976/05–001, January 10, 2006 (ML060120525).
7. Burr, Dave, Environmental Protection Agency's Western Ecology Division, EPA Comments on the draft Environmental Assessment, March 29, 2006 (ML060890410).
8. Schlapper, Beth A., Memorandum to Docket File 030–05976, State of Oregon Telephone Response Of No Comment For Comments On The Draft Environmental Assessment, March 29, 2006 (ML060880514).

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Arlington, Texas this 19th day of April, 2006.

For the Nuclear Regulatory Commission.

D. Blair Spitzberg,

Chief, Fuel Cycle & Decommissioning Branch, Division of Nuclear Materials Safety, Region IV.

[FR Doc. E6–7163 Filed 5–10–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 170th meeting on May 23–26, 2006, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The schedule for this meeting is as follows:

Tuesday, May 23, 2006

ACNW Working Group Meeting on Low-Level Radioactive Waste (LLW) Management Issues

8:30 a.m.–8:40 a.m.: Greeting and Introductions (Open)—The ACNW Chairman, Dr. Michael Ryan, will state the purpose and objectives for this Working Group Meeting. He will also provide an overview of the planned technical sessions for Day 1 and introduce invited panelists and speakers.

Purpose of ACNW Working Group Meeting. The purposes of this ACNW Working Group Meeting are to:

—Obtain current information on commercial LLW management practices.
—Identify emerging LLW management issues and concerns.
—Solicit stakeholder views on what changes to the regulatory framework for managing LLW should be recommended for Commission consideration.
—Solicit stakeholder views on actions the NRC can take to ensure a stable, reliable and adaptable regulatory framework for effective LLW management.
—Identify specific impacts, both positive and negative, of potential staff activities.

8:40 a.m.–9:40 a.m.: Existing LLW Licensee Operational Experience and Perspective (Open)—The Committee will hear presentations by representatives of Chem-Nuclear Systems, LLC and EnergySolutions, LLC.

9:40 a.m.–10:40 a.m.: Alternative Disposal Options and Practices (Open)—The Committee will hear presentations by Waste Control Specialists and U.S. Ecology—American Ecology.

11 a.m.–11:30 a.m.: NRC's Current LLW Program: Challenges (Open)—The Committee will hear a presentation by a NRC staff representative regarding the current LLW program.

11:30 a.m.–12:30 p.m.: NRC's 10 CFR Part 61: Historical Perspective (Open)—The Committee will hear presentations from former NRC staff regarding the development of NRC's LLW regulatory framework.

2 p.m.–3:30 p.m.: State/Compact Disposal Experience (Open)—The Committee will hear presentations from representatives of the Southwestern Low-Level Radioactive Waste Commission and the South Carolina Department of Health and Environmental Control.

3:30 p.m.–4 p.m.: LLW Definitions and Decommissioning Experience (Open)—The Committee will hear a presentation by a representative from the Nuclear Energy Institute.

4 p.m.–4:30 p.m.: New License Application Perspectives (Open)—The Committee will hear a presentation by a representative from Waste Control Specialists, LLC.

4:30 p.m.–5:30 p.m.: Stakeholder and Public Comments (Open).

Wednesday, May 24, 2006

8:30 a.m.–8:40 a.m.: Greeting and Introductions (Open)—Dr. Ryan will provide an overview of the planned technical sessions for Day 2 and introduce the invited panelists and speakers.

8:40 a.m.–11 a.m.: Industry Roundtable Discussion (Open)—Scheduled participants are expected to include representatives from Entergy,

the U.S. Army Corps of Engineers, the South Carolina Department of Health and Environmental Control, Harvard University, and U.S. Ecology—American Ecology.

12:30 p.m.–3 p.m.: Panel Discussion Concerning NRC's LLW Strategic Assessment (Open)—Scheduled participants are expected to included representatives from the Washington State Department of Health, the NRC staff, Chem-Nuclear Systems, the Texas Council on Environmental Quality, and the California Radioactive Materials Management.

3 p.m.–4:30 p.m.: Stakeholder and Public Comments (Open).

4:30 p.m.–5 p.m.: Closing Remarks (Open)—By Dr. Ryan.

5 p.m.–5:30 p.m.: ACNW Working Group Meeting Impressions—Discussion of Letter Report (Open)—The Committee will discuss the impressions of the Working Group Meeting and proposed ACNW letters.

Thursday, May 25, 2006

8:25 a.m.–8:30 a.m.: Opening Remarks by the ACNW Chairman (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

8:30 a.m.–10:30 a.m.: National Academy of Sciences (NAS) Report on the Management of Certain Tank Wastes at U.S. Department of Energy (DOE) Sites (Open)—Representatives of the NAS staff and an NAS Committee will brief the ACNW on the findings of a Congressionally-mandated study of radioactive waste streams stored in tanks at three DOE sites.

10:45 a.m.–12:15 p.m.: NRC Standard Review Plan (SRP) for Waste Determinations (Open)—NMSS representatives will update the Committee on progress in the development of the SRP to be used by the NRC staff to review DOE waste determinations.

1:30 p.m.–3 p.m.: Review of International Commission on Radiological Protection (ICRP) Draft Report, ''The Scope of Radiological Protection Regulations'' (Open)—Briefing by and discussions with representatives of the NRC staff regarding the ICRP draft report for comment titled, ''The Scope of Radiological Protection Regulations.''

3:15 p.m.–5:30 p.m.: Discussion of Draft Letters and Reports (Open)—The Committee will discuss proposed ACNW letters.

Friday, May 26, 2006

10 a.m.–10:10 a.m.: Opening Remarks by the ACNW Chairman (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

10:10 a.m.–11:45 a.m.: Overview of NRC Spent fuel Storage Program (Open)—NMSS representatives will provide an overview of NRC spent fuel storage program.

11:45 a.m.–4 p.m.: Discussion of Draft Letters and Reports (Open)—The Committee will discuss proposed ACNW letters.

4 p.m.–4:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of ACNW activities and specific issues that were not completed during previous meetings, as time and availability of information permit. Discussions may include future Committee Meetings.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 11, 2005 (70 FR 59081). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Mr. Michael R. Snodderly (Telephone 301–415–6927), between 8:15 a.m. and 5 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Snodderly as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted, therefore, can be obtained by contacting Mr. Snodderly.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Video Teleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: May 4, 2006.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E6–7161 Filed 5–10–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting on Planning and Procedures; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold a Planning and Procedures meeting on May 26, 2006, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Friday, May 26, 2006—8:30 a.m.–9:30 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Michael R. Snodderly (Telephone: 301/415–6927) between 8:15 a.m. and 5 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be

permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:15 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: May 3, 2006.

Michael R. Snodderly,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E6–7162 Filed 5–10–06; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53750; File No. SR–Amex–2006–33]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Section 141 of the Company Guide

May 2, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 11, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission.[5] On April 12, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to correct Section 141 of the Amex *Company Guide* so that annual fees in connection with Closed-End Fund issuers may not be deferred, waived, or rebated (in all or part).

The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com*, at the principal office of the Amex, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the Exchange, the purpose of the proposal is to correct Section 141 of the Amex *Company Guide* to properly reflect the fact that annual fees (in all or part) for Closed-End Funds may not be deferred, waived, or rebated in the discretion of the Board. As a result, Section 141 will now provide that the Board of Governors of the Exchange or its designee may, in its discretion, defer, waive, or rebate all or any part of the applicable annual listing fee for stock issues.

The Exchange previously adopted in File No. SR–Amex–2004–70[7] the ability of the Board of Governors or its designee, in its discretion, to defer, waive, or rebate all or any part of the applicable annual listing fees, except in the case of issues listed under Sections 106 and 107 of the Amex Company Guide and Rule 1200 (Trust Issued Receipts); and Closed-End Funds. As part of an amendment to File No. SR–Amex–005–127, the Exchange inadvertently omitted Closed-End Funds from the class of issuers whose annual fees cannot be deferred, waived, or rebated. Accordingly, in this rule filing, the Exchange seeks to correct this error so that only stock issues may, in the discretion of the Board of Governors, be deferred, waived, or rebated.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)[8] of the Act in general and furthers the objectives of Section 6(b)(5)[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder[11] because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6)[13] thereunder.

The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange requested the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] In Amendment No. 1, Nasdaq made minor revisions to Section 141 of the Amex *Company Guide* to reflect changes to set forth in File No. SR–Amex–2005–124. Securities Exchange Act Release No. 53430 (March 7, 2006), 71 FR 12744 (March 13, 2006).

[7] *See* Securities Exchange Act Release No. 50270 (August 26, 2004), 69 FR 53750 (September 2, 2004).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

operative delay.[14] The Commission is exercising its authority to waive the five-day pre-filing notice requirement and believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative delay allows Amex to correct what it represents was an inadvertent omission, in an earlier filing, of Closed-End Funds from the class of issuers whose annual fees cannot be deferred, waived, or rebated. This correction will clarify that only stock issues may, in the discretion of the Board of Governors, be deferred, waived, or rebated. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[15]

At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2006–33 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–Amex–2006–33. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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–Amex–2006–33 and should be submitted on or before June 1, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Nancy M. Morris,

Secretary.

[FR Doc. E6–7219 Filed 5–10–06; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on April 12, 2006, the date on which the Exchange submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53756; File No. SR–ISE–2005–56]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Thereto Establishing Fees for Enhanced Sentiment Market Data

May 3, 2006.

On December 1, 2005, the International Securities Exchange, Inc. (''ISE'' 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 its Schedule of Fees to establish fees for enhanced sentiment market data, as described below. On March 14, 2006, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on March 28, 2006.[3] The Commission received no comments on the proposal.

By this proposed rule change, the Exchange seeks to establish fees for a new product, enhanced sentiment market data, which is based upon the ISE Sentiment Index®, or ISEE. The ISEE, which is created by the ISE, provides an intra-day picture of how investors view stock prices by assessing customers' option trading activity. More specifically, the ISEE measures opening long customer transactions on the ISE. The ISE updates the current ISEE value hourly during market hours and posts it for free on its Web site.[4]

The ISEE is a single value for the overall market sentiment. In contrast, the enhanced sentiment market data will provide more specific information that will allow an end user to retrieve a sentiment value for an individual symbol using a query tool. For example, an end user interested in the sentiment value for only the Nasdaq 100 Tracking Stock (symbol QQQQ) would just enter that symbol into the query tool interface to retrieve the sentiment value. Additionally, the enhanced sentiment market data will include a sentiment scanning tool that will allow a user to comb the market for sentiment levels that meet pre-defined parameters. Enhanced sentiment market data will be a purely optional product; it is not necessary to subscribe to this service to trade options on the ISE.[5]

The Exchange will offer this product to online investors, on a subscription basis, directly and through a Broker Marketing Alliance, an arrangement between ISE and a participating U.S. broker-dealer that markets the enhanced sentiment offering to its customers. The Exchange proposes four subscription levels, based on the number of customer queries. Clients of participating brokers will pay less at each of the same four subscription levels, and the participating broker-dealers will receive a rebate of 35% of the subscription fee collected from subscribers. In addition, the Exchange will pay a bonus rebate to broker-dealers for achieving

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53532 (March 21, 2006), 71 FR 15501 (''Notice'').

[4] *http://www.iseoptions.com/marketplace/statistics/sentiment_index.asp.*

[5] *See* telephone conversation between Samir Patel, Assistant General Counsel, ISE, and Christopher Chow, Special Counsel, Commission, on April 28, 2006.

subscription levels based on the size of their firm and the number of clients that subscribe to the service.[6]

The Commission has reviewed carefully the proposed rule change and finds that it 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 section 6(b)(4) of the Act,[8] which requires that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange states that it established the proposed tiered pricing structures for enhanced sentiment data based upon a survey of financial services industry participants regarding their level of interest in proprietary market data offerings, a business plan it developed based on the results of that survey, and the advice of a consultant retained to opine on the structure and amount of fees to charge for the product.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change as amended be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–7201 Filed 5–10–06; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2005–23438]

Notice of Request for Public Comments on Interpretation of the On-Demand Flight Time and Rest Period Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice, request for comments.

SUMMARY: The FAA has received several related requests for interpretation of the On-Demand Flight and Rest Rules, 14 CFR Sections 121.263(d) and 121.267(b), (d) and (e). The FAA has decided that it would be beneficial to request public comments on the requesters' questions, before the FAA issues its responses. *See* Notice of Reinstatement of 1980 Public Comment Procedures for Requests for Interpretation of Flight Time, Rest and Duty Period Regulations (70 FR 74863, Dec. 16, 2005). Copies of the requests from members of the public can be found at the DOT public electronic docket, using the docket number FAA–2005–23438.

DATES: Comments must be received on or before July 10, 2006.

ADDRESSES: Address your comments to the docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–23438 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also electronically submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing comments concerning this document in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Constance Subadan, Regulations Division, AGC–200, Office of the Chief Counsel, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202–267–3073.

Background

The FAA has received several related requests for interpretation of sections 135.263(d) and 135.267(b), (d), and (e). The FAA has previously issued interpretations on some, but no all, of the questions. The Agency will take into consideration in developing its responses the public comments it receives. For example, in its response, the FAA intends to clarify two issues on which it has previously stated an opinion, namely: (1) Whether late arriving passengers or cargo may be considered an unforeseen circumstance or circumstance beyond the certificate holder's or crewmember's control under section 135.263(d); and (2) whether the rest period under section 135.267(d) must be timely received. The Agency will consider whether to recede from statements or suggestions in prior interpretations that late arriving passengers or cargo are an unforeseen circumstance, because such statements or suggestions may not represent good safety policy. The Agency will also consider whether to recede from statements or suggestions that the implied 14-hour test period, because such statements or suggestions may not represent a valid interpretation of section 135.267(d).

Requesters' Questions

The requests for interpretation of the On Demand Flight Time and Rest Rules raised the questions set forth below. To put these questions in full context, respondents should look at the letters from the members of the public that are posted on the DOT public electronic docket.

No. 1 (William Gruening): Scenario/Questions: The crew receives a 10-hour rest period and is scheduled for a 14-hour duty day, starting at 0600, with the first flight at 0700. Total scheduled flight time for the day is 5 hours. They do not receive 10 consecutive hours of rest during the day. The last flight is scheduled to arrive at home base at 1930, and the crew has 30 minutes to complete [post flight] duties. They are scheduled to be off duty at 2000. The certificate holder wants to invoke section 135.263(d) (''circumstances beyond the control'') for the last flight for any of the following reasons: (a) Passengers are caught in traffic, (b) there is a 1 hour ground hold for weather, (c) there is a 1 hour ATC hold in flight, (d) there is a 1 hour delay for unscheduled maintenance, or (e) it takes 1 hour longer to taxi out than expected. Because of any of the above circumstances, the crew will arrive 1 hour late and will not have 10 consecutive hours within the preceding 24 hours.

1. May the crew complete the flight or must they be on the ground in time to have 10 hours of rest within the preceding 24 hours, consistent with the interpretation of the similar provision in section 121.471?

2. If the crew may complete the flight, how must the records be documented for record inspections?

No. 2 (Eagle's Wings Aviation Corp): Scenario/Question: Three situations are presented: (1) The passengers or cargo arrive late and cause a crew to exceed the duty limit for a charter flight that was scheduled to arrive within duty time limits; (2) winds or weather more adverse than forecast cause the crew to exceed duty time limits; and (3) the passengers on a passenger charter flight request a change in itinerary or an additional stop and cause the crew to

[6] *See* Notice, *supra* at note 3.

[7] In approving this proposed rule change, 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).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

exceed scheduled completion time and exceed the duty time limit.

Does section 135.263(d) excuse a certificate holder or pilot from exceeding the 14-hour duty time limitation in the above situations?

No. 3 (SamaritansAir, Aviation Consultants): Scenario/Questions: A pilot is required to respond to a pager and be at the airport within 30 minutes of the page. He is also required to be ''on call'' at the airport starting from 0700. The ''call'' may not come in until 1600. His duty time is considered to start at 1600 and continues until 0600 the next day.

1. May the pilot perform the above operation without an uninterrupted rest period ''free from all restraint'' from the certificate holder?

2. May a Part 135 pilot fly under Part 91 rules for a ''reposition'' or ''ferry'' flight with non-essential flight crew or passengers on board who are non-paying ''customers'' of the certificate-holder, when the ''sole'' intent is to circumvent the 14-hour duty limitation and weather limitations if the flight had to be flown under Part 135 rules?

3. May late arriving passengers be called an ''unexpected'' delay as a way to circumvent and extend the 14-hour duty time limitation?

No. 4 (Era Aviation): Scenario/Questions: A Part 135 (one pilot crew) comes on duty at 5:30 a.m. and completes three hours of commercial flight time by 15:15 p.m. The operator receives a mission for the next day in another state and the pilot must depart immediately to ferry the aircraft to the new location at which he will give it to the pilot who will fly the new mission. At that point, the pilot ferrying the aircraft will be free of any duty with the carrier for a week.

1. If it becomes necessary to deliver the aircraft to the new pilot, may the ferry pilot overfly the 14-hour duty day which began at 5:30 a.m., assuming he will be off duty for a week upon delivering the aircraft?

2. If it becomes necessary to deliver the aircraft to the new pilot, may the ferry pilot overfly his original eight hours of flight time, assuming he will be off duty for a week upon delivering the aircraft?

3. Is the assumption correct that all flight time following the original three hours flown under Part 135 may be considered Part 91 flight time and thus free of Part 135 restrictions?

4. Is the assumption correct that all duty after the original Part 135 duty period that ended at 12:30 p.m. may be considered non-Part 135 duty, and thus free of Part 135 restrictions?

No. 5 (Kyle Opp): Scenario/Questions: A 2-pilot crew receives 24 hours free of duty [on Day 1]. Duty time starts 1 hour prior to scheduled departure, and ends 30 minutes after actual arrival time. Duty time includes 1 hour before scheduled departure and 30 minutes after actual arrival. On Day 2 duty time started at 0700z. The scheduled and actual data are as follows:

Scheduled	Actual	Flight time	Duty time at arrival
Leg 1 0800–1000	0900–1100	2.0	4:00
Leg 2 1300–1430	1415–1545	1.5	8:45
Leg 3 1730–2000	1900–2130	2.5	14:30
Scheduled: 13.5 hrs	Actual: 15 hrs		

1. Is the crew prohibited from taking off or boarding Part 135 passengers knowing they will exceed their 14-hour duty day and will actually arrive without the required lookback rest within the previous 24 hours?

2. Can it still be ''circumstances beyond the control of the operator'' when the operator and crew has the knowledge that Leg 3 while on the ground using actual flight/arrival times knows they will violate the lookback rest requirements? If they proceed anyway, under what section would the FAA take enforcement action?

3. Can the 30 minutes of duty time after actual arrival be waived by the crew, even if it is proscribed in the FAA approved operations manual? If not, must the crew calculate that into the final leg to insure they return with at least 30 minutes left in their duty period?

Comments

Your comments should address the 6 points raised below. Responses that include these elements provide the FAA a meaningful basis for determining its final responses.

1. What are your views on how the FAA should answer the requesters' questions stated above?

2. What are your views on how the FAA intends to address the issues about late arriving passengers or cargo being an unforeseen circumstance under section 135.263(d) and the timely receipt of section 135.267(d) rest?

3. What industry operational practices support your views? Please provide documentation of such practices.

4. What is the safety policy that supports your views or practices?

5. What regulatory history supports your position?

6. In your opinion, are there any prior FAA interpretations that are controlling or that are at least instructive on the matter?

Issued in Washington, DC on May 5, 2006.

Rebecca B. MacPherson,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 06–4361 Filed 5–10–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty-Seventh (27th) Joint Meeting, RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 189/EUROCAE Working Group 53 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements.

DATES: The meeting will be held June 20–23, 2006, starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036–4001.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat (Hal Moses), 1828 L Street, NW., Suite 805, Washington, DC 20036, (202) 833–9339, fax (202) 833–9434; Web site *http://www.rtca.org.*Additional information on

directions, maps, and nearby hotels may be found by accessing the RTCA Web site.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 189/EUROCAE Working Group 53 meeting.

Meeting Objectives

- Resolve all comments and issues to complete the Safety and Performance Requirements Standard for Air Traffic Data Link Services in Oceanic and Remote Airspace by July 26, 2006 for final review and consultation.
- Resolve all comments and issues to complete the FANS 1/A–ATN Interoperability Standard by July 26, 2006 for final review and consultation.
- Agree on a work statement for SC–189/WG–53 that details work items and milestones.

The plenary agenda will include:

- June 20:
  - Opening Plenary Session (Welcome, Introductions, and Administrative Remarks, Review and approval of Agenda and Meeting Minutes) Administrative.
  - SC–189/WG–53 co-chair progress report and review of work program.
  - Determine and agree to breakout groups if necessary.
- June 21–22:
  - Breakout groups, as agreed, and plenary debriefs, as necessary.
- June 23:
  - Debrief on progress for the week.
  - Closing Plenary Session (Review schedule and new action items. Any other business, Adjourn).

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 May 3, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06–4363 Filed 5–10–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Brunswick and New Hanover Counties, NC

AGENCY: Federal Highway Administration (FHWA).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Brunswick and New Hanover Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Clarence W. Coleman, PE., Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601–1418, Telephone: (919) 856–4346.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT) and the North Carolina Turnpike Authority (NCTA), will prepare an environmental impact statement (EIS) on a proposal to construct a multi-lane highway facility in Brunswick and New Hanover Counties, North Carolina. Known as the Cape Fear Skyway, the proposed improvement would extend from US 17 in Brunswick County, near the community of Bishop, to US 421 in the city of Wilmington for a distance of approximately 9.5 miles. The project would include a crossing of the Cape Fear River.

The proposed highway facility is considered necessary as a means to improve regional traffic flow, enhance access to the North Carolina Ports, improve emergency service response times and facilitate emergency evacuation. Preliminary alternatives to be evaluated include (1) taking no action (2) Transportation System Management (TSM); (3) Transportation Demand Management (TDM); (4) Mass Transit; and (5) constructing a multi-lane facility on new location with full control of access. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment. The EIS will address environmental, social, and economic impacts associated with the development of the proposed action.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A series of public meetings will be held in the vicinity of the project throughout the development of the EIS. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to any public hearings being held.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: May 4, 2006.

Clarence W. Coleman,

Operations Engineer, Raleigh, North Carolina.

[FR Doc. 06–4367 Filed 5–10–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Sampson, Duplin, and Cumberland Counties, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that we are rescinding the Draft Environmental Impact Statement for a proposed highway project in Sampson, Duplin, and Cumberland Counties, North Carolina

FOR FURTHER INFORMATION CONTACT: Clarence W. Coleman, P.E., Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Ste 410, Raleigh, North Carolina 27601–1418, Telephone: (919) 856–4346.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), is rescinding the Draft Impact Environmental Statement (DEIS) for the proposed NC 24 improvements from 2.8 miles east of I–95 to I–40. In June, 1994, the DEIS for the project was approved, published, and made available for public review. The DEIS evaluated in detail twelve (12) Build alternatives.

Following a corridor public hearing in November 1994, a preferred alternative was selected. Subsequently, preliminary design and wetland delineation commenced for the preferred alternative. The results of the wetland delineation indicated that the project would require extensive wetland takings, far more than originally anticipated in earlier studies. As a result of these findings, the U.S. Army Corps of Engineers and other resource agencies indicated that other alternatives should be studied to minimize natural resource impacts. Based on the comments received from various Federal and state agencies the FHWA and NCDOT have agreed not to prepare a Final EIS for the proposed NC 24 improvements from 2.8 miles east of I–95 to I–40.

FHWA and NCDOT are in the process of finalizing the development of a new draft EIS for the proposed project. The new Draft EIS will include full range of alternatives that may utilize sections of existing NC 24 to minimize impacts to natural resources.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: May 4, 2006.

Clarence W. Coleman,

Operations Engineer, Raleigh, North Carolina.

[FR Doc. 06–4368 Filed 5–10–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement (VISA)/Joint Planning Advisory Group (JPAG)

AGENCY: Maritime Administration, DOT.

ACTION: Synopsis of March 28, 2006, meeting with VISA participants.

The VISA program requires that a notice of the time, place, and nature of each JPAG meeting be published in the **Federal Register**.The full text of the VISA program, including these requirements, is published in 70 FR 55947–55955, dated September 23, 2005.

On March 28, 2006, the Maritime Administration (MARAD) and the U.S. Transportation Command (USTRANSCOM) co-hosted a meeting of the VISA JPAG at USTRANSCOM, Scott Air Force Base, Illinois. Meeting attendance was by invitation only, due to the nature of the information discussed and the need for a government-issued security clearance. Of the 52 U.S.-flag carrier corporate participants enrolled in the VISA program 19 companies participated in the JPAG meeting. Two representatives for maritime labor also participated in the meeting. In addition, representatives from MARAD and the Department of Defense attended the meeting.

Brig Gen Paul Selva, USAF, TCJ3, USTRANSCOM, and James Caponiti, Associate Administrator for National Security, MARAD, welcomed the participants. Brig Gen Selva noted that he maintains a deep appreciation of the capabilities the maritime industry delivers to support DOD sealift logistics. Mr. Caponiti remarked that while some progress has been made in recent JPAG meetings regarding the findings of DOD's Mobility Capabilities Study (MCS), future JPAG meetings should provide a more focused operational perspective on how the maritime industry will be able to respond to the MCS assumptions.

The purpose of the JPAG meeting was to brief participants on USTRANSCOM's Turbo Distribution Exercise 2006 and to provide an overview of the Department of Defense's Operations Plan (OPLAN). There was also a discussion related to activation of JPAG participants' capacity and intermodal resources to support the OPLAN.

The following VISA companies participated in the March 28, 2006 JPAG meeting: American President Lines, Ltd.; American Roll-On Roll-Off Carrier, LLC; American Shipping Group; APL Marine Services, Ltd.; APL Maritime Ltd; Central Gulf Lines, Inc.; CP Ships USA, LLC; Crowley Liner Services, Inc.; Crowley Marine Services, Inc.; Farrell Lines Incorporated; Fidelio Limited Partnership; Liberty Global Logistics, LLC; Liberty Shipping Group Limited Partnership; Maersk Line, Limited; Matson Navigation Company, Inc.; Patriot Shipping, LLC; Patriot Titan, LLC; Sealift Inc.; and Waterman Steamship Corporation.

FOR FURTHER INFORMATION CONTACT: Mr. Taylor E. Jones II, Director, Office of Sealift Support, (202) 366–2323.

(Authority: 49 CFR 1.66).

By Order of the Maritime Administrator.

Dated: May 5, 2006.

Joel C. Richard,

Secretary.

[FR Doc. E6–7156 Filed 5–10–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 667X)]

CSX Transportation, Inc.—Abandonment Exemption—in Harlan County, KY

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon a 12.56-mile rail line on its Southern Region, Huntington Division-West, Cumberland Valley Subdivision, from milepost OWH 258.5 to the end of the track at milepost OWH–271.06, in Harlan County, KY. The line traverses United States Postal Service Zip Codes 40828, 40843 and 40927.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 10, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1]

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 FR 1152.29 must be filed by May 22, 2006. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 31, 2006, with: the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Steven C. Armbrust, Esq., 500 Water Street, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* CSXT has filed an environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by May 16, 2006. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by CSXT's filing of a notice of consummation by May 11, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 4, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–7214 Filed 5–10–06; 8:45 am]

BILLING CODE 4915–01–P

by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee which as of April 19, 2006, is set for $1,300. *See Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—2006 Update,* STB Ex Parte No. 542 (Sub-No. 13) (STB served Mar. 20, 2006). *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 223X)]

Union Pacific Railroad Company—Abandonment Exemption—in Smith County, TX

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a 7.25-mile line of railroad, the Tyler Industrial Lead, extending from milepost 0.25 near Troup to milepost 7.50 near Whitehouse, in Smith County, TX. The line traverses United States Postal Service Zip Codes 75789 and 75791. UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 10, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 22, 2006. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 31, 2006, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed a combined environmental report and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by May 16, 2006. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by May 11, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 4, 2006.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which was increased to $1,300 effective on April 19, 2006. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2006 Update,* STB Ex Parte No. 542 (Sub-No. 13) (STB served March 20, 2006).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–7150 Filed 5–10–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 6, 2006.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be held Tuesday, June 6, 2006 from 9 a.m. Pacific Time to 10:30 a.m. Pacific Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: May 4, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–7203 Filed 5–10–06; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 71, No. 91

Thursday, May 11, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent to Prepare an Environmental Impact Statement for the Dam Safety Assurance Evaluation Report, Dover Dam, City of Dover, Tuscarawas County, OH

Correction

In notice document 06–4234 beginning on page 26479 in the issue of Friday, May 5, 2006, make the following corrections:

1. On page 26479, in the third column, in the fourth line, ''*david.m.reiger@1rh01.usace.army.mil.*'' should read ''*david.m.rieger@lrh01.usace.army.mil*''.

2. On the same page, in the same column, under the **FOR FURTHER INFORMATION CONTACT** heading, in the last two lines, ''*Rodney.G.Cremeans@irh01.usace.army.mil*'' should read ''*Rodney.G.Cremeans@lrh01.usace.army.mil*''.

[FR Doc. C6–4234 Filed 5–10–06; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2005–0170 FRL–8167–4]

Regulation of Fuels and Fuel Additives: Removal of Reformulated Gasoline Oxygen Content Requirement and Revision of Commingling Prohibitions To Address Non–Oxygenated Reformulated Gasoline; Partial Withdrawal; Correction

Correction

In rule document 06–4253 beginning on page 26419 in the issue of Friday, May 5, 2006, make the following correction:

§ 80.79 [Corrected]

On page 26420, in the third column, in § 80.79, in the second to last line, the phrase ''paragraphs (a)(5) and (c)(1) to read as'' should read ''paragraph (a)(5) to read as''.

[FR Doc. C6–4253 Filed 5–10–06; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Employee Benefits Security Administration

RIN 1210–AB03

Voluntary Fiduciary Correction Program Under the Employee Retirement Income Security Act of 1974

Correction

In notice document 06–3674 beginning on page 20262 in the issue of Wednesday, April 19, 2006 make the following correction:

On page 20283, in the Table, under the column, ''1st day'' in the first entry, ''14/14/01'' should read ''4/14/01''.

[FR Doc. C6–3674 Filed 5–10–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
May 11, 2006

Part II

Department of Defense

Department of the Navy

32 CFR Part 701

Availability of DON Records and Publication of DON Documents Affecting the Public; Final Rule

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

RIN 0703–AA77

Availability of DON Records and Publication of DON Documents Affecting the Public

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The rule sets forth amended regulations pertaining to the Department of the Navy's (DON) Privacy Program. The rule reflects changes in the Secretary of the Navy Instruction (SECNAVINST) 5211.5 series from which it is derived.

EFFECTIVE DATE: Effective May 11, 2006.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama (DNS–36), Office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000, 202–685–6545.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the DON amends 32 CFR part 701. Subparts F and G derived from the SECNAVINST 5211.5 series, which implements within the DON the provisions of Department of Defense (DOD) Directives 5400.11 and 5400.11–R series, DOD Privacy Program (32 CFR part 310). This rule is being published by the DON for guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1). It has been determined that invitation of public comment on these changes to the DON's implementing instruction prior to adoption would be impracticable and unnecessary, and it is therefore not required under the public rulemaking provisions of 32 CFR parts 286 and 701, subpart E. Interested persons, however, are invited to comment in writing on this amendment. All written comments received will be considered in making subsequent amendments or revisions to 32 CFR part 701, subparts F and G, or the instruction upon which it is based. Changes may be initiated on the basis of comments received. Written comments should be addressed to Mrs. Doris Lama (DNS–36), Office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000. It has been determined that this final rule is not a ''major rule'' within the criteria specified in Section 1(b) of Executive Order 12291 and does not have substantial impact on the public.

List of Subjects in 32 CFR Part 701

Administrative practice and procedure, Freedom of Information, Privacy.

■ Accordingly, 32 CFR part 701 is amended as follows:

PART 701—AVAILABILITY OF DON RECORDS AND PUBLICATION OF DON DOCUMENTS AFFECTING THE PUBLIC

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

Authority: 5 U.S.C. 552.

■ 2. Revise subparts F and G to read as follows:

Subpart F—DON Privacy Program

Sec.
701.100 Purpose.
701.101 Privacy program terms and definitions.
701.102 Online resources.
701.103 Applicability.
701.104 Responsibility and authority.
701.105 Policy.
701.106 Collecting information about individuals.
701.107 Record access.
701.108 Amendment of records.
701.109 Privacy Act (PA) appeals.
701.110 Conditions of disclosure.
701.111 Disclosure accounting.
701.112 ''Blanket routine uses.''
701.113 PA exemptions.
701.114 PA enforcement actions.
701.115 Protected personal information (PPI).
701.116 PA systems of records notices overview.
701.117 Changes to PA systems of records.
701.118 Privacy, IT, and PIAs.
701.119 Privacy and the web.
701.120 Processing requests that cite or imply PA, Freedom of Information (FOIA), or PA/FOIA.
701.121 Processing ''routine use'' disclosures.
701.122 Medical records.
701.123 PA fees.
701.124 PA self assessments/inspections.
701.125 Computer matching program.

Subpart G—Privacy Act Exemptions

701.126 Purpose.
701.127 Exemption for classified records.
701.128 Exemptions for specific Navy record systems.
701.129 Exemptions for specific Marine Corps records systems.

Subpart F—DON Privacy Program

§ 701.100 Purpose.

Subparts F and G of this part implement the Privacy Act (5 U.S.C. 552a), and the DOD Directives 5400.11 and 5400.11–R series, DOD Privacy Program (see 32 CFR part 310) and provides DON policies and procedures to ensure that all DON military members and civilian/contractor employees are made fully aware of their rights and responsibilities under the provisions of the Privacy Act (PA); to balance the Government's need to maintain information with the obligation to protect individuals against unwarranted invasions of their privacy stemming from the DON's collection, maintenance, use, and disclosure of Protected Personal Information (PPI); and to require privacy management practices and procedures be employed to evaluate privacy risks in publicly accessible DON Web sites and unclassified non-national security information systems.

(a) *Scope.* Governs the collection, safeguarding, maintenance, use, access, amendment, and dissemination of PPI kept by DON in PA systems of records.

(b) *Guidance.* Provides guidance on how to respond to individuals who seek access to information in a PA system of records that is retrieved by their name and/or personal identifier.

(c) *Verify identity.* Establishes ways to verify the identity of individuals who request their records before the records are made available to them.

(d) *Online resources.* Directs the public to the Navy's PA Online Web site at *http://www.privacy.navy.mil* that defines the DON's PA Program, lists all Navy, Marine Corps, and Government-wide systems of records and provides guidance on how to gain access to those records.

(e) *Rules of conduct.* Governs the PA rules of conduct for personnel, who will be subject to either civil or criminal penalties for noncompliance with 5 U.S.C. 552a.

(f) *Privacy impact assessment (PIA) requirements.* Establishes requirements for conducting, reviewing, approving, and publishing PIAs.

§ 701.101 Privacy program terms and definitions.

(a) *Access.* Review or copying a record or parts thereof contained in a system of records by any individual.

(b) *Agency.* For the purposes of disclosing records subject to the PA between or among DOD components, DOD is considered a single agency. For all other purposes, DON is considered an agency within the meaning of PA.

(c) *Disclosure.* The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review), to any person, private entity, or Government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.

(d) *Federal personnel.* Officers and employees of the U.S. Government, members of the uniformed services (including members of the reserve), individuals or survivors thereof, entitled to receive immediate or deferred

retirement benefits under any retirement program of the U.S. Government (including survivor benefits).

(e) *Individual.* A living citizen of the U.S. or an alien lawfully admitted to the U.S. for permanent residence. The custodial parent of a minor or the legal guardian of any individual also may act on behalf of an individual. Members of the United States Armed Forces are ''individuals.'' Corporations, partnerships, sole proprietorships, professional groups, businesses, whether incorporated or unincorporated, and other commercial entities are not ''individuals.''

(f) *Individual access.* Access to information pertaining to the individual by the individual or his/her designated agent or legal guardian.

(g) *Information in identifiable form (IIF).* Information in an Information Technology (IT) system or online collection that directly identifies an individual (*e.g.*, name, address, social security number or other identifying code, telephone number, e-mail address, etc.) or by an agency intends to identify specific individuals in conjunction with other data elements (*i.e.*, indirect identification that may include a combination of gender, race, birth date, geographic indicator, and other descriptors).

(h) *Information system.* A discrete set of information resources organized for the collection, processing, maintenance, transmission, and dissemination of information.

(i) *Maintain.* Includes maintain, collect, use, or disseminate.

(j) *Member of the public.* Any individual or party acting in a private capacity.

(k) *Minor.* Under this subpart, a minor is an individual under 18 years of age, who is not a member of the U.S. Navy or Marine Corps, or married.

(l) *Official use.* Within the context of this subpart, this term is used when DON officials and employees have a demonstrated need for the use of any record or the information contained therein in the performance of their official duties.

(m) *Personal information.* Information about an individual that identifies, relates, or is unique to, or describes him or her (*e.g.*, Social Security Number (SSN), age, military rank, civilian grade, marital status, race, salary, home/office phone numbers, etc.).

(n) *Privacy Act (PA) request.* A request from an individual for notification as to the existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records.

(o) *Privacy Impact Assessment (PIA).* An ongoing assessment to evaluate adequate practices in balancing privacy concerns with the security needs of an organization. The process is designed to guide owners and developers of information systems in assessing privacy through the early stages of development. The process consists of privacy training, gathering data from a project on privacy issues, identifying and resolving the privacy risks, and approval by a designated privacy representative.

(p) *Protected personal information (PPI).* Any information or characteristics that may be used to distinguish or trace an individual's identity, such as their name, SSN, or biometric records.

(q) *Record.* Any item, collection, or grouping of information, whatever the storage media (e.g., paper, electronic, etc), about an individual that is maintained by a DON activity including, but not limited to, the individual's education, financial transactions, and medical, criminal, or employment history, and that contains the individual's name or other identifying particulars assigned to the individual, such as a finger or voice print or a photograph.

(r) *Review authority.* An official charged with the responsibility to rule on administrative appeals of initial denials of requests for notification, access, or amendment of records. SECNAV has delegated review authority to the Assistant Secretary of the Navy (Manpower & Reserve Affairs) (ASN(M&RA)), General Counsel of the DON (GC), and the Judge Advocate General of the Navy (JAG). Additionally, the Office of Personnel Management (OPM) is the review authority for civilian official personnel folders or records contained in any other OPM record.

(s) *''Routine use'' disclosure.* A disclosure of a record made outside DOD for a purpose that is compatible with the purpose for which the record was collected and maintained by DOD. The ''routine use'' must have been included in the notice for the system of records published in the **Federal Register**.

(t) *Statistical record.* A record maintained only for statistical research, or reporting purposes, and not used in whole or in part in making any determination about a specific individual.

(u) *System manager.* An official who has overall responsibility for a system of records. He/she may serve at any level in DON. Systems managers are indicated in the published record systems notices. If more than one official is indicated as a system manager, initial responsibility resides with the manager at the appropriate level (i.e., for local records, at the local activity).

(v) *System of records.* A group of records under the control of a DON activity from which information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual. System notices for all PA systems of records must be published in the **Federal Register** and are also available for viewing or downloading from the Navy's Privacy Act Online Web site at *http://www.privacy.navy.mil.*

(w) *Web site.* A collection of information organized into a number of Web documents related to a common subject or set of subjects, including the ''home page'' and the linked subordinate information.

(x) *Working day.* All days excluding Saturday, Sunday, and legal holidays.

§ 701.102 Online resources.

(a) *Navy PA online Web site (http://www.privacy.navy.mil).* This Web site supplements this subpart and subpart G. It provides a detailed understanding of the DON's PA Program. It contains information on Navy and Marine Corps systems of records notices; Government-wide systems of records notices that can be used by DON personnel; and identifies Navy and Marine Corps exempt systems of records notices. It includes: PA policy documents; sample training materials; DOD ''Blanket Routine Uses;'' a checklist for conducting staff assistance visits; a copy of PA statute; guidance on how to establish, delete, alter, or amend PA systems of records notices; and provides updates on the DON's PA Program.

(b) *DON Chief Information Officer (DON CIO) Web site (http://www.doncio.navy.mil).* This Web site provides detailed guidance on PIAs.

(c) *DOD's PA Web site (http://www.defenselink.mil/privacy).* This Web site is an excellent resource that contains a listing of all DOD and its components' PA systems of records notices, DOD PA directive and regulation, OMB Circulars, Defense Privacy Decision Memoranda, etc.

(d) *DON Freedom of Information Act (FOIA) Web site (http://www.foia.navy.mil).* This Web site discusses the interface between PA and FOIA and provides detailed guidance on the DON's FOIA Program.

§ 701.103 Applicability.

(a) *DON activities.* Applies to all DON activities that collect, maintain, or disseminate PPI. Applies to DON

activities and to contractors, vendors, and other entities that develop, procure, or use Information Technology (IT) systems under contract to DOD/DON, to collect, maintain, or disseminate IIF from or about members of the public.

(b) *Combatant commands.* Applies to the U.S. Joint Forces Command (USJFCOM) and U.S. Pacific Command (USPACOM), except for U.S. Forces Korea as prescribed by DOD Directive 5100.3.

(c) *U.S. citizens and legally admitted aliens.* Applies to living citizens of the U.S. or aliens lawfully admitted for permanent legal residence. Requests for access to information in a PA system of records made by individuals who are not U.S. citizens or permanent residents will be processed under the provisions of the FOIA.

(d) *Federal contractors.* Applies to Federal contractors by contract or other legally binding action, whenever a DON contract provides for the operation, maintenance, or use of records contained in a PA system of records to accomplish a DON function.

(1) When a DON activity contracts for the operation or maintenance of a system of records or a portion of a system of records by a contractor, the record system or the portion of the record system affected are considered to be maintained by the DON activity and are subject to this subpart and subpart G of this part.

(2) The contractor and its employees are considered employees of the DON activity for purposes of the sanction provisions of the PA during the performance of the contract.

(3) The Defense Acquisition Regulatory (DAR) Council, which oversees the implementation of the Federal Acquisition Regulations (FAR) within DOD, is responsible for developing the specific policies and procedures for soliciting, awarding, and administering contracts that are subject to this subpart and 5 U.S.C. 552a.

(4) Consistent with the FAR regulations, contracts for the operation of a system of records shall identify specifically the record system and the work to be performed, and shall include in the solicitation and resulting contract the terms as prescribed by the FAR (see *http://www.privacy.navy.mil* (Admin Tools)).

(5) DON activities must furnish PA Program guidance to their personnel who solicit and award or administer Government contracts; inform prospective contractors of their responsibilities regarding the DON PA Program; and establish an internal system of contractor performance review to ensure compliance with the DON Privacy Program.

(6) This instruction does not apply to records of a contractor that are:

(i) Established and maintained solely to assist the contractor in making internal contractor management decisions, such as records maintained by the contractor for use in managing the contract;

(ii) Maintained as internal contractor employee records, even when used in conjunction with providing goods or services to a DON activity;

(iii) Maintained as training records by an educational organization contracted by a DON activity to provide training when the records of the contract students are similar to and commingled with training records of other students, such as admission forms, transcripts, and academic counseling and similar records;

(iv) Maintained by a consumer reporting agency to which records have been disclosed under 31 U.S.C. 3711; or

(7) DON activities shall establish contract surveillance programs to ensure contractors comply with the procedures established by the DAR Council.

(8) Disclosing records to a contractor for use in performing a contract let by a DON activity is considered a disclosure within DON (*i.e.,* based on an official need to know). The contractor is considered the agent of DON when receiving and maintaining the records for that activity.

(e) *Precedence.* In case of a conflict, this subpart and subpart G takes precedence over any DON directive that deals with the personal privacy and rights of individuals regarding their personal records, except for disclosure of PPI required by 5 U.S.C. 552 and implemented by Secretary of the Navy (SECNAVINST) 5720.42F.

§ 701.104 Responsibility and authority.

(a) *Delegation.* The Chief of Naval Operations (CNO) for administering and supervising the execution of 5 U.S.C. 552a, DOD Directive 5400.11 and DOD Regulation 5400.11–R. The Director, Navy Staff (DNS) will administer this program through the Head, DON PA/FOIA Policy Branch (DNS–36) who will serve as the Principal PA Program Manager for the DON.

(b) *CNO (DNS–36).* (1) Develops and implements DON policy on the provisions of the PA; serves as principal advisor on all DON PA matters; oversees the administration of the DON's PA program; reviews and resolves PA complaints; maintains the DON's PA Online Web site; develops a Navy-wide PA training program and serves as training oversight manager; establishes, maintains, deletes, and approves Navy and joint Navy/Marine Corps PA systems of records notices; compiles reports that address the DON's PA Program to DOD and/or the Office of Management and Budget (OMB); conducts PA reviews as defined in OMB Circular A–130; publishes exempt systems of records in the CFR; and conducts staff assistance visits/program evaluations within DON to review compliance with 5 U.S.C. 552a, this subpart and subpart G of this part.

(2) Serves as PA Coordinator for the Secretary of the Navy (SECNAV), Office of the CNO (OPNAV) and the Naval Historical Center (NHC).

(3) Represents SECNAV on the Defense Privacy Board (DPO). Per DOD Directive 5400.11, the Board has oversight responsibility for implementation of the DOD Privacy Program.

(4) Represents SECNAV on the Defense Data Integrity Board. Per DOD Directive 5400.11, the Board has oversight responsibility for reviewing and approving all computer matching agreements between the DOD and other Federal, State, or local government agencies, as well as memoranda of understanding when the match is internal to DOD, to ensure that appropriate procedural and due process requirements have been established before engaging in computer matching activities.

(5) Provides input to the DPO on OMB's Federal Information Security Management Act (FISMA) Report.

(6) Coordinates on all PIAs prior to the PIA being submitted to DON CIO for review and final approval. Makes a determination as to whether the new IT system constitutes a PA system of records. If it does, determines whether an existing system covers the collection or whether a new systems notice will have to be written and approved. As necessary, assists the DON activity in creating and getting a new PA system of records notice approved.

(7) Oversees the administration of OPNAV's PA program.

(8) Chairs the DON PA Oversight Working Group.

(c) *Commandant of the Marine Corps (CMC).* (1) Administers and supervises the execution of this instruction within the Marine Corps and maintains and approves Marine Corps PA systems of records notices. The Commandant has designated CMC (ARSF) as the PA manager for the U.S. Marine Corps.

(2) Oversees the administration of the Marine Corps' PA program; reviews and resolves PA complaints; develops a Marine Corps privacy education, training, and awareness program;

reviews and validates PIAs for Marine Corps information systems and submits the validation to CNO (DNS–36); establishes, maintains, deletes, and approves Marine Corps PA systems of records notices; and conducts staff assistance visits/program evaluations within the Marine Corps to review compliance with 5 U.S.C. 552a, this subpart and subpart G of this part.

(3) Serves as the PA Coordinator for all Headquarters, U.S. Marine Corps components, except for Marine Corps Systems Command and the Marine Corps Combat Development Command.

(4) Provides input to CNO (DNS–36) for inclusion FISMA Report.

(5) Serves on the DON PA Oversight Working Group.

(6) Coordinates on all PIAs prior to the PIA being submitted to DON CIO for review and final approval, making a determination as to whether the new IT system constitutes a PA system of records. If it does, determines whether an existing system covers the collection or whether a new systems notice will have to be written and approved. As necessary, assists the DON activity in creating and getting a new PA system of records notice approved.

(d) *DON CIO.* (1) Integrates protection of PPI into the overall DON major information system life cycle management process as defined in the E-Government Act of 2002 (Pub. L. 107–347).

(2) Provides guidance for effective assessment and utilization of privacy-related technologies.

(3) Provides guidance to DON officials on the conduct of PIAs (see their Web site at *http://www.doncio.navy.mil*) and oversees DON PIA policy and procedures to ensure PIAs are conducted commensurate with the information system being assessed, the sensitivity of IIF in that system, and the risk of harm for unauthorized release of that information. Also, DON CIO reserves the right to request that a PIA be completed on any system that may have privacy risks.

(4) Reviews and approves all PIAs for the DON and submits the approved PIAs to DOD and OMB according to Federal and DOD guidance.

(5) Serves as the focal point in establishing and validating DON information systems privacy requirements and coordinating issues with other DOD Military Departments and Federal Agencies.

(6) Develops and coordinates privacy policy, procedures, education, training, and awareness practices regarding DON information systems.

(7) Compiles and prepares responses to either DOD or OMB regarding PIA issues.

(8) Develops and coordinates DON web privacy policy, education, training and an awareness program in accordance with DON Web privacy requirements including annual Web site privacy posting training with CNO (DNS–36).

(9) Provides guidance toward effective research and development of privacy-related technologies.

(10) Serves as the focal point in establishing and validating DON Web privacy requirements and coordinating issues with DOD, other Military Departments, and other Federal agencies.

(11) Provides guidance on the use of encryption software to protect privacy sensitive information.

(12) Implements DON IT privacy requirements and coordinates IT information system requirements that cross service boundaries with the Joint Staff.

(13) Provides recommended changes to CNO (DNS–36) on policy guidance set forth in this instruction regarding IT privacy policy and procedures that includes requirements/guidance for conducting PIAs.

(14) Provides input to CNO (DNS–36) for inclusion in the FISMA Report.

(15) Serves on the DON PA Oversight Working Group.

(e) *The Chief of Information (CHINFO) and U.S. Marine Corps Director of Public Affairs (DIRPA).* CHINFO and DIRPA, in accordance with DON CIO guidance on Department-wide Information Management (IM) and IT matters, are responsible for developing and administering Navy and Marine Corps Web site privacy policies and procedures respectively per SECNAVINST 5720.47B. Additionally, CHINFO and DIRPA:

(1) Maintains master World Wide Web (WWW) page to issue new service-specific Web privacy guidance. CHINFO will maintain a master WWW page to issue DON guidance and DIRPA will link to that page. All significant changes to this Web site and/or its location will be issued via Naval (ALNAV) message.

(2) Maintains overall cognizance for DON and U.S. Marine Corps Web sites and Web site content-related questions as they pertain to Web site privacy requirements.

(3) Ensures that public-facing Web sites have machine-readable privacy policies (i.e., web privacy policies are P3P-enabled or automatically readable using some other tool).

(4) Provides input to CNO (DNS–36) for inclusion in the FISMA Report.

(5) Serves on the DON PA Oversight Working Group.

(f) *DON PA Oversight Working Group.* The DON PA Oversight Working Group is charged with reviewing and coordinating compliance with DON PA program initiatives. CNO (DNS–36) will chair this working group, hosting meetings as deemed appropriate to discuss best PA practices, PA issues, FISMA reporting and other reporting requirements, PA training initiatives, etc. At a minimum, membership shall consist of CNO (DNS–36), DON CIO, CMC (ARSF), CMC (C4I–IA), OJAG (Code 13), OGC (PA/FOIA), CMC (JAR), CHINFO, and CMC (PA).

(g) *DON activities.* Each DON activity is responsible for implementing and administering a PA program under this subpart and subpart G.

(h) *Navy Echelon 2 and 3 Commands and Marine Corps Major Subordinate Commands.* Each Navy Echelon 2 and 3 Command and Marine Corps Major Subordinate Command will designate a PA Coordinator to:

(1) Serve as principal point of contact on PA matters.

(2) Advise CNO (DNS–36) promptly of the need to establish a new Navy PA system of records; amend or alter an existing Navy system of records; or, delete a Navy system of records that is no longer needed.

(3) Advise CMC (ARSF) promptly of the need to establish a new Marine Corps PA system of records; amend or alter an existing Marine Corps system of records; or, delete a Marine Corps system of records that is no longer needed.

(4) Ensure no official files are maintained on individuals that are retrieved by name or other personal identifier without first ensuring that a system of records notice exists that permits such collection.

(5) Ensure that PA systems of records managers are properly trained on their responsibilities for protecting PPI being collected and maintained under the DON PA Program.

(6) Provide overview training to activity/command personnel on the provisions of this subpart and subpart G.

(7) Issue an implementing instruction which designates the activity's PA Coordinator, addresses PA records disposition, addresses PA processing procedures, identifies those PA systems of records being used by their activity; and provide training/guidance to those personnel involved with collecting, maintaining, disseminating information from a PA system of records.

(8) Review internal directives, forms, practices, and procedures, including

those having PA implications and where Statements (PAS) are used or PPI is solicited.

(9) Maintain liaison with records management officials (e.g., maintenance and disposal procedures and standards, forms, and reports), as appropriate.

(10) Provide guidance on handling PA requests; scope of PA exemptions; and the fees, if any, that may be collected.

(11) Conduct staff assistance visits or program evaluations within their command and lower echelon commands to ensure compliance with the PA.

(12) Work closely with their PA systems managers to ensure they are properly trained with regard to collecting, maintaining, and disseminating information in a PA system of records notice.

(13) Process PA complaints.

(14) Ensure protocols are in place to avoid instances of loss of PPI. Should a loss occur, take immediate action to apprise affected individuals of how to ensure their identity has not been compromised.

(15) Work closely with their public affairs officer and/or web master to ensure that PPI is not placed on public Web sites or in public folders.

(16) Annually conduct reviews of their PA systems of records to ensure that they are necessary, accurate, and complete.

(17) Provide CNO (DNS–36) or CMC (ARSF) respectively, with a complete listing of all PA Coordinators under their jurisdiction. Such information should include activity name, complete mailing and E-Mail addresses, office code, name of PA Coordinator, and commercial, DSN, and FAX telephone numbers.

(18) Review and validate PIAs for their information systems and submit the validation to CNO (DNS–36) for Navy information systems or to HQMC (ARSF) for Marine Corps information systems.

(i) *DON employees/contractors.* DON employees/contractors are responsible for safeguarding the rights of others by:

(1) Ensuring that PPI contained in a system of records, to which they have access or are using to conduct official business, is protected so that the security and confidentiality of the information is preserved.

(2) Not disclosing any information contained in a system of records by any means of communication to any person or agency, except as authorized by this instruction or the specific PA systems of records notice.

(3) Not maintaining unpublished official files that would fall under the provisions of 5 U.S.C. 552a.

(4) Safeguarding the privacy of individuals and confidentiality of PPI contained in a system of records.

(5) Properly marking all documents containing PPI data (e.g., letters, E-Mails, message traffic, etc.) as ''FOR OFFICIAL USE ONLY—PRIVACY SENSITIVE—Any misuse or unauthorized disclosure can result in both civil and criminal penalties.''

(6) Not maintaining privacy-sensitive information in public folders.

(7) Reporting any unauthorized disclosure of PPI from a system of records to the applicable Privacy Point of Contact (POC) for his/her activity.

(8) Reporting the maintenance of any unauthorized system of records to the applicable Privacy POC for his/her activity.

(j) *Denial authority.* Within DON, the head of the activity having cognizance over an exempt PA system of record is authorized to deny access to that information under the exemptions cited in the PA systems of records notice. The denial authority may also deny requests to amend a system of records or to deny notification that a record exists. As deemed appropriate, the head of the activity may further designate initial denial authority to an individual properly trained on the provisions of the PA and this subpart and subpart G of this part.

(k) *Release authority.* Within DON, officials having cognizance over a non-exempt PA system of record that is requested by a first party or his/her authorized representative are authorized to release records. A release authority may also grant requests for notification and amendment of systems of records. The PA systems manager, who is properly trained on the provisions of 5 U.S.C. 552a, DOD Directive 5400.11 and DOD 5400.11–R, may be delegated this responsibility.

(l) *Review authority.* (1) Assistant Secretary of the Navy (Manpower & Reserve Affairs) (ASN(M&RA)) is designated to act upon requests for administrative review of initial denials of requests for amendment of records related to fitness reports and performance evaluations of military personnel.

(2) Both the JAG and GC are designated to act upon requests for administrative review of initial denials of records for notification, access, or amendment of records under their cognizance.

(3) The authority of SECNAV, as the head of an agency, to request records subject to the PA from an agency external to DOD for civil or criminal law enforcement purposes, under (b)(7) of 5 U.S.C. 552a, is delegated to CMC; the Commander, Naval Criminal Investigative Service; JAG and GC.

(m) *System manager.* System managers are responsible for overseeing the collection, maintenance, use, and dissemination of information from a PA system of records and ensuring that all personnel who have access to those records are aware of their responsibilities for protecting PPI that is being collected or maintained. In this capacity, they shall:

(1) Establish appropriate administrative, technical, and physical safeguards to ensure the records in every system of records are protected from unauthorized alteration, destruction, or disclosure.

(2) Protect the records from reasonably anticipated threats or hazards that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(3) Work closely with their coordinator to ensure that all personnel who have access to a PA system of records are properly trained on their responsibilities under the PA. Training materials may be downloaded from *http://www.privacy.navy.mil*.

(4) Ensure that no illegal files are maintained.

Note: Official files on individuals that are retrieved by name and/or personal identifier must be approved and published in the **Federal Register**.

(5) Review annually each PA system of records notice under their cognizance to determine if the records are up-to-date and/or used in matching programs and whether they are in compliance with the OMB Guidelines. Such items as organization names, titles, addresses, etc., frequently change and should be reported to CNO (DNS–36) for updating and publication in the **Federal Register**.

(6) Work with IT personnel to identify any new information systems being developed that contain PPI. If a PA systems notice does not exist to allow for the collection, assist in creating a new systems notice that permits collection.

(7) Complete and maintain a PIA for those systems that collect, maintain or disseminate IIF, according to DON PIA guidance found at *http://www.privacy.navy.mil* and *http://www.doncio.navy.mil*.

(8) Complete and maintain a disclosure accounting form for all disclosures made without the consent of the record subject, except those made within DOD or under FOIA. (See 701.111).

(9) Ensure that only those DOD/DON officials with a ''need to know'' in the

official performance of their duties has access to information contained in a system of records.

(10) Ensure safeguards are in place to protect the privacy of individuals and confidentiality of PPI contained in a system of records.

(11) Ensure that records are maintained in accordance with the identified PA systems of records notice.

(12) Ensure that each newly proposed PA system of records notice is evaluated for need and relevancy and confirm that no existing PA system of records notice covers the proposed collection.

(13) Stop collecting any category or item of information about individuals that is no longer justified, and when feasible remove the information from existing records.

(14) Ensure that records are kept in accordance with retention and disposal requirements set forth in SECNAVINST 5720.47B.

(15) Take reasonable steps to ensure the accuracy, relevancy, timeliness, and completeness of a record before disclosing the record to anyone outside the Federal Government.

(16) Identify all systems of records that are maintained in whole or in part by contractor personnel, ensuring that they are properly trained and that they are routinely inspected for PA compliance.

§ 701.105 Policy.

DON recognizes that the privacy of an individual is a personal and fundamental right that shall be respected and protected and that PPI shall be collected, maintained, used, or disclosed to ensure that it is relevant and necessary to accomplish a lawful DON/DOD purpose required to be accomplished by statute or Executive Order (E.O.). Accordingly, it is DON policy that DON activities shall fully comply with 5 U.S.C. 552a, DOD Directive 5400.11 and DOD 5400.11–R to protect individuals from unwarranted invasions of privacy when information is collected, processed, maintained, or disseminated. To ensure compliance, DON activities shall follow the procedures listed in this section.

(a) *Collection, Maintenance and Use.* (1) Only maintain systems of records that have been approved and published in the **Federal Register**. (See *http://www.privacy.navy.mil* for a list of all DOD, Navy, Marine Corps, and component systems of records notices, as well as, links to Government-wide systems that the DON is eligible to use).

Note: CNO (DNS–36) can assist Navy activities in identifying existing systems that may meet their needs and HQMC (ARSF) can assist Marine Corps activities.

(2) Only collect, maintain, and use PPI needed to support a DON function or program as authorized by law or E.O. and disclose this information only as authorized by 5 U.S.C. 552a, this subpart and subpart G of this part. In assessing need, DON activities shall consider alternatives such as: truncating the SSN by only using the last four digits; using information that is not individually identifiable; using a sampling of certain data for certain individuals only. Additionally, they shall consider the length of time the information is needed and the cost of maintaining the information compared to the risks and adverse consequences of not maintaining the information.

(3) Only maintain PPI that is timely, accurate, complete, and relevant to the purpose for which it was collected.

(4) DON activities shall not maintain records describing how an individual exercises his/her rights guaranteed by the First Amendment (freedom of religion; freedom of political beliefs; freedom of speech; freedom of the press; the right to peaceful assemblage; and petition for redress of grievances), unless they are: expressly authorized by statute; authorized by the individual; within the scope of an authorized law enforcement activity; or are used for the maintenance of certain items of information relating to religious affiliation for members of the naval service who are chaplains.

Note: This should not be construed, however, as restricting or excluding solicitation of information that the individual is willing to have in his/her record concerning religious preference, particularly that required in emergency situations.

(b) *Disposal.* Dispose of records from systems of records to prevent inadvertent disclosure. To this end:

(1) Disposal methods are considered adequate if the records are rendered unrecognizable or beyond reconstruction (*e.g.*, tearing, burning, melting, chemical decomposition, burying, pulping, pulverizing, shredding, or mutilation). Magnetic media may be cleared by completely erasing, overwriting, or degaussing the tape.

(2) DON activities may recycle PA data. Such recycling must be accomplished to ensure that PPI is not compromised. Accordingly, the transfer of large volumes of records in bulk to an authorized disposal activity is not considered a disclosure of records.

(3) When disposing of or destroying large quantities of records from a system of records, DON activities must ensure that the records are disposed of to preclude easy identification of specific records.

(c) *Individual access.* (1) Allow individuals to have access to and/or copies of all or portions of their records to which they are entitled. In the case of a legal guardian or custodial parent of a minor, they have the same rights as the individual he/she represents. A minor is defined as an individual under the age of 18. In the case of members of the Armed Forces under the age of 18, they are not considered to be minors for the purposes of the PA.

(2) Enter all PA first-party access requests into a tracking system and assign a case file number. (Files should comply with DON PA systems of records notice NM05211–1, PA Request Files and Tracking System at *http://www.privacy.navy.mil/notices*.)

(3) Allow individuals to seek amendment of their records when they can identify and provide proof that factual information contained therein is erroneous, untimely, incomplete, or irrelevant. While opinions are not subject to amendment, individuals who are denied access to amending their record may have a statement of disagreement added to the file.

(4) Allow individuals to appeal decisions that deny them access to or refusal to amend their records. If a request to amend their record is denied, allow the individual to file a written statement of disagreement.

(d) *Posting and use of PA sensitive information.* (1) Do not post PPI on an Internet site. Also, limit the posting and use of PA sensitive information on an Intranet Web site, letter, FAX, e-mail, etc.

(2) When posting or transmitting PPI, ensure the following legend is posted on the document: ''FOR OFFICIAL USE ONLY—PRIVACY ACT SENSITIVE: Any misuse or unauthorized disclosure of this information may result in both criminal and civil penalties.''

(e) *Safeguarding PPI.* DON activities shall establish appropriate administrative, technical and physical safeguards to ensure that the records in every system of records are protected from unauthorized alteration or disclosure and that their confidentiality is protected. Protect the records against reasonably anticipated threats of hazards that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual about whom information is kept. At a minimum, DON activities shall:

(1) Tailor system safeguards to conform to the type of records in the system, the sensitivity of the PPI stored, the storage medium used, and the number of records maintained.

(2) Treat all unclassified records that contain PPI that normally would be withheld from the public under FOIA exemptions (b)(6) and (b)(7)(C) as if they were designated ''For Official Use Only'' and safeguard them from unauthorized disclosure.

(3) Ensure that privacy considerations are addressed in the reengineering of business processes and take proactive steps to ensure compliance with the PA and 5 U.S.C. 552a as they move from conducting routine business via paper to electronic media.

(4) Recognize the importance of protecting the privacy of its members, especially as it modernizes its collection systems. Privacy issues must be addressed when systems are being developed, and privacy protections must be integrated into the development life cycle of automated systems. This applies also to contractors, vendors, and other entities that develop, procure, or use IT systems under contract to DOD/DON, to collect, maintain, or disseminate IIF from or about members of the public (see § 701.115).

(5) Ensure that adequate safeguards are implemented and enforced to prevent misuse, unauthorized disclosure, alteration, or destruction of PPI in records per 5 U.S.C. 552a, this subpart and subpart G of this part.

§ 701.106 Collecting information about individuals.

(a) *Collecting information directly from the individual.* To the greatest extent practicable, collect information for systems of records directly from the individual to whom the record pertains if the record may be used to make an adverse determination about the individual's rights, benefits, or privileges under a Federal program.

(b) *Collecting information about individuals from third persons.* It may not always be practical to collect all information about an individual directly. For example, when verifying information through other sources for security or employment suitability determinations; seeking other opinions, such as a supervisor's comments on past performance or other evaluations; obtaining the necessary information directly from the individual would be exceptionally difficult or would result in unreasonable costs or delays; or, the individual requests or consents to contacting another person to obtain the information.

(c) *Soliciting the SSN.* (1) It is unlawful for any Federal, State, or local government agency to deny an individual a right, benefit, or privilege provided by law because the individual refuses to provide his/her SSN. However, this prohibition does not apply if a Federal law requires that the SSN be provided, or the SSN is required by a law or regulation adopted before January 1, 1975, to verify the individual's identity for a system of records established and in use before that date.

(2) Before requesting an individual to provide the SSN, the individual must be advised whether providing the SSN is mandatory or voluntary; by what law or other authority the SSN is solicited; and what uses will be made of the SSN.

(3) The preceding advice relates only to the SSN. If other information about the individual is solicited for a system of records, a PAS also must be provided.

(4) The notice published in the **Federal Register** for each system of records containing SSNs solicited from individuals must indicate the authority for soliciting the SSNs and whether it is mandatory for the individuals to provide their SSN. E.O. 9397 requires Federal Agencies to use SSNs as numerical identifiers for individuals in most Federal records systems. However, it does not make it mandatory for individuals to provide their SSNs.

(5) When entering military service or civilian employment with the DON, individuals are asked to provide their SSNs. In many instances, this becomes the individual's numerical identifier and is used to establish personnel, financial, medical, and other official records (as authorized by E.O. 9397). The individuals must be given the notification described above. Once the individual has provided his/her SSN to establish a record, a notification is not required when the SSN is requested only for identification or to locate the records.

(6) DON activities are discouraged from collecting SSNs when another identifier would suffice. In those instances where activities wish to differentiate individuals, they may find it advantageous to only collect the last four digits of the individual's SSN, which is not considered to be privacy sensitive.

(7) If a DON activity requests an individual's SSN even though it is not required by Federal statute, or is not for a system of records in existence and operating prior to January 1, 1975, it must provide a PAS and make it clear that disclosure of the number is voluntary. Should the individual refuse to disclose his/her SSN, the activity must be prepared to identify the individual by alternate means.

(d) *Contents of a PAS.* (1) When an individual is requested to furnish PPI for possible inclusion in a system of records, a PAS must be provided to the individual, regardless of the method used to collect the information (*e.g.*, forms, personal or telephonic interview, etc). If the information requested will not be included in a system of records, a PAS is not required.

(2) The PAS shall include the following:

(i) The Federal law or E.O. that authorizes collection of information (*i.e.*, E.O. 9397 authorizes collection of SSNs);

(ii) Whether or not it is mandatory for the individual to provide the requested information. (Note: It is only mandatory when a Federal law or E.O. of the President specifically imposes a requirement to furnish the information and provides a penalty for failure to do so. If furnishing information is a condition precedent to granting a benefit or privilege voluntarily sought by the individual, then the individual may decline to provide the information and decline the benefit);

(iii) The principal purposes for collecting the information;

(iv) The routine uses that will be made of the information (e.g., to whom and why it will be disclosed outside DOD); and

(v) The possible effects on the individual if the requested information is not provided.

(3) The PAS must appear on the form used to collect the information or on a separate form that can be retained by the individual collecting the information. If the information is collected by a means other than a form completed by the individual, i.e., solicited over the telephone, the PAS should be read to the individual and if requested by the individual, a copy sent to him/her. There is no requirement that the individual sign the PAS.

(e) *Format for a PAS.* When forms are used to collect information about individuals for a system of records, the PAS shall appear as follows (listed in the order of preference):

(1) Immediately below the title of the form;

(2) Elsewhere on the front page of the form (clearly indicating it is the PAS);

(3) On the back of the form with a notation of its location below the title of the form; or,

(4) On a separate form which the individual may keep.

(f) *Using forms issued by non-DOD activities.* Forms subject to the PA issued by other Federal agencies have a PAS attached or included. DON activities shall ensure that the statement prepared by the originating agency is adequate for the purpose for which the form will be used by the DON activity. If the PAS provided is inadequate, the

DON activity concerned shall prepare a new statement or a supplement to the existing statement before using the form. Forms issued by agencies not subject to the PA (state, municipal, and local agencies) do not contain a PAS. Before using a form prepared by such agencies to collect PPI subject to this subpart and subpart G, an appropriate PAS must be added.

§ 701.107 Record access.

The access provisions of this subpart and subpart G of this part are intended for use by individuals about whom records are maintained in systems of records. Accordingly, only individuals seeking first party access to records retrieved by their name and/or personal identifier from a system of records have access under the provisions of 5 U.S.C. 552a, this subpart and subpart G of this part, unless they provide written authorization for their representative to act on their behalf. (See § 701.107(e) regarding access by custodial parents and legal guardians.)

(a) *How to request records.* Individuals shall address requests for access to records retrieved by their name and/or personal identifier to the PA systems manager or to the office designated in the paragraph entitled, ''Record Access Procedures.''

(1) DON activities may not require an individual to state a reason or justify the need to gain access under 5 U.S.C. 552a, this subpart and subpart G of this part.

(2) However, an individual must comply with the requirements of the PA and this instruction in order to seek access to records under the provisions of 5 U.S.C. 552a, this subpart and subpart G of this part. Specifically, individuals seeking access to records about themselves that are maintained in a PA system of records must sign their request and provide specific identifying data to enable a search for the requested record. Failure to sign the request or to provide sufficient identifying data to locate the record will result in the request being returned for non-compliance with the ''Record Access Procedures'' cited in the PA system of records notice.

(b) *Authorized access.* (1) Individuals may authorize the release of all or part of their records to anyone they choose provided they submit a signed authorization to that DON activity. Such authorization must specifically state the records to which the individual may have access.

(2) Individuals may be accompanied by anyone they choose when seeking to review their records. In such instance, DON activities shall require the individual to provide a written authorization to allow the record to be discussed in front of the other person.

(c) *Failure to comply.* First party requesters will be granted access to their records under the provisions of the PA, unless:

(1) They did not properly identify the records being sought; did not sign their request; and/or failed to provide sufficient identifying data to locate the requested record(s);

(2) They are seeking access to information in a system of records that is exempt from disclosure in whole or in part under the provisions of 5 U.S.C. 552a;

(3) They are seeking access to information that was compiled in anticipation of a civil action or proceeding (i.e., 5 U.S.C. 552a(d)(5) applies). The term ''civil action or proceeding'' includes quasi-judicial and pre-trial judicial proceedings, as well as formal litigation. However, this does not prohibit access to records compiled or used for purposes other than litigation or to records frequently subject to litigation. The information must have been compiled for the primary purpose of litigation to be withheld under 5 U.S.C. 552a(d)(5); or

(4) They are seeking access to information contained in the system that is currently and properly classified (see 5 U.S.C. 552a(k)(1)).

(d) *Blanket requests.* Many DON activities are unable to respond to ''blanket'' requests from individuals for access or copies of ''all records pertaining to them,'' because they do not have a centralized index that would allow them to query by name and personal identifier to identify ''all files.'' Accordingly, it is the requester's responsibility to identify the specific PA system of records notice for which they seek information. To assist the requester in identifying such systems, DON activities shall apprise the requester that a listing of all DON PA systems of records can be downloaded from *http://www.privacy.navy.mil* and that they should identify the specific records they are seeking and write directly to the PA systems manager listed in the notice, following the guidance set forth under the section entitled ''Record Access Procedures'' of the notice.

(e) *Access by custodial parents and legal guardians.* The custodial parent of any minor, or the legal guardian of any individual declared by a court of competent jurisdiction to be incompetent due to physical or mental incapacity or age, may obtain access to the record of the minor or incompetent individual under the provisions of the PA, if they are acting on behalf of/in the best interest of/for the benefit of the minor or incompetent. If the systems manager determines that they are not acting on behalf of/in the best interest of/for the benefit of the minor or incompetent, access will not be granted under the PA and the request will be processed under FOIA (5 U.S.C. 552). See 701.122 regarding access to medical records.

(f) *Access by a minor or incompetent.* The right of access of the parent or legal guardian is in addition to that of the minor or incompetent. Although a minor or incompetent has the same right of access as any other individual under this subpart and subpart G of this part, DON activities may wish to ascertain whether or not the individual is being coerced to obtain records for the benefit of another. If so, the activity may refuse to process the request under the provisions of PA.

(g) *Requests from members of Congress.* Requests received from a Member of Congress on behalf of a constituent shall be processed under the provisions of the PA and this subpart and subpart G of this part if the requester is seeking access to records about the constituent contained in a non-exempt PA system of records (i.e., first party request). Otherwise, the request will be processed under the provisions of the FOIA (see 5 U.S.C. 552) since the request is received from a third party (i.e., not the record subject).

(1) The DOD ''Blanket Routine Uses'' enables DON activities to process requests from Members of Congress on behalf of their constituents without submitting a written authorization from the constituent granting authorization to act on their behalf.

(2) In those instances where the DON activity wishes to verify that a constituent is seeking assistance from a Member of Congress, an oral or written statement by a Congressional staff member is sufficient to confirm that the request was received from the individual to whom the record pertains.

(3) If the constituent inquiry is made on behalf of an individual other than the record subject (i.e., a third party requester), advise the Member of Congress that a written consent from the record subject is required before information may be disclosed. Do not contact the record subject to obtain consent for the disclosure to the Member of Congress, unless specifically requested by the Member of Congress.

(4) Depending on the sensitivity of the information being requested, a DON activity may choose to provide the record directly to the constituent and notify the congressional office that this

has been done without providing the record to the congressional member.

(h) *Release of PPI.* Release of PPI to individuals under the PA and/or this subpart or subpart G is not considered to be a public release of information.

(i) *Verification of identity.* (1) An individual shall provide reasonable verification of identity before obtaining access to records. In the case of seeking to review a record in person, identification of the individual can be verified by documents they normally carry (e.g., identification card, driver's license, or other license, permit/pass). DON activities shall not, however, deny access to an individual who is the subject of the record solely for refusing to divulge his/her SSN, unless it is the only means of retrieving the record or verifying identity.

(2) DON activities may not insist that a requester submit a notarized signature to request records. Instead, the requester shall be offered the alternative of submitting an unsworn declaration that states ''I declare under perjury or penalty under the laws of the United States of America that the foregoing is true and correct.''

(j) *Telephonic requests.* DON activities shall not honor telephonic requests nor unsigned E-Mail/FAX/letter requests for first party access to a PA system of records.

(k) *Denials.* (1) An individual may be denied access to a record pertaining to him/her only if the record was compiled in reasonable anticipation of civil action; is in a system of records that has been exempted from the access provisions of this subpart and subpart G of this part under one of the permitted exemptions; contains classified information that has been exempted from the access provision of this instruction under the blanket exemption for such material claimed for all DOD PA systems of records; is contained in a system of records for which access may be denied based on some other federal statute.

(2) Only deny the individual access to those portions of the records for which the denial of access serves some legitimate governmental purpose.

(3) Only a designated denial authority may deny access to information contained in an exempt PA system of records. The denial must be in writing and at a minimum include the name, title or position and signature of the designated denial authority; the date of the denial; the specific reason for the denial, including specific citation to the appropriate sections of the PA or other statutes, this instruction, or CFR authorizing the denial; notice to the individual of his/her right to appeal the denial through the component appeal procedure within 60 calendar days; and, the title or position and address of the PA appeals official for the DON.

(l) *Illegible or incomplete records.* DON activities may not deny an individual access to a record solely because the physical condition or format of the record does not make it readily available (*i.e.,* when the record is in a deteriorated state or on magnetic tape). DON activities may either prepare an extract or recopy the document and mark it ''Best Copy Available.''

(m) *Personal notes.* (1) Certain documents under the physical control of a DON employee and used to assist him/her in performing official functions are not considered ''agency records'' within the meaning of this instruction. Uncirculated personal notes and records that are not disseminated or circulated to any person or organization (*e.g.,* personal telephone lists or memory aids) that are retained or discarded at the author's discretion and over which the DON activity does not exercise direct control, are not considered ''agency records.'' However, if personnel are officially directed or encouraged, either in writing or orally, to maintain such records, they may become ''agency records,'' and may be subject this subpart and subpart G of this part.

(2) The personal uncirculated handwritten notes of unit leaders, office supervisors, or military supervisory personnel concerning subordinates are not systems of records within the meaning of this instruction. Such notes are an extension of the individual's memory. These notes, however, must be maintained and discarded at the discretion of the individual supervisor and not circulated to others. Any established requirement to maintain such notes (such as, written or oral directives, regulations, or command policy) make these notes ''agency records'' and they then must be made a part of a system of records. If the notes are circulated, they must be made a part of a system of records. Any action that gives personal notes the appearance of official agency records is prohibited, unless the notes have been incorporated into a system of records.

(n) *Compiled in anticipation of litigation.* An individual is not entitled to access information compiled in reasonable anticipation of a civil action or proceeding. Accordingly, deny access under 5 U.S.C. 552a(d)(5) and then process under FOIA (SECNAVINST 5740.42F) to determine releasibility.

§ 701.108 Amendment of records.

Amendments under this subpart and subpart G of this part are limited to correcting factual or historical matters (*i.e.,* dates and locations of service, participation in certain actions of activities, not matters of opinion (*e.g.,* evaluations of work performance and assessments of promotion potential contained in employee evaluations, fitness reports, performance appraisals, or similar documents)) except when such matters of opinion are based solely on inaccurate facts and the accuracy of those facts has been thoroughly discredited.

(a) *Individual review and correction.* Individuals are encouraged to make periodic reviews of the information maintained about them in systems of records and to avail themselves of the amendment procedures established by 5 U.S.C. 552a, this subpart and subpart G of this part, and other regulations to update their records.

(b) *Eligibility.* An individual may request amendment of a record retrieved by his/her personal identifier from a system of records, unless the:

(1) System has been exempt from the amendment procedure under 5 U.S.C. 552a and/or

(2) Record is covered by another procedure for correction, such as by the Board for Correction of Naval Records.

(c) *Amendment requests.* Amendment requests shall be in writing, except for routine administrative changes, such as change of address.

(1) An amendment request must include: a description of the factual or historical information to be amended; the reason for the amendment; the type of amendment action sought (*e.g.,* deletion, correction, or addition); and copies of available documentary evidence that support the request.

(2) The burden of proof rests with the individual. The individual must demonstrate the existence of specific evidence establishing the factual or historical inaccuracy, and in the case of matters of opinion, must specifically discredit the underlying facts. General allegations of error are inadequate.

(3) The individual may be required to provide identification to prevent the inadvertent or intentional amendment of another's record.

(d) *Limits on attacking evidence previously submitted.* (1) The amendment process is not intended to permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Any amendments or changes to these records normally are made through the specific procedures established for the amendment of such records.

(2) Nothing in the amendment process is intended or designed to permit a collateral attack upon what has already

been the subject of a judicial or quasi-judicial determination. However, while the individual may not attack the accuracy of the judicial or quasi-judicial determination under this instruction, he/she may challenge the accuracy of the recording of that action.

(e) *Sufficiency of a request to amend.* DON activities shall consider the following factors when evaluating the sufficiency of a request to amend: the accuracy of the information itself and the relevance, timeliness, completeness, and necessity of the recorded information for accomplishing an assigned mission or purpose.

(f) *Time limits.* Within 10 working days of receiving an amendment request, the systems manager shall provide the individual a written acknowledgement of the request. If action on the amendment request is completed within the 10 working days and the individual is so informed, no separate acknowledgment is necessary. The acknowledgment must clearly identify the request and advise the individual when to expect notification of the completed action. Only under exceptional circumstances should more than 30 working days be required to complete the action on an amendment request.

(g) *Granting an amendment request in whole or in part.* A record must be accurate, relevant, timely, complete, and necessary. If the record in its present state does not meet each of the criteria, the requester's request to amend the record should be granted to the extent necessary to meet them.

(1) *Notify the requester.* To the extent the amendment request is granted, the systems manager shall notify the individual and make the appropriate amendment.

(2) *Notify previous recipients.* Notify all previous recipients of the information (as reflected in the disclosure accounting record) that the amendment has been made and provide each a copy of the amended record. Recipients who are no longer retaining the record need not be advised of the amendment. If it is known that other naval activities, DOD components, or Federal Agencies have been provided the information that now requires amendment, or if the individual requests that these agencies be notified, provide the notification of amendment even if those activities or agencies are not listed on the disclosure accounting form.

(h) *Denying an amendment request.* If an amendment request is denied in whole or in part, promptly notify the individual in writing and include the following information in the notification:

(1) Those sections of 5 U.S.C. 552a, this subpart or subpart G of this part upon which the denial is based;

(2) His/her right to appeal to the head of the activity for an independent review of the initial denial;

(3) The procedures for requesting an appeal, including the title and address of the official to whom the appeal should be sent; and

(4) Where the individual can receive assistance in filing the appeal.

(i) *Requests for amendment of OPM records.* The records in an OPM Government-wide system of records are only temporarily in the custody of DON activities. See the appropriate OPM Government-wide systems notice at *http://www.defenselink.mil/privacy/govwide* for guidance on how to seek an amendment of information. The custodian DON denial authority may deny a request, but all denials are subject to review by the Assistant Director for Workforce Information, Office of Merit Systems Oversight and Effectiveness, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

(j) *Individual's statement of disagreement.* (1) If the review authority refuses to amend the record as requested, the individual may submit a concise statement of disagreement listing the reasons for disagreeing with the refusal to amend.

(2) If possible, DON activities shall incorporate the statement of disagreement into the record. If that is not possible, annotate the record to reflect that the statement was filed and maintain the statement so that it can be readily obtained when the disputed information is used or disclosed.

(3) Furnish copies of the statement of disagreement to all individuals listed on the disclosure accounting form (except those no longer retaining the record), as well as to all other known holders of copies of the record.

(4) Whenever the disputed information is disclosed for any purpose, ensure that the statement of disagreement is also disclosed.

(k) *Statement of reasons.* (1) If the individual files a statement of disagreement, the DON activity may file a statement of reasons containing a concise summary of the activity's reasons for denying the amendment request.

(2) The statement of reasons shall contain only those reasons given to the individual by the appellate official and shall not contain any comments on the individual's statement of disagreement.

(3) At the discretion of the DON activity, the statement of reasons may be disclosed to those individuals, activities, and agencies that receive the statement of disagreement.

§ 701.109 PA appeals.

(a) *How to file an appeal.* Individuals wishing to appeal a denial of notification, access, or amendment of records shall follow these guidelines:

(1) The appeal must be received by the cognizant review authority (*i.e.*, ASN (M&RA), OJAG, OGC, or OPM) within 60 calendar days of the date of the response.

(2) The appeal must be in writing and requesters should provide a copy of the denial letter and a statement of their reasons for seeking review.

(b) *Time of receipt.* The time limits for responding to an appeal commence when the appeal reaches the office of the review authority having jurisdiction over the record. Misdirected appeals should be referred expeditiously to the proper review authority and the requester notified.

(c) *Review authorities.* ASN (M&RA), JAG, and GC are authorized to adjudicate appeals made to SECNAV. JAG and GC are further authorized to delegate this authority to a designated Assistant JAG or Deputy Assistant JAG and the Principal Deputy General Counsel or Deputy General Counsel, respectively, under such terms and conditions as they deem appropriate.

(1) If the record is from a civilian Official Personnel Folder or is contained on any other OPM forms, send the appeal to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415. Records in all systems of records maintained in accordance with the OPM Government-wide systems notices are only in the temporary custody of the DON.

(2) If the record pertains to the employment of a present or former Navy or Marine Corps civilian employee, such as Navy or Marine Corps civilian personnel records or an employee's grievance or appeal file, send it to the General Counsel of the Navy, 1000 Navy Pentagon, Washington, DC 20350–1000.

(3) If the record pertains to a present or former military member's fitness reports or performance evaluations, send it to the Assistant Secretary of the Navy (Manpower and Reserve Affairs), 1000 Navy Pentagon, Washington, DC 20350–1000.

(4) All other records dealing with present or former military members should be sent to the Office of the Judge Advocate General, 1322 Patterson

Avenue SE., Suite 3000, Washington Navy Yard, DC 20374–5066.

(d) *Appeal procedures.* (1) If the appeal is granted, the review authority shall advise the individual that his/her appeal has been granted and provide access to the record being sought.

(2) If the appeal is denied totally or in part, the appellate authority shall advise the reason(s) for denying the appeal, citing the appropriate subsections of 5 U.S.C. 552a or this subpart and subpart G of this part; the date of the appeal determination; the name, title, and signature of the appellate authority; and a statement informing the requester of his/her right to seek judicial relief in the Federal District Court.

(e) *Final action, time limits and documentation.* (1) The written appeal notification granting or denying access is the final naval activity action on the initial request for access.

(2) All appeals shall be processed within 30 working days of receipt, unless the appellate authority finds that an adequate review cannot be completed within that period. If additional time is needed, notify the applicant in writing, explaining the reason for the delay and when the appeal will be completed.

(f) *Denial of appeal by activity's failure to act.* An individual may consider his/her appeal denied if the appellate authority fails to:

(1) Take final action on the appeal within 30 working days of receipt when no extension of time notice was given; or

(2) Take final action within the period established by the notice to the appellate authority of the need for an extension of time to complete action on the appeal.

§ 701.110 Conditions of disclosure.

The PA identifies 12 conditions of disclosure whereby records contained in a system of records may be disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains. These instances are identified as:

(a) *Official need to know.* Records pertaining to an individual may be disclosed without the consent of the individual to any DOD official who has need for the record in the performance of his/her assigned duties. Rank, position, or title alone does not authorize access to PPI about others. An official need must exist before disclosure can be made. For the purposes of disclosure, DOD is considered a single agency.

Note: No disclosure accounting required.

(b) *FOIA.* Records must be disclosed if their release is required by FOIA. 5 U.S.C. 552 and SECNAVINST 5720.42F require that records be made available to the public unless exempted from disclosure by one of the nine FOIA exemptions found in the Act. It follows, therefore, that if a record is not exempt from disclosure, it must be released. Note: No disclosure accounting required.

(c) *Routine use.* Each DON PA system of records notice identifies what records may be disclosed outside DOD without consent of the individual to whom the record pertains.

Note: Disclosure accounting is required.

(1) A routine use shall be compatible with and related to the purpose for which the record was compiled; identify the persons or organizations to whom the record may be released; identify specifically the uses to which the information may be put by the receiving agency; and, have been published previously in the **Federal Register**.

(2) A routine use shall be established for each user of the information outside the DOD who needs the information for an official purpose.

(3) A routine use may be established, discontinued, or amended without the consent of the individuals involved. However, new or changed routine uses must be published in the **Federal Register** for at least 30 days before actually disclosing the records.

(4) In addition to specific routine uses, the DOD has identified certain ''Blanket Routine Uses'' that apply to all systems, unless the systems notice states that they do not. (See § 701.112 regarding Blanket Routine Uses.)

(d) *Bureau of Census.* Records may be disclosed to the Bureau of Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13.

Note: Disclosure accounting is required.

(e) *Statistical research and reporting.* Records may be disclosed for statistical research and reporting without the consent of the individual to whom they pertain. Before such disclosures, the recipient must provide advance written assurance that the records will be used as statistical research or reporting records; only to transferred in a form that is not individually identifiable; and will not be used, in whole or in part, to make any determination about rights, benefits, or entitlements of specific individuals.

Note: Disclosure accounting is required.

(f) *National Archives and Records Administration (NARA).* Records may be disclosed to NARA as a record that has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Archivist of the U.S. or his designee to determine whether the record has such value.

Note: Disclosure accounting is required.

(1) Records may be disclosed to NARA to carry out records management inspections required by law.

(2) Records transferred to a Federal Records Center (FRC) operated by NARA for storage are not within this category. Those records continue to be maintained and controlled by the transferring DON activity. The FRC is considered to be the agency of the DON for this purpose.

(g) *Disclosures for law enforcement purposes.* Records may be disclosed without the consent of the individual whom they pertain to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the U.S. for a civil or criminal law enforcement activity provided the civil or criminal law enforcement activity is authorized by law; the head of the law enforcement activity or a designee has made a written request specifying the particular records desired and the law enforcement purpose (such as criminal investigations, enforcement of a civil law, or a similar purpose) for which the record is sought; and there is no Federal statute that prohibits the disclosure of the records to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought.

(1) Disclosure to foreign law enforcement agencies is not governed by the provisions of 5 U.S.C. 552a. To enable disclosure, a specific routine use must be published in the record system notice or another governing authority must exist.

(2) If a DON activity discloses a record outside the DOD for law enforcement purposes without the individual's consent and without an adequate written request, the disclosure must be under an established routine use, such as the ''Blanket Routine Use'' for law enforcement.

(3) Blanket requests from law enforcement activities for all records pertaining to an individual shall not be honored. The requesting agency must specify each record or portion desired and how each relates to the authorized law enforcement activity.

(4) When a record is released to a law enforcement activity under this routine use, DON activities shall maintain a

disclosure accounting. This disclosure accounting shall not be made available to the individual to whom the record pertains if the law enforcement activity requests that the disclosure not be released.

(5) The Blanket Routine Use for law enforcement records applies to all DON PA systems of records notices. Only by including this routine use can a DON activity on its own initiative report indications of violations of law found in a system of records to a law enforcement activity without the consent of the individual to whom the record pertains.

(h) *Emergency disclosures.* Records may be disclosed without the written consent of the individual to whom they pertain if disclosure is made under compelling circumstances affecting the health or safety of any individual. The affected individual need not be the subject of the record disclosed.

Note: Disclosure accounting is required.

(1) When such a disclosure is made, notify the individual who is the subject of the record. Notification sent to the last known address of the individual reflected in the records is sufficient.

(2) In instances where information is requested by telephone, an attempt will be made to verify the inquirer's and medical facility's identities and the caller's telephone number.

(3) The specific data to be disclosed is at the discretion of the releasing authority. Emergency medical information may be released by telephone.

(i) *Disclosure to Congress.* (1) Records may be disclosed without the consent of the individual to whom they pertain to either house of the Congress or to any committee, joint committee or subcommittee of Congress if the release pertains to a matter within the jurisdiction of the committee. Note: Disclosure accounting is required.

(2) See § 701.107(g) regarding how to process constituent inquiry requests.

(j) *Government Accountability Office (GAO).* Records may be disclosed to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the GAO.

Note: Disclosure accounting is required.

(k) *Court orders.* Records may be disclosed without the consent of the person to whom they pertain under a court order signed by a judge of a court of competent jurisdiction. Releases may also be made under the compulsory legal process of Federal and state bodies having authority to issue such process.

Note: Disclosure accounting is required.

(1) The court order must bear the signature of a Federal, state, or local judge. Orders signed by court clerks or attorneys are not deemed to be orders of a court of competent jurisdiction. A photocopy of the order will be sufficient evidence of the court's exercise of its authority of the minimal requirements of SECNAVINST 5820.8A, ''Release of Official Information for Litigation Purposes and Testimony by DON Personnel.''

(2) When a record is disclosed under this provision and the compulsory legal process becomes a matter of public record, make reasonable efforts to notify the individual to whom the record pertains. Notification sent to the last known address of the individual is sufficient. If the order has not yet become a matter of public record, seek to be advised as to when it will become public. Neither the identity nor the party to whom the disclosure was made nor the purpose of the disclosure shall be made available to the record subject unless the court order has become a matter of public record.

(l) *Disclosures to consumer reporting agencies.* Certain information may be disclosed to a consumer reporting agency in accordance with section 3711(f) of Title 31.

Note: Certain information (e.g., name, address, SSN, other information necessary to establish the identity of the individual; amount, status, and history of the claim; and the agency or program under which the claim arose, may be disclosed to consumer reporting agencies (*i.e.*, credit reference companies as defined by the Federal Claims Collection Act of 1966, 31 U.S.C. 952d).

Note: Disclosure accounting is required.

§ 701.111 Disclosure accounting.

Disclosure accounting allows the individual to determine what agencies or persons have been provided information from the record, enable DON activities to advise prior recipients of the record of any subsequent amendments or statements of dispute concerning the record, and provide an audit trail of DON's compliance with 5 U.S.C. 552a. Since the characteristics of various records maintained within the DON vary widely, no uniform method for keeping disclosure accountings is prescribed. The primary criteria are that the selected method be one which will enable an individual to ascertain what persons or agencies have received disclosures pertaining to him/her; provide a basis for informing recipients of subsequent amendments or statements or dispute concerning the record; and, provide a means to prove, if necessary, that the activity has complied with the requirements of 5 U.S.C. 552a, this subpart and subpart G of this part.

(a) *Record of disclosures made.* DON activities must keep an accurate record of all disclosures made from a record (including those made with the consent of the individual) except those made to DOD personnel for use in performing their official duties and those disclosures made under FOIA. Accordingly, each DON activity with respect to each system of records under its control must keep a record of the date of the disclosure, a description of the information disclosed, the purpose of the disclosure, and the name and address of the person or agency to whom the disclosure was made. OPNAV Form 5211/9, Disclosure Accounting Form, is downloadable from *http://www.privacy.navy.mil* and should be used whenever possible to account for disclosures.

Note: DON activities do not have to maintain a disclosure accounting for disclosures made under (b)(1), to those officers and employees of an agency which maintains the record who have a need for the record in the performance of their duties or under (b)(2)—which is required under FOIA.

(b) *Retention.* Disclosure accountings must be kept for five years after the disclosure is made or for the life of the record, whichever is longer.

(c) *Right of access.* The record subject has the right of access to the disclosure accounting except when the disclosure was made at the request of a civil or criminal law enforcement agency or when the system of records has been exempted from the requirement to provide access to the disclosure accounting.

(d) *Correction.* A DON activity must inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of 5 U.S.C. 552a of any record that has been disclosed to the person or agency if an accounting of the disclosure was made. The exception is for intra-agency ''need to know'' and FOIA disclosures.

(e) *Accurate accounting.* A DON activity that does not keep a running tabulation of every disclosure at the time it is made, must be able to reconstruct an accurate and complete accounting of disclosures to be able to respond to requests in a timely fashion.

§ 701.112 ''Blanket routine uses.''

In the interest of simplicity, economy, and to avoid redundancy, DOD has established ''DOD Blanket Routine Uses.'' These ''blanket routine uses'' are applicable to every PA system of records

notice maintained within DOD, unless specifically stated within a particular systems notice. ''DOD Blanket Routine Uses'' are downloadable from *http://www.privacy.navy.mil* (Notices) and are published at the beginning of the Department of the Navy's **Federal Register** compilation of record systems notices.

§ 701.113 PA exemptions.

(a) *Exempt systems of records.* 5 U.S.C. 552a authorizes SECNAV to adopt rules designating eligible systems of records as exempt from certain requirements of the Act. This authorization has been delegated to CNO (DNS–36), who will be responsible for proposing an exemption rule. Exempt systems of records are identified at *http://www.privacy.navy.mil.*

(b) *Exemption rule.* No PA exemption may be established for a system of records until the system itself has been established by publishing a notice in the **Federal Register**. This allows interested persons an opportunity to comment.

(c) *Access.* A PA exemption may not be used to deny an individual access to information that he/she can obtain under 5 U.S.C. 552.

(d) *Exemption status.* An exempt system of records that is filed in a non-exempt system of records retains its exempt status.

(e) *Types of exemptions.* There are two types of exemptions permitted by 5 U.S.C. 552a, general and specific exemptions.

(1) General exemptions allow a system of records to be exempt from all but specifically identified provisions of 5 U.S.C. 552a. They are:

(i) ''(j)(1)''—this exemption is only available for use by CIA to protect access to their records.

(ii) ''(j)(2)''—this exemption protects criminal law enforcement records maintained by the DON. To be eligible, the system of records must be maintained by a DON activity that performs, as one of its principal functions, the enforcement of criminal laws. For example, the Naval Criminal Investigative Service and military police activities qualify for this exemption. Criminal law enforcement includes police efforts to detect, prevent, control, or reduce crime, or to apprehend criminals and the activities of prosecution, court, correctional, probation, pardon, or parole authorities.

(A) This exemption applies to information compiled for the purpose of identifying criminal offenders and alleged criminal offenders and identifying data and notations of arrests; the nature and disposition of criminal charges; and sentencing, confinement, release, parole and probation status; information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with the identifiable individual; and reports identifiable to an individual, compiled at any stage of the enforcement process, from arrest, apprehension, indictment, or preferral of charges through final release from the supervision that resulted from the commission of a crime.

(B) The exemption does not apply to investigative records maintained by a DON activity having no criminal law enforcement duties as one of its principle functions; or investigative records compiled by any element concerning an individual's suitability, eligibility; or, qualification for duty, employment, or access to classified information, regardless of the principle functions of the DON activity that compiled them.

(2) Specific exemptions permit certain categories of records to be exempted from specific provisions of 5 U.S.C. 552a. They are:

(i) ''(k)(1)'': Information which is properly classified under E.O. in the interest of national defense or foreign policy.

Note: All DOD systems of records that contain classified information automatically qualify for (k)(1) exemption, without establishing an exemption rule.

(ii) ''(k)(2)'': Investigatory material compiled for law enforcement purposes, other than material within the scope of exemption (j)(2). If an individual is denied any right, privilege, or benefit that he would otherwise be eligible, as a result of such material, such material shall be provided to such individual, except to the extent that the disclosure would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to 27 September 1975 under an implied promise that the identity of the source would be held in confidence.

(iii) ''(k)(3)'': Information maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of Title 18.

(iv) ''(k)(4)'': Information required by statute to be maintained and used solely as statistical records.

(v) ''(k)(5)'': Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(vi) ''(k)(6)'': Testing and evaluation material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(vii) ''(k)(7)'': Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of the source who furnished information to the government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(f) *Detailed analysis of PA exemptions.* A detailed analysis of each exemption can be found in the Department of Justice's (DOJ's) ''Freedom of Information Act Guide & Privacy Act Overview'' that appears on *http://www.privacy.navy.mil.*

§ 701.114 PA Enforcement actions.

(a) *Administrative remedies.* Any individual who alleges that he/she has been affected adversely by a DON activity's violation of 5 U.S.C. 552a and this subpart may seek relief from SECNAV through administrative channels. It is recommended that the individual first address the issue through the PA coordinator having cognizance over the relevant records or supervisor (if a Government employee). If the complaint is not adequately addressed, the individual may contact CNO (DNS–36) or CMC (ARSF), for assistance.

(b) *Civil court actions.* After exhausting administrative remedies, an individual may file a civil suit in Federal court against a DON activity for the following acts:

(1) *Denial of an amendment request.* The activity head, or his/her designee wrongfully refuses the individual's request for review of the initial denial of an amendment or, after review, wrongfully refuses to amend the record.

(2) *Denial of access.* The activity wrongfully refuses to allow the individual to review the record or wrongfully denies his/her request for a copy of the record.

(3) *Failure to meet recordkeeping standards.* The activity fails to maintain an individual's record with the accuracy, relevance, timeliness, and completeness necessary to assure fairness in any determination about the individual's rights, benefits, or privileges and, in fact, makes an adverse determination based on the record.

(4) *Failure to comply with PA.* The activity fails to comply with any other provision of 5 U.S.C. 552a or any rule or regulation issued under 5 U.S.C. 552a and thereby causes the individual to be adversely affected.

(c) *Civil remedies.* In addition to specific remedial actions, 5 U.S.C. 552a provides for the payment of damages, court costs, and attorney fees in some cases.

(d) *Criminal penalties.* 5 U.S.C. 552a authorizes criminal penalties against individuals for violations of its provisions, each punishable by fines up to $5,000.

(1) *Wrongful disclosure.* Any member or employee of DON who, by virtue of his/her employment or position, has possession of or access to records and willfully makes a disclosure knowing that disclosure is in violation of 5 U.S.C. 552a, this subpart or subpart G.

(2) *Maintaining unauthorized records.* Any member or employee of DON who willfully maintains a system of records for which a notice has not been approved and published in the **Federal Register**.

(3) *Wrongful requesting or obtaining records.* Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses.

(e) *Litigation notification.* Whenever a complaint citing the PA is filed in a U.S. District Court against the DON or any DON employee, the responsible DON activity shall promptly apprise CNO (DNS–36)) and provide a copy of all relevant documents. CNO (DNS–36) will in turn apprise the DPO, who will apprise the DOJ. When a court renders a formal opinion or judgment, copies of the judgment and/or opinion shall be promptly provided to CNO (DNS–36). CNO (DNS–36) will apprise the DPO.

§ 701.115 Protected personal information (PPI).

(a) *Access/disclosure.* Access to and disclosure of PPI such as SSN, date of birth, home address, home telephone number, etc., must be strictly limited to individuals with an official need to know. It is inappropriate to use PPI in group/bulk orders. Activities must take action to protect PPI from being widely disseminated. In particular, PPI shall not be posted on electronic bulletin boards because the PA strictly limits PPI access to those officers and employees of the agency with an official need to know.

(b) *Transmittal.* In those instances where transmittal of PPI is necessary, the originator must take every step to properly mark the correspondence so that the receiver of the information is apprised of the need to properly protect the information. For example, when transmitting PPI in a paper document, FAX, or E-Mail, it may be appropriate to mark it ''FOR OFFICIAL USE ONLY (FOUO)—PRIVACY SENSITIVE. Any misuse or unauthorized disclosure may result in both civil and criminal penalties.'' When sending a message that contains PPI, it should be marked FOUO. It is also advisable to inform the recipient that the message should not be posted on a bulletin board. In all cases, recipients of message traffic that contain PPI, whether marked FOUO or not, must review it prior to posting it on an electronic bulletin board.

(c) *Collection/maintenance.* The collection and maintenance of information retrieved by an individual's name and/or personal identifier should be performed in compliance with the appropriate PA systems of record notice (see *http://www.privacy. navy.mil*). If you need to collect and maintain information retrieved by an individual's name and/or personal identifier, you must have an approved PA systems notice to cover that collection. If you are unsure as to whether a systems notice exists or not, contact the undersigned for assistance.

(d) *Best practices.* PA Coordinators should work closely with command officials to conduct training, evaluate what PPI can be removed from routine message traffic, review Web site postings, review command electronic bulletin boards, etc., to ensure appropriate processes are in place to minimize the misuse and overuse of PPI information that could be used to commit identity theft. PA Coordinators should also ensure that their PA systems of records managers have a copy of the appropriate PA systems notice and understand PA rules. DON activities shall ensure that PPI (e.g., home address, date of birth, SSN, credit card or charge card account numbers, etc.) pertaining to a Service member, civilian employee (appropriated and non-appropriated fund), military retiree, family member, or another individual affiliated with the activity (i.e., volunteer) is protected from unauthorized disclosures. To this end, DON activities shall:

(1) Notify their personnel of this policy. Address steps necessary to ensure that PPI is not compromised.

(2) Conduct and document privacy awareness training for activity personnel (e.g., military, civilian, contractor, volunteers, NAF employees, etc.) Training options include: ''All Hands'' awareness briefing; memo to staff; formal training; circulation of brief sheet on Best Practices, etc.

(3) Examine business practices to eliminate the unnecessary collection, transmittal and posting on internet/intranet of PPI. DON activities shall reevaluate the necessity and value of including an individual's SSN and other PPI in messages, e-mails, and correspondence in order to conduct official business. The overuse and misuse of SSNs should be discontinued to avoid the potential for identity theft. For example, there is no need to include an individual's SSN in a welcome aboard message. Such messages are routinely posted on command bulletin boards that are viewable by all. If a unique identifier is needed, truncate the SSN using only the last four digits.

(4) Mark all documents that contain PPI (e.g., letters, memos, emails, messages, documents FAXed, etc) FOUO. Consider using a header/footer that reads: ''FOR OFFICIAL USE ONLY—PRIVACY SENSITIVE: ANY MISUSE OR UNAUTHORIZED DISCLOSURE MAY RESULT IN BOTH CIVIL AND CRIMINAL PENALTIES.''

(5) Train DON military members/employees who maintain PPI on their laptop computers/BlackBerrys, who telecommute, work from home, or take work home, etc., to ensure information is properly safeguarded against loss/compromise. Should a loss occur, ensure they are aware of how, what, and where to report the loss.

(6) Review existing postings on activity Web sites and public folders to ensure that the PPI is removed to prevent identity theft.

(7) Remove PPI from documents prior to posting or circulating information to individuals without an ''official need to know.''

(8) Evaluate risks for potential compromise of PPI held in activity files, databases, etc., to ensure proper safeguards are in place to prevent unauthorized disclosures. Revise protocols as necessary.

(9) Ensure that PPI is not left out in the open or circulated to individuals not having an official need to know.

(10) Ensure that PA systems of records are properly safeguarded and that PPI is properly destroyed (*http://www.privacy.navy.mil/noticenumber/noticeindex.asp*).

(11) Organizations that are moving or being disestablished need to ensure they do not dispose of documents containing PPI in containers that may be subject to public access/compromise.

(12) DON activities shall build a Privacy Team to identify ways to preclude inadvertent releases of PPI.

(e) *Unauthorized disclosure.* In the event an unauthorized disclosure of PPI is made, DON activities shall:

(1) Take immediate action to prohibit further damage/disclosure.

(2) Within 10 days, the DON activity shall notify all affected individuals by letter, including the specific data involved and the circumstances surrounding the incident. If the DON activity is unable to readily identify the affected individuals, a generalized notice should be sent to the potentially affected population. As part of any notification process, individuals shall be informed to visit the Federal Trade Commission's (FTC's) Web site at *http://www.consumer.gov/idtheft* for guidance on protective actions the individual can take. A synopsis of the disclosure made, number of individuals affected, actions to be taken, should be e-mailed to CNO (DNS–36) with ''Identity Theft Notification'' in the subject line.

(3) If the DON activity is unable to comply with the notification requirements set forth in paragraph (e)(2) of this section, the activity shall immediately inform CNO (DNS–36) as to the reasons why. CNO (DNS–36) will, in turn, notify the Secretary of Defense.

(4) DON activities shall identify ways to preclude future incidents.

§ 701.116 PA systems of records notices overview.

(a) *Scope.* A ''system of records notice'' consists of ''records'' that are routinely retrieved by the name, or some other personal identifier, of an individual and under the control of the DON.

(b) *Retrieval practices.* How a record is retrieved determines whether or not it qualifies to be a system of records. For example, records must be retrieved by a personal identifier (name, SSN, date of birth, etc.) to qualify as a system of records. Accordingly, a record that contains information about an individual but IS NOT RETRIEVED by a personal identifier does not qualify as a system of records under the provisions of the PA. (**Note:** The ''ability to retrieve'' is not sufficient to warrant the establishment of a PA system of records. The requirement is retrieval by a name or personal identifier.) Should a business practice change, DON activities shall immediately contact CNO (DNS–36) to discuss the pending change, so that the systems notice can be changed or deleted as appropriate.

(c) *Recordkeeping standards.* A record maintained in a system of records subject to this instruction must meet the following criteria:

(1) *Be accurate.* All information in the record must be factually correct.

(2) *Be relevant.* All information contained in the record must be related to the individual who is the record subject and must be related to a lawful purpose or mission of the DON activity maintaining the record.

(3) *Be timely.* All information in the record must be reviewed periodically to ensure that it has not changed due to time or later events.

(4) *Be complete.* It must be able to stand alone in accomplishing the purpose for which it is maintained.

(5) *Be necessary.* All information in the record must be needed to accomplish a mission or purpose established by Federal Law or E.0. of the President.

(d) Approval. CNO (DNS–36) is the approval authority for Navy PA systems of records actions. CMC (ARSF) is the approval authority for Marine Corps PA systems of records actions. Activities wishing to create, alter, amend, or delete systems should contact CNO (DNS–36) or CMC (ARSF), respectively. Those officials will assist in electronically preparing and coordinating the documents for DOD/Congressional approval, as electronic processing is both time and cost efficient.

(e) *Publication in the* ***Federal Register.*** Per DOD 5400.11–R, the DPO has responsibility for submitting all rulemaking and changes to PA system of records notices for publication in the **Federal Register** and CFR.

§ 701.117 Changes to PA systems of records.

CNO (DNS–36) is the approval authority for Navy/DON PA systems of records actions. CMC (ARSF) is the approval authority for Marine Corps PA systems of records actions. DON activities wishing to create, alter, amend, or delete systems should contact CNO (DNS–36) or CMC (ARSF), who will assist in electronically preparing the documents for coordination and DOD/Congressional approval.

(a) *Creating a new system of records.* (1) A new system of records is one for which no existing system notice has been published in the **Federal Register**. DON activities wishing to establish a new PA system of records notice shall contact CNO (DNS–36) (regarding Navy system of records) or CMC (ARSF) (regarding Marine Corps system of records.) These officials will assist in the preparation and approval of the notice. Once approval is obtained from DOD, the systems notice will be published in the **Federal Register** for comment by the public. In the case of an exempt system of records, it will also be published at 32 CFR part 701. A listing of all DON PA systems of records notices is available at *http://www.privacy.navy.mil.*

(2) A DON activity may not begin collecting or maintaining PPI about individuals that is retrieved by their name and/or personal identifier until a PA system of records notice has been approved and published in the **Federal Register**. Failure to comply with this mandate could result in both criminal and civil penalties.

(3) In those cases where a system of records has been cancelled or deleted and it is later determined that it should be reinstated or reused, a new system notice must be prepared.

(4) DON activities wishing to create a new PA system of records must conduct a risk analysis of the proposed system to consider the sensitivity and use of the records; present and projected threats and vulnerabilities; and projected cost effectiveness of safeguards. (See § 701.118 regarding PIAs.)

(b) *Altering a system of records notice.* A systems manager shall contact CNO (DNS–36)/CMC (ARSF) to alter a PA system of records notice when there has been:

(1) A significant increase or change in the number or types of individuals about who records are maintained. For example, a decision to expand a system of records that originally covered personnel assigned to only one activity to cover personnel at several installations would constitute an altered system. An increase or decrease in the number of individuals covered due to normal growth or decrease is not an alteration.

(2) A change that expands the types or categories of information maintained.

(3) A change that alters the purpose for which the information is used. In order to be an alteration, the change must be one that is not reasonably inferred from any of the existing purposes.

(4) A change that adds a new routine use.

(5) A change to equipment configuration (either hardware or software) that creates substantially greater use of records in the system. For example, placing interactive computer terminals at regional offices when the system was formerly used only at the headquarters would be an alteration.

(6) A change in the manner in which records are organized or in the method by which records are retrieved.

(7) A combining of record systems due to reorganization.

(c) *Amending a system of records notice.* DON activities should apprise CNO (DNS–36) or CMC (ARSF) respectively when a minor change has been made to a system of records.

(d) *Deleting a system of records notice.* When a system of records is discontinued, incorporated into another system, or determined to be no longer subject to this instruction, a deletion notice must be published in the **Federal Register**. The deletion notice shall include the system identification number, system name, and the reason for deleting it. If a system is deleted through incorporation into or merger with another system, identify the successor system in the deletion notice. Systems managers who determine that a systems notice is no longer needed should contact CNO (DNS–36)/CMC (ARSF) who will prepare the deletion notice and submit it electronically to DOD for publication in the **Federal Register**.

(e) *Numbering a system of records notice.* Systems of records notices are identified with an ''N'' for a Navy system; ''M'' for a Marine Corps system; or an ''NM'' to identify a DON-wide system, followed by the subject matter Standard Subject Identification Code (SSIC).

(f) *Detailed information.* Detailed information on how to write, amend, alter, or delete a PA system of records notice is contained at *http://www.privacy.navy.mil.*

§ 701.118 Privacy, IT, and PIAs.

(a) *Development.* Privacy must be considered when requirements are being analyzed and decisions are being made about data usage and storage design. This applies to all of the development methodologies and system life cycles used in the DON.

(b) *E-Government Act of 2002.* The E-Government Act of 2002 (Pub. L. 107–347) directs agencies to conduct reviews of how privacy issues are considered when purchasing or creating new IT systems or when initiating new electronic collections of IIF. See DOD Memo of 28 Oct 05, subject ''DOD PIA Guidance'' regarding DOD PIA Guidance.

(c) *Purpose.* To ensure IIF is only acquired and maintained when necessary and the supporting IT that is being developed and used protects and preserves the privacy of the American public and to provide a means to assure compliance with applicable laws and regulations governing employee privacy. A PIA should be prepared before developing or procuring a general support system or major application that collects, maintains, or disseminates IIF from or about DON civilian or military personnel.

(d) *Scope.* The PIA incorporates privacy into the development life cycle so that all system development initiatives can appropriately consider privacy issues from the earliest stages of design. During the early stages of the development of a system, both the system owner and system developer shall work together to identify, evaluate, and resolve any privacy risks. Accordingly,

(1) System owners must address what data is to be used, how the data is to be used, and who will use the data.

(2) System developers must address whether the implementation of the owner's requirements presents any threats to privacy.

(e) *Requirements.* Before developing, modifying or establishing an automated system of records that collects, maintains, and/or disseminates IIF, DON activities shall conduct a PIA to effectively address privacy factors. Guidance is provided at *http://www.doncio.navy.mil.*

(f) *Coverage.* E-Government Act of 2002 (Pub. L. 107–347) mandates the preparation of a PIA either before developing or procuring IT systems that collect, maintain, or disseminate IIF from or about members of the public or initiating a new electronic collection of IIF for 10 or more persons of the public. (**Note:** The public DOES NOT include DON civilian or military personnel, but DOES cover family members of such personnel, retirees and their family members, and DON contractors.) A PIA should be prepared before developing, modifying, or procuring IT systems that collect, maintain, or disseminate IIF from or about members of the public or initiating a new electronic collection of IIF for 10 or more members of the public. A PIA shall also be prepared before developing, modifying or procuring a general support system or major application that collects, maintains, or disseminates IIF from or about DON civilian and military personnel.

(g) *PIA not required.* (1) Legacy systems do not require completion of a PIA. However, DON CIO may request a PIA if the automation or upgrading of these systems puts the data at risk.

(2) Current operational systems do not require completion of a PIA. However, if privacy is a concern for a system the DON CIO can request that a PIA be completed. If a potential problem is identified concerning a currently operational system, the DON will use all reasonable efforts to remedy the problem.

§ 701.119 Privacy and the web.

DON activities shall consult SECNAVINST 5720.47B for guidance on what may be posted on a Navy Web site.

§ 701.120 Processing requests that cite or imply PA, Freedom of Information (FOIA), or PA/FOIA.

Individuals do not always know what Act(s) to cite when requesting information. Nonetheless, it is DON policy to ensure that they receive the maximum access to information they are requesting. Accordingly, processing guidance is as follows:

(a) *Cite/imply PA.* (1) Individuals who cite to the PA and/or seek access to records about themselves that are contained in a PA system of records that is retrieved by their name and personal identifier, will have their request processed under the provisions of the PA.

(2) If there is no ''Exemption Claimed for this System,'' then the record will be released to the requester unless: it contains classified information ((k)(1) applies); was compiled in anticipation of litigation ((d)(5) applies); or contains information about another person. Although there is no ''privacy'' exemption under the PA, delete any information about other persons and explain in the response letter that ''information not about you'' was deleted from the response. There is no PA exemption to claim and no appeal rights to be given.

(b) *Cite/imply FOIA.* (1) Individuals who cite/imply FOIA when seeking access to records about themselves will have their request processed under PA, if the records they seek are contained in a PA system of records that is retrieved by their name and personal identifier. However, if the system of records notice contains an exemption rule, the release of information will be adjudicated using both PA and FOIA, ensuring that the individual receives the maximum amount of information allowable under the Acts.

(2) Individuals who cite/imply FOIA and seek access to records about themselves that are not contained in a PA system of records that is retrieved by their name and personal identifier will have their request processed under FOIA.

(3) Individuals who cite to the FOIA, but do not seek access to records about themselves, will have their request processed under FOIA.

(c) *Cite to PA and FOIA.* Individuals who cite to both PA and FOIA and seek

access to records contained in a PA system of record retrieved by their name and personal identifier, will have their request as follows:

(1) If the system of records does not cite to an exemption rule, does not contain classified information, or was not compiled in anticipation of litigation, the entire file is considered releasable under the PA. However, if the file contains information about another person, that information shall be withheld and the requester apprised that information about another individual has been deleted, since the information is not about them. Since no PA exemption exists for protecting privacy, no exemption rule can be cited and appeal rights do not have to be given.

(2) If the system of records does cite to a PA exemption rule, claim the exemption and process the request under the provisions of the FOIA, ensuring the requester receives the maximum release of information allowed under the Acts.

(d) *Processing time limits.* DON activities shall normally acknowledge receipt of PA requests within 10 working days and respond within 30 working days.

§ 701.121 Processing ''routine use'' disclosures.

(a) ''*Routine use*'' *disclosure.* Individuals or organizations may seek a ''routine use'' disclosure of information from a DON PA system of records if the system provides for such a disclosure.

(1) The request must be in writing and state that it is being made under a ''routine use'' established by a specific PA system of records notice. For example: ''Under the ''routine use'' provisions of PA systems notice N05880–1, Security Incident System, that allows release of information to individuals involved in base incidents, their insurance companies, and/or attorneys for the purpose of adjudicating a claim, I am seeking access to a copy of my vehicle accident report to submit a claim to my insurance company. Information needed to locate this record is as follows * * *.''

(2) The individual is provided information needed to adjudicate the claim. A release authority may sign the response letter since a release of responsive information is being disclosed under a ''routine use,'' there is no ''denial'' of information (i.e., PA/FOIA exemptions do not apply), and no appeal rights cited.

(3) DON activities shall retain a copy of the request and maintain a disclosure accounting of the information released. (See § 701.111.)

(b) *Failure to cite to a ''routine use.''* Individuals or organizations that seek access to information contained in a DON PA system of records under PA/FOIA, but who have access under a ''routine use'' cited in the systems notice, shall be apprised of the ''routine use'' access and offered the opportunity to resubmit a ''routine use'' request, rather than having information denied under PA/FOIA. DON activities shall not make a ''routine use'' disclosure without having a ''routine use'' request.

(c) *Frequent ''routine use'' requests.* DON activities (*e.g.*, security and military police offices) that routinely receive requests for information for which a ''routine use'' has been established should offer a ''routine use'' request form. This will eliminate the unnecessary burden of processing requests under PA/FOIA when the limited information being sought is available under a ''routine use.''

§ 701.122 Medical records.

(a) *Health Information Portability and Accountability Act (HIPAA).* (1) DOD Directive 6025.18 establishes policies and assigns responsibilities for implementation of the standards for privacy of individually identifiable health information established by HIPAA.

(2) DOD Directive 6025.18–R prescribes the uses and disclosures of protected health information.

(3) Detailed guidance on HIPAA compliance is available from the Bureau of Medicine and Surgery's Web site at *http://navymedicine.med.navy.mil* and from DOD at *http://www.tricare.osd.mil/hipaa/.*

(4) In addition to responsibilities to comply with this subpart and subpart G of this part, DOD Directive 6025.18 and DOD 6025.18–R must also be complied with to the extent applicable. Although nothing in this subpart and subpart G violates DOD Directive 6025.18, compliance with this subpart and subpart G in connection with protected health information does not necessarily satisfy all requirements of DOD 6025.18–R.

(b) *Disclosure.* DON activities shall disclose medical records to the individual to whom they pertain, even if a minor, unless a judgment is made that access to such records could have an adverse effect on the mental or physical health of the individual. Normally, this determination shall be made in consultation with a medical practitioner.

(1) Deny the individual access to his/her medical and psychological records if that access could have an adverse affect on the mental or physical health of the individual. This determination normally should be made in consultation with a medical practitioner. If it is medically indicated that access could have an adverse mental or physical effect on the individual, provide the record to a medical practitioner named by the individual, along with an explanation of why access without medical supervision could be harmful to the individual. In any case, do not require the named medical practitioner to request the record for the individual.

(2) If, however, the individual refuses or fails to designate a medical practitioner, access will be refused. The refusal is not considered a denial for reporting purposes under the PA.

(c) *Access to a minor's medical records.* DON activities may grant access to a minor's medical records to his/her custodial parents or legal guardians, observing the following procedures:

(1) In the United States, the laws of the State where the records are located may afford special protection to certain medical records (e.g., drug and alcohol abuse treatment and psychiatric records.) Even if the records are maintained by a military medical facility, these statutes may apply.

(2) For installations located outside the United States, the custodial parent or legal guardian of a minor shall be denied access if all of the following conditions are met: the minor at the time of the treatment or consultation was 15, 16, or 17 years old; the treatment or consultation was within a program authorized by law or regulation to provide confidentiality to the minor; the minor indicated a desire that the treatment or consultation record be handled in confidence and not disclosed to a parent or guardian; and the custodial parent or legal guardian does not have the written authorization of the minor or a valid court order granting access.

(3) All members of the military services and all married persons are not considered minors regardless of age, and the parents of these individuals do not have access to their medical records without the written consent of the individual to whom the record pertains.

§ 701.123 PA fees.

The PA fee schedule is only applicable to first party requesters who are seeking access to records about themselves that are contained in a PA system of record. DON activities receiving requests under PA, FOIA, or PA/FOIA shall only charge fees that are applicable under the Act(s) in which the request is being processed.

(a) *PA costs.* PA fees shall include only the direct cost of reproducing the

requested record. There are no fees for search, review, or any administrative costs associated with the processing of the PA request. The cost for reproduction of documents/microfiche will be at the same rate as that charged under the FOIA schedule (see SECNAVINST 5720.42F).

(b) *Fee waiver.* A requester is entitled to the first 100 pages of duplication for free.

(1) DON activities shall waive fees automatically if the direct cost for reproduction of the remaining pages is less than the minimum fee waiver threshold addressed under FOIA fees (see SECNAVINST 5720.42F).

(2) However, DON activities should not waive fees when it is determined that a requester is seeking an extension or duplication of a previous request for which he/she was already granted a waiver.

(3) Decisions to waive or reduce fees that exceed the minimum fee waiver threshold are made on a case-to-case basis.

(c) *PA fee deposits.* Checks or money orders shall be made payable to the Treasurer of the United States. DON activities will forward any remittances to the Treasury Department pursuant to the Miscellaneous Receipts Act.

§ 701.124 PA self assessments/ inspections.

(a) *Self assessments.* DON activities are encouraged to conduct annual self-assessments of their PA program. This serves to identify strengths and weaknesses and to determine training needs of personnel who work with privacy records/information. A PA self-assessment evaluation form is provided at *http://www.privacy.navy.mil* (Administrative Tools) for use in measuring compliance with the PA.

(b) *Inspections.* During internal inspections, DON inspectors shall be alert for compliance with this instruction and for managerial, administrative, and operational problems associated with the implementation of the DON's PA program.

(1) DON inspectors shall document their findings in official reports furnished to the responsible DON officials. These reports, when appropriate, shall reflect overall assets of the activity's PA program inspected, or portion thereof, identify deficiencies, irregularities, and significant problems. Also document remedial actions taken to correct problems identified.

(2) Inspection reports and follow-up reports shall be maintained in accordance with established records disposition standards (see SECNAVINST 5210.8D). These reports shall be made available to PA program officials and to CNO (DNS–36)/CMC (ARSF) respectively.

(c) *Retention of reports.* Retain staff visit reports and follow-up reports per established records disposition standards contained in SECNAVINST 5210.8D. Retain self-assessment reports until the next self-assessment is completed. Make these reports available, upon request, to CNO (DNS–36) or CMC (ARSF).

§ 701.125 Computer matching program.

The DPO has responsibility for coordinating the approval of DOD's participation in Computer Matching agreements with other Federal, state, and local agencies.

(a) *Purpose.* To establish or verify initial or continuing eligibility for Federal benefit programs; verify compliance with the requirements, either statutory or regulatory, of such programs; or recoup payments or delinquent debts under such Federal benefit programs.

(b) *Record comparison.* The record comparison must be a computerized one between two Federal Agencies or one Federal Agency and a state agency. Manual comparisons are not covered.

(c) *Types of programs not covered.* (1) State programs and programs using records about subjects who are not ''individuals'' as defined in § 701.101(e) are not covered.

(2) Statistical matches whose purpose is solely to produce aggregate data stripped of personal identifiers.

(3) Statistical matches whose purpose is in support of any research or statistical project.

(4) Law enforcement investigative matches whose purpose is to gather evidence against a named person or persons in an existing investigation.

(5) Tax administration matches.

(6) Routine administrative matches using Federal personnel records.

(7) Internal matches using only records from DOD systems of records.

(8) Background investigation and foreign counterintelligence matches done in the course of performing a background check for security clearances of Federal personnel or Federal contractor personnel or foreign counterintelligence.

(d) *Categories of individuals covered.* Applicants for Federal benefit programs (*i.e.*, individuals initially applying for benefits); program beneficiaries (*i.e.*, individuals currently receiving or formerly receiving benefits); and providers of services to support such programs (*i.e.*, those deriving income from them such as health care providers).

(e) *Features of a computer matching program.* A computer matching program entails not only the actual computerized comparison, but also preparing and executing a written agreement between the participants, securing approval of the Defense Data Integrity Board, publishing a matching notice in the **Federal Register** before the match begins, ensuring that investigation and due process are completed, and taking ultimate action, if any.

(f) *Approval/denial of agreements.* The Executive Secretary, Defense Data Integrity Board, receives and processes for review all requests for computer matching agreements involving DOD activities. Members of the Defense Data Integrity Board are provided with a copy of the proposed computer matching agreement that details the costs associated with the match, length of agreement, and the number of computer matches expected, for their approval/ disapproval.

(g) *Questions.* CNO (DNS–36) represents the DON on the Defense Data Integrity Board. Questions from DON personnel should be directed to CNO (DNS–36).

Subpart G—Privacy Act Exemptions

§ 701.126 Purpose.

Subparts F and G of this part contain rules promulgated by the Secretary of the Navy, pursuant to 5 U.S.C. 552a (j) and (k), and subpart F, § 701.113, to exempt certain systems of DON records from specified provisions of 5 U.S.C. 552a.

§ 701.127 Exemption for classified records.

All systems of records maintained by the DON shall be exempt from the requirements of the access provision of the Privacy Act (5 U.S.C. 552a(d)) under the (k)(1) exemption, to the extent that the system contains information properly classified under E.O. 12,958 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein that contain isolated items of properly classified information.

§ 701.128 Exemptions for specific Navy record systems.

(a) *System identifier and name:*

(1) *N01070–9, White House Support Program.*

(2) *Exemption:* (i) Information specifically authorized to be classified under E.O. 12,958, as implemented by DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(iii) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(iv) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(v) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), and (k)(5).

(4) *Reasons:* Exempted portions of this system contain information that has been properly classified under E.O. 12,958, and which is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system may also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information, and which was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record. Exempted portions of this system may also contain information collected and maintained in connection with providing protective services to the President and other individuals protected pursuant to 18 U.S.C. 3056. Exempted portions of this system may also contain investigative records compiled for law enforcement purposes, the disclosure of which could reveal the identity of sources who provide information under an express or implied promise of confidentiality, compromise investigative techniques and procedures, jeopardize the life or physical safety of law-enforcement personnel, or otherwise interfere with enforcement proceedings or adjudications.

(b) *System identifier and name:*

(1) *N01131–1, Officer Selection and Appointment System.*

(2) *Exemption:* (i) Information specifically authorized to be classified under E.O. 12,958, as implemented by DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(iv) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(v) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1), (k)(5), (k)(6), and (k)(7).

(4) *Reasons:* Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(c) *System identifier and name:*

(1) *N01133–2, Recruiting Enlisted Selection System.*

(2) *Exemption:* (i) Information specifically authorized to be classified under E.O. 12,958, as implemented by DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(iv) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(v) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1), (k)(5), (k)(6), and (k)(7).

(4) *Reasons:* Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(d) *System identifier and name:*

(1) *N01640–1, Individual Correctional Records.*

(2) *Exemption:* (i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

(3) *Authority:* 5 U.S.C. 552a(j)(2).

(4) *Reason:* (i) Granting individuals access to portions of these records pertaining to or consisting of, but not limited to, disciplinary reports, criminal investigations, and related statements of witnesses, and such other related matter in conjunction with the enforcement of criminal laws, could interfere with the orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used

by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of these records, and the reasons therefore, necessitate the exemption of this system of records from the requirement of the other cited provisions.

(ii) [Reserved]

(e) *System identifier and name:*

(1) *N01754–3, Navy Child Development Services Program.*

(2) *Exemption:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3) and (d).

(3) *Authority:* 5 U.S.C. 552a(k)(2).

(4) *Reasons:* (i) Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recrimination, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accountings, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

(ii) [Reserved]

(f) *System identifier and name:*

(1) *N03834–1, Special Intelligence Personnel Access File.*

(2) *Exemption:* (i) Information specifically authorized to be classified under E.O. 12,958, as implemented by DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1) and (k)(5).

(4) *Reasons:* (i) Exempted portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy.

(ii) Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information and was obtained by providing an express or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

(g) *System identifier and name:*

(1) *N04060–1, Navy and Marine Corps Exchange Sales and Security Files.*

(2) *Exemption:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) through (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2).

(4) *Reasons:* Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and could also reveal and render ineffectual investigative techniques, sources, and methods used by these activities.

(h) [Reserved]

(i) *System identifier and name:*

(1) *N05041–1, Inspector General (IG) Records.*

(2) *Exemption:* (i) Information specifically authorized to be classified under E.O. 12,958, as implemented by DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(iii) Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1) and (k)(2).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would permit individuals to obtain valuable information concerning the nature of the investigation and would present a serious impediment to the orderly conduct of any investigative activities. Such accounting could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(ii) From subsections (d) and (f) because access to the records would inform individuals of the existence and nature of the investigation; provide information that might result in the concealment, destruction, or fabrication of evidence; possibly jeopardize the safety and well-being of informants, witnesses and their families; likely reveal and render ineffectual investigatory techniques and methods and sources of information; and possibly result in the invasion of the personal privacy of third parties. Access could result in the release of properly classified information which could compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with the ongoing investigation and impose an impossible administrative burden by requiring investigations to be continually reinvestigated.

(iii) From subsection (e)(1) because in the course of the investigation it is not always possible, at least in the early stages of the inquiry, to determine relevance and or necessity as such determinations may only occur after the information has been evaluated. Information may be obtained concerning

the actual or potential violation of laws or regulations other than those relating to the ongoing investigation. Such information should be retained as it can aid in establishing patterns of improper activity and can provide valuable leads in the conduct of other investigations.

(iv) From subsection (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsections (k)(1) and (k)(2) of the Privacy Act of 1974.

(v) From subsection (e)(4)(I) because it is necessary to protect the confidentiality of sources and to protect the privacy and physical safety of witnesses. Although the system is exempt from this requirement, the DON has published a notice in broad, generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires.

(j) *System identifier and name:*

(1) *N05300–3, Faculty Professional Files.*

(2) *Exemptions:* (i) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) and (H), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(5).

(4) *Reasons:* Exempted portions of this system contain information considered relevant and necessary to make a release determination as to qualifications, eligibility, or suitability for Federal employment, and was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(k) *System identifier and name:*

(1) *N05354–1, Equal Opportunity Information Management System.*

(2) *Exemptions:* (i) Information specifically authorized to be classified under E.O. 12,958, as implemented by DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) through (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1) and (k)(5).

(4) *Reasons:* Granting access to information in this system of records could result in the disclosure of classified material, or reveal the identity of a source who furnished information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that will not disclose the identity of a confidential source.

(l) *System identifier and name:*

(1) *N05520–1, Personnel Security Eligibility Information System.*

(2) *Exemptions:* (i) Information specifically authorized to be classified under E.O. 12,958, as implemented by DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(iii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iv) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(v) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) and (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), and (k)(7).

(4) *Reasons:* Granting individuals access to information collected and maintained in this system of records could interfere with orderly investigations; result in the disclosure of classified material; jeopardize the safety of informants, witnesses, and their families; disclose investigative techniques; and result in the invasion of privacy of individuals only incidentally related to an investigation. Material will be screened to permit access to unclassified information that will not disclose the identity of sources who provide the information to the Government under an express or implied promise of confidentiality.

(m) *System identifier and name:*

(1) *N05520–4, NCIS Investigative Files System.*

(2) *Exemptions:* (i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principal function any activity pertaining to the enforcement of criminal laws.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

(3) *Authority:* 5 U.S.C. 552a(j)(2).

(4) *Reasons:* (i) Granting individuals access to information collected and maintained by this activity relating to the enforcement of criminal laws could interfere with the orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of these records, and the reasons therefore, necessitate the exemption of this system of records from the requirement of the other cited provisions.

(ii) [Reserved]

(5) *Exemptions:* (i) Information specifically authorized to be classified under E.O. 12,958, as implemented by DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(iii) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be

disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(iv) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(v) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(vi) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(6) *Authority:* 5 U.S.C. 552a(k)(1), (k)(3), (k)(4), (k)(5) and (k)(6).

(7) *Reasons:* (i) The release of disclosure accountings would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation, and the information contained, or the identity of witnesses or informants, would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record.

(ii) Access to the records contained in this system would inform the subject of the existence of material compiled for law enforcement purposes, the premature release of which could prevent the successful completion of investigation, and lead to the improper influencing of witnesses, the destruction of records, or the fabrication of testimony. Exempt portions of this system also contain information that has been properly classified under E.O. 12,958, and that is required to be kept secret in the interest of national defense or foreign policy.

(iii) Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified information, and was obtained by providing an express or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

(iv) The notice of this system of records published in the **Federal Register** sets forth the basic statutory or related authority for maintenance of the system.

(v) The categories of sources of records in this system have been published in the **Federal Register** in broad generic terms. The identity of specific sources, however, must be withheld in order to protect the confidentiality of the source, of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(vi) This system of records is exempted from procedures for notice to an individual as to the existence of records pertaining to him/her dealing with an actual or potential civil or regulatory investigation, because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation, pending or future. Mere notice of the fact of an investigation could inform the subject or others that their activities are under, or may become the subject of, an investigation. This could enable the subjects to avoid detection, to influence witnesses improperly, to destroy records, or to fabricate testimony.

(vii) Exempt portions of this system containing screening board reports.

(viii) Screening board reports set forth the results of oral examination of applicants for a position as a special agent with the Naval Investigation Service Command. Disclosure of these records would reveal the areas pursued in the course of the examination and thus adversely affect the result of the selection process. Equally important, the records contain the candid views of the members composing the board. Release of the records could affect the willingness of the members to provide candid opinions and thus diminish the effectiveness of a program which is essential to maintaining the high standards of the Special Agent Corps., i.e., those records constituting examination material used solely to determine individual qualifications for appointment in the Federal Service.

(n) *System identifier and name:*

(1) *N05520–5, Personnel Security Program Management Records System.*

(2) *Exemptions:* (i) Information specifically authorized to be classified under E.O. 12,958, as implemented by DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (d)(1–5).

(3) *Authority:* 5 U.S.C. 552a(k)(1) and (k)(5).

(4) *Reasons:* (i) Granting individuals access to information collected and maintained in this system of records could result in the disclosure of classified material; and jeopardize the safety of informants, and their families. Further, the integrity of the system must be ensured so that complete and accurate records of all adjudications are maintained. Amendment could cause alteration of the record of adjudication.

(ii) [Reserved]

(o) *System identifier and name:*

(1) *N05580–1, Security Incident System.*

(2) *Exemption:* (i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principal function any activity pertaining to the enforcement of criminal laws.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), and (e)(4)(G) through (I), (e)(5), (e)(8), (f) and (g).

(3) *Authority:* 5 U.S.C. 552a(j)(2).

(4) *Reasons:* (i) Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and of law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to his or her records, and the reason therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.

(ii) [Reserved]

(p) [Reserved]

(q) *System identifier and name:*

(1) *N05800–1, Legal Office Litigation/Correspondence Files.*

Exemptions: (i) Information specifically authorized to be classified under E.O. 12,958, as implemented by

DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(iii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iv) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(v) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(vi) Portions of this system of records are exempt from the following subsections of the Privacy Act: (d), (e)(1), and (f)(2), (3), and (4).

(3) *Authority:* 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), (k)(6), and (k)(7).

(4) *Reasons:* (i) Subsection (d) because granting individuals access to information relating to the preparation and conduct of litigation would impair the development and implementation of legal strategy. Accordingly, such records are exempt under the attorney-client privilege. Disclosure might also compromise on-going investigations and reveal confidential informants. Additionally, granting access to the record subject would seriously impair the Navy's ability to negotiate settlements or pursue other civil remedies. Amendment is inappropriate because the litigation files contain official records including transcripts, court orders, investigatory materials, evidentiary materials such as exhibits, decisional memorandum and other case-related papers. Administrative due process could not be achieved by the ''ex parte'' correction of such materials.

(ii) Subsection (e)(1) because it is not possible in all instances to determine relevancy or necessity of specific information in the early stages of case development. What appeared relevant and necessary when collected, ultimately may be deemed unnecessary upon assessment in the context of devising legal strategy. Information collected during civil litigation investigations which is not used during subject case is often retained to provide leads in other cases or to establish patterns of activity.

(iii) Subsections (f)(2), (3), and (4) because this record system is exempt from the individual access provisions of subsection (d).

(r) *System identifier and name:*

(1) *N01000–5, Naval Clemency and Parole Board Files.*

(2) *Exemption:* (i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principal function any activity pertaining to the enforcement of criminal laws.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(4), (d), (e)(4)(G), and (f).

(3) *Authority:* 5 U.S.C. 552a(j)(2).

(4) *Reasons:* (i) Granting individuals access to records maintained by this Board could interfere with internal processes by which Board personnel are able to formulate decisions and policies with regard to clemency and parole in cases involving naval prisoners and other persons under the jurisdiction of the Board. Material will be screened to permit access to all material except such records or documents as reflecting items of opinion, conclusion, or recommendation expressed by individual board members or by the board as a whole.

(ii) The exemption of the individual's right to access to portions of these records, and the reasons therefore, necessitate the partial exemption of this system of records from the requirements of the other cited provisions.

(s) *System identifier and name:*

(1) *N01752–1, Family Advocacy Program System.*

(2) *Exemptions:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3) and (d).

(3) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(4) *Reasons:* (i) Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recriminations, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accounting, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders or alleged offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

(ii) Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment and Federal contracts, and that was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(t) *System identifier and name:*

(1) *N12930–1, Human Resources Group Personnel Records.*

(2) *Exemptions:* (i) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) Testing or examination material used solely to determine individual qualifications for appointment or

promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(iii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (d), (e)(4)(G) and (H), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(5) and (k)(6).

(4) *Reasons:* (i) Exempted portions of this system contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment, and was obtained by providing express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(ii) Exempted portions of this system also contain test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal Service, the disclosure of which would comprise the objectivity or fairness of the testing or examination process.

(u) *System identifier and name:*

(1) *N05813–4, Trial/Government Counsel Files.*

(2) *Exemption.* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Portions of this system of records that may be exempt pursuant to subsection 5 U.S.C. 552a(j)(2) are (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(5), (e)(4)(G), (H), and (I), (e)(8), (f), and (g).

(3) *Exemption.* Information specifically authorized to be classified under E.O. 12,958, as implemented by DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(4) *Exemption.* Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source. Portions of this system of records that may be exempt pursuant to subsections 5 U.S.C. 552a(k)(1) and (k)(2) are (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(4) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2).

(5) *Reasons:* (i) From subsection (c)(3) because release of accounting of disclosure could place the subject of an investigation on notice that he/she is under investigation and provide him/her with significant information concerning the nature of the investigation, resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (c)(4), (d), (e)(4)(G), and (e)(4)(H) because granting individuals access to information collected and maintained for purposes relating to the enforcement of laws could interfere with proper investigations and orderly administration of justice. Granting individuals access to information relating to the preparation and conduct of criminal prosecution would impair the development and implementation of legal strategy. Amendment is inappropriate because the trial/Government counsel files contain official records including transcripts, court orders, and investigatory materials such as exhibits, decisional memorandum and other case-related papers. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffective investigation techniques, sources, and methods used by law enforcement personnel, and could result in the invasion of privacy of individuals only incidentally related to an investigation.

(iii) From subsection (e)(1) because it is not always possible in all instances to determine relevancy or necessity of specific information in the early stages of case development. Information collected during criminal investigations and prosecutions and not used during the subject case is often retained to provide leads in other cases.

(iv) From subsection (e)(2) because in criminal or other law enforcement investigations, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of an investigation, presenting a serious impediment to law enforcement investigations.

(v) From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(vi) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(vii) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(viii) From subsection (e)(8) because compliance would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures, or evidence.

(ix) From subsection (f) and (g) because this record system is exempt from the individual access provisions of subsection (d).

(x) Consistent with the legislative purpose of the Privacy Act of 1974, the DON will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the DON's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

(v) *System identifier and name:*

(1) *NM05211–1, Privacy Act Request Files and Tracking System.*

(2) *Exemption:* During the processing of a Privacy Act request (which may include access requests, amendment requests, and requests for review for initial denials of such requests), exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system, the DON hereby claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(3) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(4) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(w) *System identifier and name:*

(1) *NM05720–1, FOIA Request/Appeal Files and Tracking System.*

(2) *Exemption:* During the processing of a Freedom of Information Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the DON hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(3) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(4) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

§ 701.129 Exemptions for specific Marine Corps record systems.

(a) *System identifier and name:*

(1) *MMN00018, Base Security Incident Report System.*

(2) *Exemptions:* (i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2) and (3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

(3) *Authority:* 5 U.S.C. 552a(j)(2).

(4) *Reasons:* (i) Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and might enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to his or her records, and the reasons therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.

(ii) [Reserved]

(b) *System identifier and name:*

(1) *MIN00001, Personnel and Security Eligibility and Access Information System.*

(2) *Exemption:*

(i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(iii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iv) Portions of this system of records are exempt for the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2), (k)(3), and (k)(5), as applicable.

(4) *Reasons:* (i) Exempt portions of this system contain information that has been properly classified under E.O. 12,958, and that is required to be kept secret in the interest of national defense or foreign policy.

(ii) Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified, compartmented, or otherwise sensitive information, and was obtained by providing an expressed or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

(iii) Exempt portions of this system further contain information that identifies sources whose confidentiality must be protected to ensure that the privacy and physical safety of these witnesses and informants are protected.

Dated: April 20, 2006.

Eric McDonald,

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

[FR Doc. 06–3924 Filed 5–10–06; 8:45 am]

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Federal Register

Thursday,
May 11, 2006

Part III

Department of the Treasury

31 CFR Part 50

Terrorism Risk Insurance Program; TRIA Extension Act Implementation; Interim Final Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AB66

Terrorism Risk Insurance Program; TRIA Extension Act Implementation

AGENCY: Departmental Offices, Treasury.
ACTION: Interim final rule.

SUMMARY: The Department of the Treasury (Treasury) is issuing this interim final rule as part of its implementation of amendments made to Title I of the Terrorism Risk Insurance Act of 2002 (TRIA, or Act) by the Terrorism Risk Insurance Extension Act of 2005 (Extension Act). The Act established a temporary Terrorism Risk Insurance Program (Program) that was scheduled to expire on December 31, 2005, under which the Federal Government shared the risk of insured losses from certified acts of terrorism with commercial property and casualty insurers. The Extension Act extends the Program through December 31, 2007, and makes other changes which are implemented by this rule. In particular, the rule addresses changes to the types of commercial property and casualty insurance covered by the Act, the requirements to satisfy the Act's mandatory availability (''make available'') provision and the operation of the new ''Program Trigger'' provision in section 103(e)(1)(B) of the Act. Published elsewhere in this issue of the **Federal Register** is a notice of proposed rulemaking that proposes to adopt as a final rule the provisions of this interim final rule.

DATES: This interim final rule is effective May 11, 2006. Comments may be submitted on or before June 12, 2006.

ADDRESSES: Submit comments by e-mail to *triacomments@do.treas.gov* or by mail (if hard copy, preferably an original and two copies) to: Terrorism Risk Insurance Program, Public Comment Record, Suite 2100, Department of the Treasury, 1425 New York Avenue, NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted electronically. All comments should be captioned with ''TRIA Extension Act Proposed Rule Comments''. Please include your name, affiliation, address, e-mail address, and telephone number in your comment. Comments may also be submitted through the Federal eRulemaking Portal: *http://www.regulations.gov.* Comments will be available for public inspection by appointment only at the TRIP Office. To make appointments, call (202) 622–6770 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Howard Leikin, Deputy Director, or David Brummond, Legal Counsel, Terrorism Risk Insurance Program (202) 622–6770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

A. Terrorism Risk Insurance Act of 2002

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297, 116 Stat. 2322). The Act was effective immediately. The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections.

Title I of the Act establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism which, as defined by the Act, is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General. The Act authorizes Treasury to administer and implement the Terrorism Risk Insurance Program (the Program), including the issuance of regulations and procedures.

Each entity that meets the Act's definition of insurer (well over 2000 firms) must participate in the Program. The amount of federal payment for an insured loss resulting from an act of terrorism is determined by insurance company deductibles and excess loss sharing with the Federal Government as specified in the Act and Treasury's implementing regulations. An insurer's deductible increases each year of the Program, thereby reducing the Federal Government's share of compensation for insured losses each year until the Program expires. An insurer's deductible is calculated based on the value of direct earned premiums collected over certain prescribed calendar periods. Once an insurer has met its individual deductible, the federal payments cover a percentage of the insured losses above the deductible, subject to an industry aggregate limit of $100 billion.

The Act gives Treasury authority to recoup federal payments made under the Program through policyholder surcharges, up to a maximum annual limit. The Act reduces the Federal share of compensation for insured losses that have been covered under any other federal program. The Act also contains provisions designed to manage litigation arising from or relating to a certified act of terrorism. Section 107 of the Act creates an exclusive federal cause of action, provides for claims consolidation in Federal court, and contains a prohibition on federal payments for punitive damages under the Program. The Act provides the United States with the right of subrogation with respect to any payment or claim paid by the United States under the Program.

B. Terrorism Risk Insurance Extension Act of 2005

The Program was originally set to expire on December 31, 2005. On December 22, 2005, the President signed into law the Terrorism Risk Insurance Extension Act of 2005 (Pub. L. 109–144, 119 Stat. 2660), which extends the Program through December 31, 2007. In doing so, the Extension Act adds Program Year 4 (January 1–December 31, 2006) and Program Year 5 (January 1–December 31, 2007) to the Program. In addition, the Extension Act made other significant changes to TRIA that include:

- A revised definition of insurer deductible that adds new Program Years 4 and 5 to the definition. The insurer deductible is set as the value of an insurer's direct earned premium for commercial property and casualty insurance (as now defined in the Act) over the immediately preceding calendar year multiplied by 17.5 percent for Program Year 4 and 20 percent for Program Year 5.
- A revised definition of property and casualty insurance that now excludes commercial automobile insurance; burglary and theft insurance; surety insurance; professional liability insurance; and farmowners multiple peril insurance. Though the definition excludes professional liability insurance, it explicitly retains directors and officers liability insurance.
- Creation of a new Program Trigger for any certified act of terrorism occurring after March 31, 2006, that prohibits payment of Federal compensation by Treasury unless the aggregate industry insured losses resulting from that act of terrorism exceed $50 million for Program Year 4 and $100 million for Program Year 5.
- A change to the Federal share of compensation for insured losses. Subject to the Program Trigger, the Federal share is 90 percent of that portion of the amount of insured losses that exceeds the applicable insurer deductible in Program Year 4 and

decreases to 85 percent of such amount in Program Year 5.

• Revisions to the recoupment provisions. For purposes of recouping the Federal share of compensation under the Act, the insurance marketplace aggregate retention amount for the two additional years of the Program is increased from the level in Program Year 3. For Program Year 4 the insurance marketplace aggregate retention amount is established as the lesser of $25 billion and the aggregate amount, for all insurers, of insured losses during Program Year 4. The insurance marketplace aggregate retention amount for Program Year 5 is the lesser of $27.5 billion and the aggregate amount, for all insurers, of insured losses during Program Year 5.

• A statutory codification of Treasury's litigation management regulatory requirements in section 50.82 of title 31 of the Code of Federal Regulations (as in effect on July 28, 2004), which requires advance approval by Treasury of proposed settlements of certain causes of action involving insured losses under the Program.

C. Previously Issued Interim Guidance

To assist insurers, policyholders, and other interested parties in complying with immediately applicable requirements of the Extension Act, on December 29, 2005 Treasury issued and posted interim guidance on its Web site. A Notice containing that interim guidance (Interim Guidance IV) was published in the **Federal Register** on January 5, 2006 (71 FR 648). The notice stated that the guidance could be relied upon by insurers in complying with new statutory requirements prior to the issuance of regulations, but was not the exclusive means of compliance. The interim guidance is superseded by this interim final rule.

II. Analysis of the Interim Final Rule

This interim final rule incorporates certain changes to 31 CFR part 50 required by the amendments to TRIA in the Extension Act, which extended the Terrorism Risk Insurance Program by two years, to December 31, 2007. The changes in the rules include new insurer deductible amounts for each of those Program Years, the extension of mandatory availability requirements, the deletion of certain types of insurance from the definition of property and casualty insurance, and a continued safe harbor for the use of model disclosure forms. The interim final rule also incorporates and clarifies statutory changes to the determination of the Federal share of compensation, taking into account the new Program Trigger. The interim final rule generally incorporates interim guidance previously issued by Treasury, except as described in this preamble. Treasury has consulted with the National Association of Insurance Commissioners in developing this rule.

Although Treasury is issuing these requirements as an interim final rule, we are soliciting comments on all aspects of the interim final rule from all interested parties. Published elsewhere in a separate part of this issue of the **Federal Register** is a notice of proposed rulemaking proposing to adopt the provisions of this interim final rule as a final rule.

A. Definitions (§ 50.5)

The interim final rule incorporates revised definitions for insurer deductible, Program Years, and property and casualty insurance. The rule also adds definitions for professional liability insurance and Program Trigger event.

The revisions to the definitions for insurer deductible and Program Years are straightforward changes based on the Extension Act. They implement that Act's addition of Program Years 4 (calendar year 2006) and 5 (calendar year 2007) and the percentages to be applied to an insurer's direct earned premium for the immediately preceding calendar year in computing insurer deductibles for Program Year 4 (17.5 percent) and Program Year 5 (20 percent).

Section 102(12) of TRIA was also amended to exclude additional types of insurance from the definition of property and casualty insurance under the Program. The Act now excludes from the definition commercial automobile insurance, burglary and theft insurance, surety insurance, professional liability insurance, and farmowners multiple peril insurance. To the extent the newly excluded types of insurance represent specific lines of business on the NAIC Annual Statement, Treasury is continuing to utilize NAIC line of business definitions in implementing the Act. The newly excluded types of insurance which may correspond to lines of business on the NAIC Annual Statement are: Line 3—Farmowners Multiple Peril; Line 19.3—Commercial Auto No-Fault (personal injury protection); Line 19.4—Other Commercial Auto Liability; Line 21.2—Commercial Auto Physical Damage; Line 26—Burglary and Theft; and Line 24—Surety. In addition, the interim final rule makes clear that these types of insurance are excluded from the definition of property casualty insurance, regardless of how their premiums may be reported.

The only type of insurance that is newly excluded from the definition of property and casualty insurance in the Act, but is not a specific line of business on the NAIC Annual Statement, is contained in new subsection 102(12)(xi) of TRIA—professional liability insurance. In this interim final rule, Treasury is providing the following definition of ''professional liability insurance'':

> *Professional liability insurance* means insurance coverage for liability arising out of the performance of professional or business duties related to a specific occupation, with coverage being tailored to the needs of the specific occupation. Examples include abstracters, accountants, insurance adjusters, architects, engineers, insurance agents and brokers, lawyers, real estate agents, stockbrokers and veterinarians. For purposes of this definition, professional liability insurance does not include directors and officers liability insurance.

Insurers are to use this definition in identifying policies excluded from the Program, as well as for determining which policies have premiums that should be subtracted from Line 17—Other Liability on the NAIC Annual Statement when computing direct earned premium for Program purposes.

This definition is derived from the definition of ''Professional Errors and Omissions Liability'' found in the Uniform Property & Casualty Coding Matrix currently utilized by the System for Electronic Rate and Form Filing (SERFF) sponsored by the National Association of Insurance Commissioners (NAIC).[1] However, this definition is not meant to limit insurers to the filing code (17.0019) specified under SERFF for ''Professional Errors and Omissions Liability''. Certainly, policies and coverages that employ the SERFF filing code will meet the interim final rule definition of professional liability insurance. Treasury acknowledges that many insurers and insurance support organizations do not utilize the SERFF mechanism for all their form filings. Thus, the definition in the interim final rule is intended to have a broader application than the SERFF filing process and should not be viewed as limited to one particular SERFF filing code.

Directors and officers liability insurance, which is sometimes considered a type of professional liability insurance, is not included in the definition of professional liability insurance. Section 102(12)(A) of the Act

[1] The Matrix can be found on the NAIC Web site at *http://www.naic.org/industry_home.htm.*

now explicitly includes directors and officers liability insurance in the definition of property and casualty insurance. This change does not substantively modify the previous definition of property and casualty insurance under the Act, but is a statutory clarification that directors and officers liability insurance is distinct from professional liability insurance. Premium for directors and officers liability insurance may be already included in Line 17—Other Liability on the NAIC Annual Statement, one of the commercial lines of business listed in Treasury's current regulations defining property and casualty insurance (31 CFR 50.5(l)), if not otherwise excluded. Treasury recommends that insurers consult the definition of ''Directors & Officers Liability'' found in the Uniform Property & Casualty Coding Matrix now being utilized by SERFF if further guidance is needed on what constitutes ''Directors & Officers Liability'' insurance.

The Extension Act revision to TRIA section 102(12) specifically excludes ''farm owners multiple peril insurance'', a particular type of insurance which is also a specific line of business on the NAIC Annual Statement, from the definition of property and casualty insurance. Insurers have asked whether monoline farm insurance coverages are similarly excluded. There is no clear guidance in the legislative history of the Extension Act on this issue. Based on the plain meaning of the statute, Treasury believes it is appropriate to interpret this exclusion as applicable only to multiple peril coverages insuring farm risks. Single peril or monoline coverages insuring farm risks would continue to meet the Act's definition of property and casualty insurance. Treasury notes that the premiums for such policies are usually reported, or otherwise allocated, to one of the commercial lines of insurance on the NAIC Annual Statement (or an equivalent reporting system) listed in the definition of property and casualty insurance in Treasury's regulations.

Treasury is aware of some concerns with this result on the part of some smaller insurance entities, such as farm and county mutuals. With this in mind, Treasury requests that any comments on this issue focus on the practical implications of this issue and articulate a basis for any assertion that monoline coverages are excluded from the Program as part of the farmowners multiple peril exclusion.

The Extension Act adds a new section 103(e)(1)(B) to TRIA entitled ''Program Trigger.'' This new provision directs the Secretary not to compensate insurers under the Program unless the aggregate industry insured losses from a certified act of terrorism exceed certain insured loss or ''trigger'' amounts.[2] To implement this provision, the interim final rule adds a new definition for ''Program Trigger event''. Such an event is a certified act of terrorism that occurs after March 31, 2006, for which the aggregate industry insured losses resulting from such act exceed $50 million if occurring in 2006 or $100 million if occurring in 2007.''

The new Program Trigger provision applies only to acts of terrorism that occur after March 31, 2006. Note that the application of the Program Trigger is based on the date of occurrence and not the date of certification of an act of terrorism. For example, the Program Trigger provision shall not apply to an act that occurs prior to March 31, 2006, but which is certified after March 31. After March 31, unless an act of terrorism is a Program Trigger event, insured losses from that act of terrorism will not be considered in any determination of or calculation leading to any Federal share of compensation under the Act. For a further discussion of the Program Trigger, see ''E. Federal Share of Compensation'' below.

B. Interim Guidance Safe Harbors (§ 50.7)

Section 50.7 of the current regulations provides that ''[a]n insurer will be deemed to be in compliance with the requirements of the Act to the extent the insurer reasonably relied on Interim Guidance prior to the effective date of applicable regulations.'' The interim final rule adds ''Interim Guidance IV issued by Treasury on December 29, 2005, and published at 71 FR 648 (January 5, 2006)'' to the list of applicable Interim Guidance.

C. Disclosure (§§ 50.12 and 50.17)

The interim final rule incorporates guidance on compliance with disclosure requirements and revised safe harbor language with regard to the use of NAIC model disclosure forms.

The Extension Act retains, as a condition for federal payments under the Act, the existing requirements contained in section 103(b) to provide clear and conspicuous disclosure to policyholders of the premium charged for insured losses covered by the Program and of the Federal share of compensation for insured losses under the Program. These disclosures must be made ''at the time of offer, purchase, and renewal of the policy''. Treasury is aware of certain operational difficulties some insurers faced with regard to policies processed in the latter part of Program Year 3 (2005) for issuance or renewal effective in 2006. In some cases policies were issued or renewed in 2006 in a form that already included coverage for terrorism risks regardless whether TRIA was extended. Because TRIA would have ended on December 31, 2005, disclosures were not provided with these policies.

The Extension Act made no change to the requirement that disclosures are required as a condition for payment of the Federal share of compensation for insured losses. However, given the late date of enactment of the Extension Act, the interim final rule provides in section 50.12(e) that ''[i]f an insurer made available coverage for insured losses in a new policy or policy renewal in Program Year 3 for coverage becoming effective in Program Year 4, but did not provide a disclosure at the time of offer, purchase or renewal, then the insurer must be able to demonstrate to Treasury's satisfaction that it has provided a disclosure as soon as possible following January 1, 2006.'' Treasury anticipates that these insurers will already have provided the disclosures by the time this rule is published.

For an insurer to demonstrate to Treasury's satisfaction that it has provided disclosures as soon as possible following January 1, 2006, Treasury will expect an insurer to have provided disclosures by 30 days after publication of this interim final rule in the **Federal Register**, barring unforeseen or unusual circumstances. If not completed by that time, an insurer will be expected, when submitting a claim for the Federal share of compensation, to clearly demonstrate why such disclosures could not be made by that date and why the insurer should be deemed to be in compliance with the Act's disclosure requirement.

Pursuant to 31 CFR 50.17, insurers that have used NAIC Model Disclosure Forms that were in existence on April 18, 2003, were deemed to satisfy the disclosure requirements of section 103(b)(2) of the Act. Although the Extension Act made no change to the TRIA disclosure requirements, revisions were made to the Act that required rewording of the NAIC Model Disclosure Forms. The NAIC has since issued revised Model Disclosure Forms, dated January 26, 2006, which if used by insurers, will be deemed to satisfy

[2] Section 103(e)(1)(B) states: ''In the case of a certified act of terrorism occurring after March 31, 2006, no compensation shall be paid by the Secretary under subsection (a), unless the aggregate industry insured losses resulting from such certified act of terrorism exceed—(i) $50,000,000, with respect to such insured losses occurring in Program Year 4; or (ii) $100,000,000, with respect to such insured losses occurring in Program Year 5.''

disclosure requirements of the Act and Treasury regulations. The interim final rule continues the safe harbor approach for use of the most current NAIC Model Disclosure forms deemed by Treasury to meet Program requirements. Insurers may also continue to use other forms to comply with the disclosure requirements.

D. Make Available (§§ 50.20 and 50.21)

For Program Year 4 (Calendar 2006) and Program Year 5 (Calendar 2007) insurers are required to continue to ''make available'' coverage for insured losses as required by TRIA and Treasury regulations. Amendments to the ''make available'' requirement in section 103(c) of the Act are simply conforming amendments that continue the requirements through Program Years 4 and 5. Thus, insurers issuing or renewing commercial property and casualty insurance policies in Program Years 4 and 5 must continue to offer coverage for insured losses resulting from an act of terrorism, as required by section 103(c) of the Act and 31 CFR 50.20 to 50.24 if they wish to have their insured loss claims eligible for the Federal share of compensation in the extended Program Years.

In its Interim Guidance IV issued on December 29, 2005, Treasury addressed ''make available'' requirements with regard to the transition from Program Year 3, originally the last year of the Program, to the extended Program Years 4 and 5. In that issuance, Treasury noted that the Extension Act made no changes to the ''make available'' requirement for insurers. Treasury provided guidance on how insurers could comply with Program requirements given operational difficulties arising from the Extension Act passage late in the year.

Treasury clarified that no additional ''make available'' offer is required if terrorism coverage for the duration of the policy term was offered for policies issued or renewed in 2005. No additional action is required because the ''make available'' provision of section 103(c) of the Act and 31 CFR 50.20 to 50.24 has been satisfied for coverage periods extending into Program Year 4. For example, policies with ''conditional'' terrorism coverage exclusions that do not arise or become effective on or after January 1 are policies in which the terrorism coverage portion continues to cover insured losses within the meaning of the Act. In such situations, no additional action is required for insurers to remain in compliance with the Act's ''make available'' provision until the time of policy renewal for insurers.

Treasury also provided guidance as to how an insurer could comply with ''make available'' requirements under three scenarios where:

(1) A policy did not provide terrorism coverage after December 31, 2005, but the policyholder had rejected an offer of terrorism coverage for the portion of the policy term up to December 31,

(2) A policy's terrorism coverage expired on December 31, 2005, but the remainder of the policy continued in force in 2006, and

(3) A policy renewal or application was processed in 2005 for coverage becoming effective in 2006 and the insurer did not ''make available'' terrorism coverage for Program Year 4 as contemplated by the Extension Act.

In the case of scenario (1) above, Treasury advised that an insurer was not required to make another offer of coverage for the remainder of the policy term. In the other two scenarios, Treasury advised insurers that TRIA as extended requires them to make offers of terrorism coverage for the policy terms continuing or beginning in Program Year 4 (2006). However, Treasury recognized the late date of passage of the Extension Act and the administrative difficulties this posed for some insurers who otherwise had complied with the ''make available'' provision in 2005. Treasury said it expected all insurers to make a good faith effort to provide policyholders whose terrorism coverage expired as of January 1 with a new offer of terrorism coverage along with the appropriate disclosures by January 1, 2006, or as quickly as possible following that date. In this regard, Treasury stated it considered January 31, 2006, to be the latest reasonable date for offers of coverage to midterm policyholders, barring unforeseen or unusual circumstances. If the January 31 date was not met by an insurer, Treasury indicated it would expect the insurer to explain any delay as well as its good faith efforts when submitting a claim for the Federal share of compensation under the Program. In its discretion, Treasury would determine whether good faith efforts to comply had been made.

The interim final rule generally incorporates the foregoing guidance into the TRIA ''make available'' provisions. Section 50.21(b) has been added to address the special Program Year 4 requirements for scenarios (1) and (2) above. For scenarios (2) and (3), where an insurer must make an offer of coverage, section 50.21(d) (formerly 50.21(c)) has been amended to provide that the insurer must be able to demonstrate to Treasury's satisfaction that it has provided an offer of coverage for insured losses by January 1, 2006, or as soon as possible following that date. In demonstrating to Treasury's satisfaction that it has provided an offer of coverage for insured losses as soon as possible after January 1, 2006, Treasury considers January 31, 2006, to be the latest reasonable date for offers of coverage, barring unforeseen or unusual circumstances. If not provided by January 31, 2006, Treasury would expect an insurer to demonstrate why the offer could not be made by that date when submitting a claim for Federal compensation under the Program.

The interim final rule incorporates technical amendments to section 50.20 that extend the ''make available'' requirements into Program Years 4 and 5. Section 50.20(c) also provides that ''property and casualty insurance coverage for insured losses does not have to be made available beyond December 31, 2007 (the last day of Program Year 5), even if the policy period of insurance coverage for losses from events other than acts of terrorism extends beyond that date''.

As a result of the Extension Act's deletion of certain types of insurance from the definition of property and casualty insurance, some uncertainty has arisen regarding the ''make available'' and disclosure requirements for excess or umbrella liability policies. As a general rule, excess or umbrella liability policies are property and casualty insurance within the meaning of TRIA. Section 102(12)(A) of the Act defines the term ''property and casualty insurance'' as meaning commercial lines of property and casualty insurance ''including excess,'' unless otherwise excluded from the definition under Section 102(12)(B). Premiums for commercial excess and umbrella insurance policies are normally reported on Line 17—Other Liability in the NAIC Annual Statement.[3] Nonetheless, excess or umbrella insurance is commercial property and casualty insurance included in the Program only to the extent it provides coverage above primary or underlying coverage that is a type of insurance included in the Program. Thus, if an excess or umbrella policy provides an upper layer of coverage for a type of insurance specifically excluded from the Program (*e.g.*, commercial auto, professional liability, medical malpractice), the excess or umbrella liability policy is also excluded.

Additional uncertainty has arisen with respect to excess or umbrella liability policies to the extent that the underlying policies they cover may

[3] *See* 68 FR 59725 (October 17, 2003).

include types of insurance that are both included and excluded from the Act's definition of property and casualty insurance. For example, an excess or umbrella liability policy might cover both an underlying professional liability policy (generally excluded from the Program) as well as underlying general liability policy (generally included in the Program). In such cases, the treatment of these hybrid excess and umbrella policies follows the same analysis as the treatment of hybrid policies generally under existing Treasury regulations.[4]

Thus, where the included commercial property and casualty coverage segment of an excess or umbrella liability policy is merely incidental to the remaining excluded coverage under the policy, an insurer may treat the entire policy as not providing property and casualty insurance within the meaning of TRIA and Treasury's regulations.[5] In such circumstances, the TRIA ''make available'' and disclosure requirements will not apply and no losses from the commercial coverage segment of the policy will be paid by Treasury.

E. Federal Share of Compensation (§ 50.50)

The interim final rule adds several provisions to section 50.50 to reflect the addition of the new Program Trigger provision to the Act. Under section 103(a) of TRIA, the Secretary is required to pay the Federal share of compensation for insured losses in accordance with section 103(e) of the Act. The Extension Act amended subsection (e) to provide, in part, that no compensation shall be paid by the Secretary under subsection (a) unless the aggregate industry insured losses from a certified act of terrorism occurring after March 31, 2006, exceed certain amounts. This provision was intended to ensure that there would be no Federal compensation unless the aggregate industry losses from an act of terrorism exceed these amounts.

The interim final rule incorporates a technical amendment to renumbered section 50.50(a) (formerly 50.50(d)) to provide that the Federal share of compensation in Program Year 5 shall be ''85 percent of that portion of the insurer's aggregate insured losses that exceed its insurer deductible during Program Year 5,'' (subject to any adjustments in section 50.51 and the cap of $100 billion as provided in section 103(e)(2) of the Act). A new provision has also been added to renumbered section 50.50(d) (formerly 50.50(a)) that reiterates, as a condition for Federal compensation for insured losses, a basic insurance principle that, ''[t]he insurer offered the coverage for insured losses and the offer was accepted by the insured prior to the occurrence of the loss''.

New section 50.50(b) incorporates the Program Trigger limitations on the amount of Federal compensation payable under the Act. To implement these limitations, section 50.50(g) states that Treasury will determine the amount of aggregate industry insured losses, and that if the aggregate industry insured losses exceed the applicable Program Trigger amounts, Treasury will publish notice in the **Federal Register** that the act of terrorism is a Program Trigger event. As noted in the previously issued Interim Guidance, Treasury also expects to provide notification through press releases and postings on the TRIP Web site.

Consistent with Treasury's Interim Guidance, section 50.50(c) clarifies that in the provisions dealing with claims procedures, Subpart F, insured losses or aggregate insured losses for acts of terrorism after March 31, 2006, will be limited to those insured losses resulting from Program Trigger events. This limitation on insured losses controls any determinations of, or calculations leading to, a Federal share of compensation under the Act including any adjustments of the Federal share, and applies to submissions of an insurer in conjunction with Initial Notices of Loss and Certifications of Loss and payments of the Federal share.

As Treasury indicated in its Interim Guidance, the Program Trigger provision also has a direct bearing on which insured losses count towards satisfaction of the insurer deductible. In Program Year 4, for example, for certified acts of terrorism occurring after March 31, only an insurer's insured losses resulting from Program Trigger events will count towards satisfaction of the insurer deductible for that year. Similarly, in Program Year 5, only an insurer's insured losses resulting from Program Trigger events in that year will count towards satisfaction of the insurer deductible.

F. Determination of Affiliations (§ 50.55)

Section 50.55 provides that for the purposes of claims procedures and the determination of the Federal share of compensation ''an insurer's affiliates for any Program Year shall be determined by the circumstances existing on the date of occurrence of the act of terrorism that is the first act of terrorism in a Program Year to be certified by the Secretary for that Program Year.'' The purpose of this regulation, when promulgated in 2005, was to clarify the point in time when insurer affiliations would be determined in order to facilitate the calculation of insurer deductibles and the payments of the Federal share of compensation for Program Years in which affiliations could change over time. Since this has meaning only if there is a potential Federal share of compensation, the interim final rule incorporates an amendment clarifying that if the first certified act of terrorism occurs after March 31, 2006, it must also be a Program Trigger event to be used for determining affiliations under the rule.

G. Federal Cause of Action; Approval of Settlements

The Extension Act added section 107(a)(6) to TRIA, which provides that procedures and requirements established by the Secretary under 31 CFR 50.82, as in effect on the date of issuance of that section in final form [July 28, 2004], shall apply to any Federal cause of action described in section 107(a)(1). This provision has been added to new section 50.85.

Section 50.82 of the regulations requires insurers to submit to Treasury for advance approval certain proposed settlements involving an insured loss, any part of the payment of which the insurer intends to submit as part of its claim for federal payment under the Program. Thus, Treasury would not expect insurers to submit any proposed settlement if the insured losses would not be eligible for payment, as would be the case if the losses resulted from a post-March 31, 2006 certified act that was not a Program Trigger event. However, if there is uncertainty whether or not a certified act will become a Program Trigger event, an insurer may wish to err on the side of caution and submit a proposed settlement for prior approval in order to preserve any subsequent eligibility for Federal compensation for insured losses under the Program. Otherwise the insured losses will be ineligible for later payment if the Program Trigger is reached.

III. Procedural Requirements

The Extension Act extended the TRIA Program, which provides for loss sharing payments by the Federal Government for insured losses resulting from certified acts of terrorism. The Act's extension became effective

[4] *See* 31 CFR 50.5(d)(1)(iii) and (iv); 68 FR 41256–41258 (July 11, 2003).

[5] *See* 31 CFR 50.5(d)(1)(iii): ''For purposes of the Program, commercial coverage combined with coverages that otherwise do not meet the definition of property and casualty insurance is incidental if less than 25 percent of the total direct premium is for such coverage.''

immediately upon the date of enactment (December 22, 2005). Changes in the Extension Act applied immediately to those entities that come within the Act's definition of ''insurer''.

The Extension Act revised the definition of property and casualty insurance to exclude certain types of insurance previously covered under the Program. The Extension Act also added a Program Trigger provision limiting the Federal compensation for certified acts of terrorism after March 31, 2006, unless the aggregate industry losses exceed certain amounts. These provisions, which go to the scope of the Program and the conditions for payments by the Federal Government, resulted in the need to provide immediate guidance to insurers, policyholders, and regulators. In addition, extension of the disclosure requirements and the ''make available'' requirements to policies currently in effect in late December 2005 raised transition issues that need to be addressed immediately. Given the significance of these changes made by the Extension Act, there is a need to issue immediately effective regulations that incorporate and clarify these requirements.

Accordingly, pursuant to 5 U.S.C. 553(b)(B), Treasury has determined that it would be contrary to the public interest to delay issuance of this interim final rule. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), Treasury has determined that there is good cause for this interim final rule to become effective immediately upon publication. While this rule is effective immediately upon publication, Treasury is seeking public comment and will consider all comments in developing a final rule. This interim final rule is a significant regulatory action and has been reviewed by the Office of Management and Budget under the terms of Executive Order 12866. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. However, the Act and the Program are intended to provide benefits to the U.S. economy and all businesses, including small businesses, by providing a federal reinsurance backstop to commercial property and casualty policyholders and spreading the risk of insured loss resulting from an act of terrorism.

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

Authority and Issuance

■ For the reasons set forth above, 31 CFR part 50 is amended as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

■ 1. The authority citation for 31 CFR part 50 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322 (15 U.S.C. 6701 note), as amended by Pub. L. 109–144, 119 Stat. 2660 (15 U.S.C. 6701 note).

Subpart A—General Provisions

■ 2. Section 50.1(a) of subpart A is revised to read as follows:

§ 50.1 Authority, purpose and scope.

(a) *Authority.* This Part is issued pursuant to authority in Title I of the Terrorism Risk Insurance Act of 2002, Pub. L. 107–297, 116 Stat. 2322, as amended by the Terrorism Risk Insurance Extension Act of 2005, Pub. L. 109–144, 119 Stat. 2660.

* * * * *

■ 3. Section 50.5 is amended as follows:
■ a. Paragraph (g) is revised.
■ b. Paragraphs (j) through (p) are redesignated as paragraphs (k), (m), (n), (o), (p), (q), and (r), respectively.
■ c. New paragraphs (j) and (l) are added.
■ d. Newly designated paragraphs (m) and (n) are revised.

The revisions and additions read as follows:

§ 50.5 Definitions.

* * * * *

(g) *Insurer deductible* means:

(1) For an insurer that has had a full year of operations during the calendar year immediately preceding the applicable Program Year:

(i) For the Transition Period (November 26, 2002 through December 31, 2002), the value of an insurer's direct earned premiums over calendar 2001, multiplied by 1 percent;

(ii) For Program Year 1 (January 1, 2003 through December 31, 2003), the value of an insurer's direct earned premiums over calendar year 2002, multiplied by 7 percent;

(iii) For Program Year 2 (January 1, 2004 through December 31, 2004), the value of an insurer's direct earned premiums over calendar year 2003, multiplied by 10 percent;

(iv) For Program Year 3 (January 1, 2005 through December 31, 2005), the value of an insurer's direct earned premiums over calendar year 2004, multiplied by 15 percent;

(v) For Program Year 4 (January 1, 2006 through December 31, 2006), the value of an insurer's direct earned premiums over calendar year 2005, multiplied by 17.5 percent;

(vi) For Program Year 5 (January 1, 2007 through December 31, 2007), the value of an insurer's direct earned premiums over calendar year 2006, multiplied by 20 percent; and

(2) For an insurer that has not had a full year of operations during the calendar year immediately preceding the applicable Program Year, the insurer deductible will be based on data for direct earned premiums for the applicable Program Year multiplied by the specified percentage for the insurer deductible for the applicable Program Year. If the insurer does not have a full year of operations during the applicable Program Year, the direct earned premiums for the applicable Program Year will be annualized to determine the insurer deductible.

* * * * *

(j) *Professional liability insurance* means insurance coverage for liability arising out of the performance of professional or business duties related to a specific occupation, with coverage being tailored to the needs of the specific occupation. Examples include abstracters, accountants, insurance adjusters, architects, engineers, insurance agents and brokers, lawyers, real estate agents, stockbrokers and veterinarians. For purposes of this definition, professional liability insurance does not include directors and officers liability insurance.

* * * * *

(l) *Program Trigger event* means a certified act of terrorism that occurs after March 31, 2006, for which the aggregate industry insured losses resulting from such act exceed $50 million with respect to such insured losses occurring in 2006 or $100 million with respect to such insured losses occurring in 2007.

(m) *Program Years* means the Transition Period (November 26, 2002 through December 31, 2002), Program Year 1 (January 1, 2003 through December 31, 2003), Program Year 2 (January 1, 2004 through December 31, 2004), Program Year 3 (January 1, 2005 through December 31, 2005), Program Year 4 (January 1, 2006 through December 31, 2006), and Program Year 5 (January 1, 2007 through December 31, 2007).

(n) *Property and casualty insurance* means commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and directors and officers liability insurance, and:

(1) Means commercial lines within only the following lines of insurance from the NAIC's Exhibit of Premiums and Losses (commonly known as

Statutory Page 14): Line 1—Fire; Line 2.1—Allied Lines; Line 5.1—Commercial Multiple Peril (non-liability portion); Line 5.2—Commercial Multiple Peril (liability portion); Line 8—Ocean Marine; Line 9—Inland Marine; Line 16—Workers' Compensation; Line 17—Other Liability; Line 18—Products Liability; Line 22—Aircraft (all perils); and Line 27—Boiler and Machinery; and

(2) Does not include:

(i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*), or any other type of crop or livestock insurance that is privately issued or reinsured (including crop insurance reported under either Line 2.1—Allied Lines or Line 2.2—Multiple Peril (Crop) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(ii) Private mortgage insurance (as defined in section 2 of the Homeowners Protection Act of 1988) (12 U.S.C. 4901) or title insurance;

(iii) Financial guaranty insurance issued by monoline financial guaranty insurance corporations;

(iv) Insurance for medical malpractice;

(v) Health or life insurance, including group life insurance;

(vi) Flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*) or earthquake insurance reported under Line 12 of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(vii) Reinsurance or retrocessional reinsurance;

(viii) Commercial automobile insurance, including insurance reported under Lines 19.3 (Commercial Auto No-Fault (personal injury protection)), 19.4 (Other Commercial Auto Liability) and 21.2 (Commercial Auto Physical Damage) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(ix) Burglary and theft insurance, including insurance reported under Line 26 (Burglary and Theft) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(x) Surety insurance, including insurance reported under Line 24 (Surety) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(xi) Professional liability insurance as defined in section 50.5(j); or

(xii) Farmowners multiple peril insurance, including insurance reported under Line 3 (Farmowners Multiple Peril) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14).

* * * * *

■ 4. Section 50.7 of subpart A is revised to read as follows:

§ 50.7 Special Rules for Interim Guidance Safe Harbors.

(a) An insurer will be deemed to be in compliance with the requirements of the Act to the extent the insurer reasonably relied on Interim Guidance prior to the effective date of applicable regulations.

(b) For purposes of this section, Interim Guidance means the following documents, which are also available from the Department of the Treasury at *http://www.treasury.gov/trip:*

(1) Interim Guidance I issued by Treasury on December 3, 2002, and published at 67 FR 76206 (December 11, 2002);

(2) Interim Guidance II issued by Treasury on December 18, 2002, and published at 67 FR 78864 (December 26, 2002);

(3) Interim Guidance III issued by Treasury on January 22, 2003, and published at 68 FR 4544 (January 29, 2003); and

(4) Interim Guidance IV issued by Treasury on December 29, 2005, and published at 71 FR 648 (January 5, 2006).

Subpart B—Disclosures as Conditions for Federal Payment

■ 5. Section 50.10(d) of subpart B is revised to read as follows:

§ 50.10 General disclosure requirements.

* * * * *

(d) *Policies issued more than 90 days after the date of enactment.* For policies issued on or after February 25, 2003, the disclosure required by the Act must be made on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy. For policies issued in late 2005 with coverage extending into 2006, see § 50.12(e)(2).

■ 6. Section 50.12(e) of subpart B is revised to read as follows:

§ 50.12 Clear and conspicuous disclosure.

* * * * *

(e) *Demonstration of compliance.* (1) An insurer may demonstrate that it has satisfied the requirement to provide clear and conspicuous disclosure as described in § 50.10 through use of appropriate systems and normal business practices that demonstrate a practice of compliance.

(2) If an insurer made available coverage for insured losses in a new policy or policy renewal in Program Year 3 for coverage becoming effective in Program Year 4, but did not provide a disclosure at the time of offer, purchase or renewal, then the insurer must be able to demonstrate to Treasury's satisfaction that it has provided a disclosure as soon as possible following January 1, 2006.

* * * * *

■ 7. Section 50.17(e) of subpart B is revised to read as follows:

§ 50.17 Use of model forms.

* * * * *

(e) *Definitions.* For purposes of this section, references to NAIC Model Disclosure Form No. 1 and NAIC Model Disclosure Form No. 2 refer to such forms as were in existence on April 18, 2003, or as subsequently modified by the NAIC, provided Treasury has stated that usage by insurers of the subsequently modified forms is deemed to satisfy the disclosure requirements of the Act and the insurer uses the most current forms that are available at the time of disclosure. These forms may be found on the Treasury Web site at *http://www.treasury.gov/trip.*

Subpart C—Mandatory Availability

■ 8. Sections 50.20 and 50.21 of subpart C are revised to read as follows:

§ 50.20 General mandatory availability requirements.

(a) *Transition Period and Program Years 1 and 2—period ending December 31, 2004.* Under section 103(c) of the Act (unless the time is extended by the Secretary as provided in that section) during the period beginning on November 26, 2002 and ending on December 31, 2004 (the last day of Program Year 2), an insurer must:

(1) Make available, in all of its property and casualty insurance policies, coverage for insured losses; and

(2) Make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

(b) *Program Year 3—calendar year 2005.* In accordance with the determination of the Secretary announced June 18, 2004, an insurer must comply with paragraphs (a)(1) and (a)(2) of this section during Program Year 3.

(c) *Program Years 4 and 5—calendar years 2006 and 2007.* Under section 103(c) of the Act, an insurer must comply with paragraphs (a)(1) and (a)(2) of this section during Program Years 4

and 5. Notwithstanding paragraph (a)(2) of this section and § 50.23(a), property and casualty insurance coverage for insured losses does not have to be made available beyond December 31, 2007 (the last day of Program Year 5) even if the policy period of insurance coverage for losses from events other than acts of terrorism extends beyond that date.

§ 50.21 Make available.

(a) *General.* The requirement to make available coverage as provided in § 50.20 applies to policies in existence on November 26, 2002, new policies issued and renewals of existing policies during the period beginning on November 26, 2002 and ending on December 31, 2004 (the last day of Program Year 2), and to new policies issued and renewals of existing policies in Program Years 3 through 5 (calendar years 2005 through 2007). Except as provided in paragraph (b) of this section, the requirement applies at the time an insurer makes the initial offer of coverage as well as at the time an insurer makes an initial offer of renewal of an existing policy.

(b) *Special Program Year 4 requirement for certain new policies issued and renewals of existing policies in Program Year 3.* If coverage for insured losses under a policy of property and casualty insurance (as defined by the Act, as amended) expired as of December 31, 2005, but the remainder of coverage under the policy continued in force in Program Year 4, then an insurer must make available coverage as provided in § 50.20 for insured losses for the remaining portion of the policy term in the manner specified in paragraphs (d)(1) and (d)(2) of this section. This requirement does not apply if during Program Year 3 a policyholder declined an offer of coverage for insured losses made at the time of the initial offer of coverage or offer of renewal of the existing policy.

(c) *Changes negotiated subsequent to initial offer.* If an insurer satisfies the requirement to ''make available'' coverage as described in § 50.20 by first making an offer with coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, which the policyholder declines, the insurer may negotiate with the policyholder an option of partial coverage for insured losses at a lower amount of coverage if permitted by any applicable State law. An insurer is not required by the Act to offer partial coverage if the policyholder declines full coverage. See § 50.24.

(d) *Demonstrations of compliance.* (1) If an insurer makes an offer of insurance but no contract of insurance is concluded, the insurer may demonstrate that it has satisfied the requirement to make available coverage as described in § 50.20 through use of appropriate systems and normal business practices that demonstrate a practice of compliance.

(2) If an insurer must make available coverage for insured losses as required by paragraph (b) of this section for a policy whose coverage period began in Program Year 3 but extends into Program Year 4, then the insurer must be able to demonstrate to Treasury's satisfaction that it has offered such coverage by January 1, 2006, or as soon as possible following that date.

(3) If an insurer processed a new policy or policy renewal in Program Year 3 for coverage becoming effective in Program Year 4, but did not make available coverage for insured losses as required by § 50.20 by January 1, 2006, then the insurer must be able to demonstrate to Treasury's satisfaction that it has provided an offer of coverage for insured losses as soon as possible following that date.

■ 9. Section 50.50 of subpart F is revised to read as follows:

Subpart F—Claims Procedures

§ 50.50 Federal share of compensation.

(a) *General.* (1) The Treasury will pay the Federal share of compensation for insured losses as provided in section 103 of the Act once a Certification of Loss required by § 50.53 is deemed sufficient. The Federal share of compensation under the Program shall be:

(i) 90 percent of that portion of the insurer's aggregate insured losses that exceed its insurer deductible during each Program Year through Program Year 4, and

(ii) 85 percent of that portion of the insurer's aggregate insured losses that exceed its insurer deductible during Program Year 5.

(2) The percentages in paragraphs (a)(1)(i) and (ii) are both subject to any adjustments in § 50.51 and the cap of $100 billion as provided in section 103(e)(2) of the Act.

(b) *Program Trigger amounts.* Notwithstanding paragraph (a) or anything in this Subpart to the contrary, no Federal share of compensation will be paid by Treasury unless the aggregate industry insured losses resulting from a certified act of terrorism occurring after March 31, 2006 exceed the following amounts:

(1) For a certified act of terrorism occurring after March 31, 2006 and before January 1, 2007: $50 million;

(2) For a certified act of terrorism occurring in calendar year 2007: $100 million.

(c) *Insured losses after March 31, 2006.* For all purposes of subpart F, insured loss or insured losses or aggregate insured losses resulting from acts of terrorism after March 31, 2006 shall be limited to those insured losses resulting from Program Trigger events.

(d) *Conditions for payment of Federal share.* Subject to paragraph (e) of this section, Treasury shall pay the appropriate amount of the Federal share of compensation to an insurer upon a determination that:

(1) The insurer is an entity, including an affiliate thereof, that meets the requirements of § 50.5(f);

(2) The insurer's insured losses, as defined in § 50.5(e) and limited by § 50.50(c) (including the allocated dollar value of the insurer's proportionate share of insured losses from a State residual market insurance entity or State workers' compensation fund as described in § 50.35), have exceeded its insurer deductible as defined in § 50.5(g);

(3) The insurer has paid or is prepared to pay an underlying insured loss, based on a filed claim for the insured loss;

(4) Neither the insurer's claim for Federal payment nor any underlying claim for an insured loss is fraudulent, collusive, made in bad faith, dishonest or otherwise designed to circumvent the purposes of the Act and regulations;

(5) The insurer had provided a clear and conspicuous disclosure as required by §§ 50.10 through 50.19;

(6) The insurer offered coverage for insured losses and the offer was accepted by the insured prior to the occurrence of the loss;

(7) The insurer took all steps reasonably necessary to properly and carefully investigate the underlying insured loss and otherwise processed the underlying insured loss using appropriate insurance business practices;

(8) The insured losses submitted for payment are within the scope of coverage issued by the insurer under the terms and conditions of the policies for commercial property and casualty insurance as defined in § 50.5(n); and

(9) The procedures specified in this Subpart have been followed and all conditions for payment have been met.

(e) *Adjustments.* Treasury may subsequently adjust, including requiring repayment of, any payment made under paragraph (d) of this section in

accordance with its authority under the Act.

(f) *Suspension of payment for other insured losses.* Upon a determination by Treasury that an insurer has failed to meet any of the requirements for payment specified in paragraph (d) of this section for a particular insured loss, Treasury may suspend payment of the Federal share of compensation for all other insured losses of the insurer pending investigation and audit of the insurer's insured losses.

(g) *Aggregate industry losses.* Treasury will determine the amount of aggregate industry insured losses resulting from a certified act of terrorism. If such aggregate industry insured losses exceed the applicable Program Trigger amounts specified in paragraph (b) of this section, Treasury will publish notice in the **Federal Register** that the act of terrorism is a Program Trigger event.

■ 10. Section 50.55 of subpart F is revised to read as follows:

§ 50.55 Determination of Affiliations.

For the purposes of subpart F, an insurer's affiliates for any Program Year shall be determined by the circumstances existing on the date of occurrence of the act of terrorism that is the first act of terrorism in a Program Year to be certified by the Secretary for that Program Year. Provided, however, if such act of terrorism occurs after March 31, 2006, the act of terrorism must also be a Program Trigger event to determine affiliations as provided in this section.

■ 11. A new § 50.85 is added to subpart I as follows:

§ 50.85 Amendment related to settlement approval.

Section 107(a)(6) of the Act, added December 22, 2005, provides that procedures and requirements established by the Secretary under § 50.82 (as in effect on the date of issuance of that section in final form) shall apply to any cause of action described in section 107(a)(1) of the Act.

Dated: May 4, 2006.

Emil W. Henry, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 06–4348 Filed 5–10–06; 8:45 am]

BILLING CODE 4811–15–P

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AB67

Terrorism Risk Insurance Program; TRIA Extension Act Implementation

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to interim final rule.

SUMMARY: The Department of the Treasury (Treasury) is issuing this proposed rule as part of its implementation of amendments made to Title I of the Terrorism Risk Insurance Act of 2002 (TRIA or Act) [1] by the Terrorism Risk Insurance Extension Act of 2005 (Extension Act).[2] The Act established a temporary Terrorism Risk Insurance Program (Program) that was scheduled to expire on December 31, 2005, under which the Federal Government shared the risk of insured losses from certified acts of terrorism with commercial property and casualty insurers. The Extension Act extends the Program through December 31, 2007, and makes other changes which are implemented by this rule. In particular, the rule addresses changes to the types of commercial property and casualty insurance covered by the Act, the requirements to satisfy the Act's mandatory availability (''make available'') provision and the operation of the new ''Program Trigger'' provision in section 103(e)(1)(B) of the Act. This proposed rule proposes to adopt as a final rule the interim final rule published elsewhere in this issue of the **Federal Register.** The text of the interim final rule serves as the text of this proposed rule.

DATES: Written comments may be submitted on or before June 12, 2006.

ADDRESSES: Submit comments by e-mail to *triacomments@do.treas.gov* or by mail (if hard copy, preferably an original and two copies) to: Terrorism Risk Insurance Program, Public Comment Record, Suite 2100, Department of the Treasury, 1425 New York Avenue, NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted electronically. All comments should be captioned with ''TRIA Extension Act Proposed Rule Comments''. Please include your name, affiliation, address, e-mail address, and telephone number in your comment. Comments may also be submitted through the Federal eRulemaking Portal: *http://www.regulations.gov.* Comments will be available for public inspection by appointment only at the TRIP Office. To make appointments, call (202) 622–6770 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Howard Leikin, Deputy Director, or David Brummond, Legal Counsel, Terrorism Risk Insurance Program (202) 622–6770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. The Proposed Rule

Published elsewhere in this issue of the **Federal Register** is an interim final rule amending subparts A, B, C, F, and I to 31 CFR part 50, which in part comprises Treasury's regulations implementing the Act. The preamble to the interim final rule explains these provisions of the proposed rule in detail, and the text of the interim final rule serves as the text for this proposed rule. Treasury is soliciting comments on all aspects of this proposed rule from all interested parties.

II. Procedural Requirements

This proposed rule is not a significant regulatory action under the terms of Executive Order 12866. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Act requires all licensed or admitted insurers to participate in the Program. This includes all insurers regardless of size or sophistication. The Act also defines property and casualty insurance to mean commercial lines without any reference to the size or scope of the commercial entity. The disclosure and ''make available'' requirements are required by the Act. The proposed rule allows all insurers, whether large or small, to use existing systems and business practices to demonstrate compliance. Treasury is required to pay the Federal share of compensation to insurers for insured losses subject to the new Program Trigger provisions in the Act. The requirement that insurers seek advance approval of certain settlements is now required by the Act. Accordingly, any economic impact associated with the proposed rule flows from the Act and not the proposed rule. However, the Act and the Program are intended to provide benefits to the U.S. economy and all businesses, including small businesses, by providing a federal reinsurance backstop to commercial property and casualty insurance policyholders and spreading the risk of insured losses resulting from an act of terrorism.

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

Authority and Issuance

For the reasons set forth above, the Department of the Treasury proposes to adopt as a final rule this proposed rule that revises 31 CFR part 50 as follows: The text of subparts A, B, C, F, and I are revised to be the same as the text of subparts A, B, C, F, and I to 31 CFR part 50 in the interim final rule published elsewhere in this issue of the **Federal Register.**

Dated: May 4, 2006.

Emil W. Henry, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 06–4349 Filed 5–10–06; 8:45 am]

BILLING CODE 4811–15–P

[1] Pub. L. 107–297, 116 Stat. 2322, 15 U.S.C. 6701 note.

[2] Pub. L. 109–144, 119 Stat. 2660, 15 USCA 6701 note.

Federal Register

Thursday,
May 11, 2006

Part IV

Department of Education

Office of Safe and Drug-Free Schools; Notice of Final Priorities and Application Requirements; Overview Information, Emergency Response and Crisis Management Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006; Notices

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Notice of Final Priorities and Application Requirements

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

SUMMARY: The Assistant Deputy Secretary for Safe and Drug-Free Schools announces two priorities and application requirements under the Emergency Response and Crisis Management Grants program. We may use one or more of these priorities and application requirements for competitions in fiscal year (FY) 2006 and later years. We take this action to focus Federal financial assistance on an identified national need. We intend these priorities and application requirements to support grants to local educational agencies (LEAs) that are at high risk for crisis situations, as well as those that have not yet received funding under this program; and to strengthen the quality of applications under this program in addressing multiple hazards, including infectious diseases.

DATES: *Effective Date:* These priorities and application requirements are effective June 12, 2006.

FOR FURTHER INFORMATION CONTACT: Tara Hill, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E340, Washington, DC 20202. Telephone: (202) 708–4850 or via Internet: *tara.hill@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The events of September 11, 2001, and more recently, Hurricanes Katrina and Rita, reinforce the need for schools and communities to plan for traditional crises and emergencies, as well as possible terrorist attacks or other catastrophic events. The purpose of this program is to support LEA projects to improve and strengthen emergency response and crisis management plans, at the district and school-building level, addressing the four phases of crisis planning: Prevention/Mitigation, Preparedness, Response, and Recovery.

We published a notice of proposed priorities and application requirements for this program in the **Federal Register** on March 1, 2006 (71 FR 10482).

Analysis of Comments and Changes

In response to our invitation in the notice of proposed priorities and application requirements, three parties submitted comments on the proposed priorities. An analysis of the comments and of any changes in the priorities since publication of the notice of proposed priorities and application requirements follows. We did not make any changes to the application requirements proposed in the notice of proposed priorities and application requirements.

Generally, we do not address technical and other minor changes and suggested changes the law does not authorize us to make under the applicable statutory authority.

Comment: One commenter recommended that we revise the competitive preference priorities to include educational service agencies (ESAs) that have previously received funding, provided the new grant application is on behalf of previously unfunded LEAs. The commenter suggested that since ESAs do not directly benefit from the grant, they should not be excluded from the competitive preference priorities if applying on behalf of LEAs that have not previously received funding under this program.

Discussion: We agree that the competitive preference priorities should be revised to include ESAs that have previously received funding under this program provided the ESA is applying on behalf of previously unfunded LEAs. The primary role of ESAs is to provide educational support programs for LEAs, such as staff and curriculum development, purchasing, and other programs. By consolidating programmatic, fiscal, or administrative services within an ESA, LEAs are able to cooperatively share services and costs for programs that may be costly or difficult to administer by a single LEA. Since ESAs often serve an administrative function for several LEAs, they are often the lead applicant in requests for funding.

Change: We have revised the competitive preference priorities to clarify the eligibility of ESAs for a competitive preference under this program if the ESAs are applying on behalf of previously unfunded LEAs.

Comment: Two commenters suggested that the competitive preference priority for LEAs located in Urban Areas Security Initiative (UASI) jurisdictions provides an unfair advantage over applicants that are not located in UASI jurisdictions.

Discussion: We believe that establishing a funding priority for LEAs located within UASI jurisdictions is justified because the UASI effectively identifies the areas that are most likely to be targets of terrorist attacks and other crises and, thus, have the greatest need for emergency plans.

However, we recognize that effective crisis plans are a priority for all LEAs, regardless of their location. Accordingly, Proposed Priority 2 was designed to address the needs of LEAs that are not located within UASI jurisdictions and that have not previously received funding under the ERCM grant program. We believe that this is an equitable approach for addressing the needs of LEAs that are not located in designated high-risk areas and whose crisis planning needs have not previously received support under this program.

Change: None.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these priorities and application requirements, we invite applications through a notice in the **Federal Register**.

Priorities

Priority 1—Competitive Preference Priority for LEAs That Have Not Previously Received a Grant Under the ERCM Program and Are Located in an Urban Areas Security Initiative Jurisdiction

Under this priority, we give a competitive preference to applications from local educational agencies (LEAs) that (1) have not yet received a grant under this program and (2) are located in whole or in part within Urban Areas Security Initiative (UASI) jurisdictions, as determined by the U.S. Department of Homeland Security (DHS). An applicant must meet both of these criteria in order to receive the competitive preference. Under a consortium application, all members of the LEA consortium need to meet both criteria to be eligible for the preference. Applications submitted by educational service agencies (ESAs) are eligible under this priority if each LEA to be served by the grant is located within a UASI jurisdiction and has not received funding under this program directly, or as the lead agency or as a partner in a consortium; however the ESA itself may have received a previous grant.

Because DHS' determination of UASI jurisdictions may change from year to year, applicants under this priority must refer to the most recent list of UASI jurisdictions published by DHS when submitting their applications. In any

notice inviting applications using this priority, the Department will provide applicants with information necessary to access the most recent DHS list of UASI jurisdictions.

Priority 2—Competitive Preference Priority for LEAs That Have Not Previously Received a Grant Under the ERCM Program

Priority: Under this priority, we give competitive preference to applications from local educational agencies (LEAs) that have not previously received a grant under this program. Applicants (other than educational service agencies (ESAs)) that have received funding under this program directly, or as the lead agency or as a partner in a consortium application under this program, will not receive competitive preference under this priority. For applications submitted by ESAs, each LEA to be served by the grant must not have received funding under this program directly, or as the lead agency, or as a partner in a consortium application, in order for the ESA to be eligible under this priority; however the ESA itself may have received a previous grant.

Application Requirements

1. *Implementation of the National Incident Management System*—Applicants must agree to implement their grant in a manner consistent with the implementation of the NIMS in their communities. Applicants must include in their applications an assurance that they have met, or will complete, all current NIMS requirements by the end of the grant period.

Because DHS' determination of NIMS requirements may change from year to year, applicants must refer to the most recent list of NIMS requirements published by DHS when submitting their applications. In any notice inviting applications, the Department will provide applicants with information necessary to access the most recent DHS list of NIMS requirements.

Note: An LEA's NIMS compliance must be achieved in close coordination with the local government and with recognition of the first responder capabilities held by the LEA and the local government. As LEAs are not traditional response organizations, first responder services will typically be provided to LEAs by local fire and rescue departments, emergency medical service providers, and law enforcement agencies. This traditional relationship must be acknowledged in achieving NIMS compliance in an integrated NIMS compliance plan for the local government and the LEA. LEA participation in the NIMS preparedness program of the local government is essential to ensure that first responder services are delivered to schools in a timely and effective manner. Additional information about NIMS implementation is available at *http://www.fema.gov/emergency/nims/index.shtm.*

2. *Infectious Disease Plan*—To be considered for a grant award, applicants must agree to develop a written plan designed to prepare the LEA for a possible infectious disease outbreak, such as pandemic influenza. Plans must address the four phases of crisis planning (Mitigation/Prevention, Preparedness, Response, and Recovery) and include a plan for disease surveillance (systematic collection and analysis of data that lead to action being taken to prevent and control a disease), school closure decision-making, business continuity (processes and procedures established to ensure that essential functions can continue during and after a disaster), and continuation of educational services.

Executive Order 12866

This notice of final priorities and application requirements has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priorities and application requirements, we have determined that the benefits of the final priorities and application requirements justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the costs and benefits in the notice of proposed priorities and application requirements.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.184.E-Emergency Response and Crisis Management Grant program.)

Authority: Program Authority: 20 U.S.C. 7131.

Dated: May 8, 2006.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 06–4408 Filed 5–10–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Emergency Response and Crisis Management Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184E.

Dates:

Applications Available: May 11, 2006.

Deadline for Transmittal of Applications: June 22, 2006.

Deadline for Intergovernmental Review: August 24, 2006.

Eligible Applicants: Local educational agencies (LEAs).

Estimated Available Funds: $24,000,000. Contingent upon the availability of funds, the Secretary may make additional awards in FY 2007 from the rank-ordered list of unfunded applicants from this competition.

Estimated Range of Awards: $100,000—$500,000.

Estimated Average Size of Awards: $100,000 for small districts (1–20 school facilities); $250,000 for medium-sized districts (21–75 school facilities); and $500,000 for large districts (76 or more school facilities).

Estimated Number of Awards: 71.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Emergency Response and Crisis Management grant competition supports efforts by LEAs to improve and strengthen their school emergency response and crisis management plans, including training school personnel and students in emergency response procedures; communicating emergency plans and procedures with parents; and coordinating with local law enforcement, public safety, public health, and mental health agencies.

Priorities: These priorities are from (1) the notice of final priorities and other application requirements for this program, published in the **Federal Register** on June 21, 2005 (70 FR 35652) and (2) the notice of final priorities and application requirements published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2006 and any subsequent year in which we make awards based on the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only those applications that meet this priority.

This priority is:

Improvement and Strengthening of School Emergency Response and Crisis Management Plans

This priority supports local educational agency (LEA) projects to improve and strengthen emergency response and crisis management plans, at the district and school-building level, addressing the four phases of crisis planning: Prevention/Mitigation, Preparedness, Response, and Recovery. Plans must include: (1) Training for school personnel and students in emergency response procedures; (2) Coordination with local law enforcement, public safety, public health, and mental health agencies; and (3) A method for communicating school emergency response policies and reunification procedures to parents and guardians.

Competitive Preference Priorities: For FY 2006, and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award an additional 10 points to an application that meets Priority 1 and we award an additional 5 points to an application that meets Priority 2. Applications that qualify for Priorities 1 and 2 will receive points only under Priority 1.

These priorities are:

Priority 1—Competitive Preference Priority for LEAs That Have Not Previously Received a Grant Under the ERCM Program and Are Located in an Urban Areas Security Initiative Jurisdiction

Under this priority, we give a competitive preference to applications from local educational agencies (LEAs) that (1) have not yet received a grant under this program and (2) are located in whole or in part within Urban Areas Security Initiative (UASI) jurisdictions, as determined by the U.S. Department of Homeland Security (DHS). An applicant must meet both of these criteria in order to receive the competitive preference. Under a consortium application, all members of the LEA consortium need to meet both criteria to be eligible for the preference. Applications submitted by educational service agencies (ESAs) are eligible under this priority if each LEA to be served by the grant is located within a UASI jurisdiction and has not previously received funding under this program directly, or as the lead agency or as a partner in a consortium; however the ESA itself may have received a previous grant.

Because DHS' determination of UASI jurisdictions may change from year to year, applicants under this priority must refer to the most recent list of UASI jurisdictions published by DHS when submitting their applications. The Governor of each State has designated a State Administrative Agency (SAA) as the entity responsible for applying for, and administering, funds under the Department of Homeland Security Grant Program (which includes the UASI program). The SAA is also responsible for defining the geographic borders for jurisdictions included in the UASI program. Guidance on jurisdiction definitions can be found at: *http://www.ojp.usdoj.gov/odp/docs/info200.pdf*.

Priority 2—Competitive Preference Priority for LEAs That Have Not Previously Received a Grant Under the ERCM Program

Under this priority, we give competitive preference to applications from local educational agencies (LEAs) that have not previously received a grant under this program. Applicants (other than educational service agencies (ESAs)) that have received funding under this program directly, or as the lead agency or as a partner in a consortium application under this program, will not receive competitive preference under this priority. For applications submitted by ESAs, each LEA to be served by the grant must not have received funding under this program directly, or as the lead agency, or as a partner in a consortium application, in order for the ESA to be eligible under this priority; however the ESA itself may have received a previous grant.

Other Application Requirements: These requirements are from (1) the notice of final priorities and other application requirements for this program, published in the **Federal Register** on June 21, 2005 (70 FR 35652) and (2) the notice of final priorities and application requirements published elsewhere in this issue of the **Federal Register**.

1. *Partner Agreements*. To be considered for a grant award, an applicant must include in its application an agreement that details the participation of each of the following five community-based partners: Law enforcement, public safety, public health, mental health, and the head of the applicant's local government (for example the mayor, city manager, or county executive). The agreement must include a description of each partner's roles and responsibilities in improving and strengthening emergency response plans at the district and school-building level, a description of each partner's commitment to the sustainability and continuous improvement of emergency response plans at the district and school-building level, and an authorized signature representing the LEA and each partner acknowledging the agreement. If one or more of the five partners listed is not present in the applicant's community, or cannot feasibly participate, the agreement must explain the absence of each missing partner. To be considered eligible for funding, however, an application must include a signed agreement between the LEA, a law enforcement partner, and at least one of the other required partners (public safety, public health, mental health, or head of local government).

Applications that fail to include the required agreement, including information on partners' roles and responsibilities and on their commitment to sustainability and continuous improvement (with signatures and explanations for missing signatures as specified above), will not be read.

Although this program requires partnerships with other parties,

administrative direction and fiscal control for the project must remain with the LEA.

2. *Coordination with State or Local Homeland Security Plan.* All emergency response and crisis management plans must be coordinated with the Homeland Security Plan of the State or locality in which the LEA is located. All States submitted such a plan to the Department of Homeland Security on January 30, 2004. To ensure that emergency services are coordinated, and to avoid duplication of effort within States and localities, applicants must include in their applications an assurance that the LEA will coordinate with, and follow, the requirements of its State or local Homeland Security Plan for emergency services and initiatives.

3. *Implementation of the National Incident Management System (NIMS).* Applicants must agree to implement their grant in a manner consistent with the implementation of the NIMS in their communities. Applicants must include in their applications an assurance that they have met, or will complete, all current NIMS requirements by the end of the grant period.

Because DHS' determination of NIMS requirements may change from year to year, applicants must refer to the most recent list of NIMS requirements published by DHS when submitting their applications. In any notice inviting applications, the Department will provide applicants with information necessary to access the most recent DHS list of NIMS requirements. Information about the Fiscal Year 2006 NIMS requirements for tribal governments and local jurisdictions, including LEAs, may be found at: *http://www.fema.gov/pdf/nims/nims_tribal_local_compliance_activities.pdf.*

Note: An LEA's NIMS compliance must be achieved in close coordination with the local government and with recognition of the first responder capabilities held by the LEA and the local government. As LEAs are not traditional response organizations, first responder services will typically be provided to LEAs by local fire and rescue departments, emergency medical service providers, and law enforcement agencies. This traditional relationship must be acknowledged in achieving NIMS compliance in an integrated NIMS compliance plan for the local government and the LEA. LEA participation in the NIMS preparedness program of the local government is essential to ensure that first responder services are delivered to schools in a timely and effective manner. Additional information about NIMS implementation is available at: *http://www.fema.gov/emergency/nims/index.shtm.*

4. *Individuals with Disabilities.* The applicant's plan must demonstrate that the applicant has taken into consideration the communication, transportation, and medical needs of individuals with disabilities within the school district.

5. *Infectious Disease Plan.* To be considered for a grant award, applicants must agree to develop a written plan designed to prepare the LEA for a possible infectious disease outbreak, such as pandemic influenza. Plans must address the four phases of crisis planning (Mitigation/Prevention, Preparedness, Response, and Recovery) and include a plan for disease surveillance (systematic collection and analysis of data that lead to action being taken to prevent and control a disease), school closure decision-making, business continuity (processes and procedures established to ensure that essential functions can continue during and after a disaster), and continuation of educational services.

Program Authority: 20 U.S.C. 7131.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299. (b) The notice of final priority and other application requirements published in the **Federal Register** on June 21, 2005 (70 FR 35652). (c) The notice of final priorities and application requirements published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $24,000,000. Contingent upon the availability of funds, the Secretary may make additional awards in FY 2007 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $100,000–$500,000.

Estimated Average Size of Awards: $100,000 for small districts (1–20 school facilities); $250,000 for medium-sized districts (21–75 school facilities); and $500,000 for large districts (76 or more school facilities).

Estimated Number of Awards: 71.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

3. *Other:*

(a) *Equitable Participation by Private School Children and Teachers.* Section 9501 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), requires that SEAs, LEAs or other entities receiving funds under the Safe and Drug-Free Schools and Communities Act are required to provide for the equitable participation of private school children, their teachers, and other educational personnel in private schools located in areas served by the grant recipient. In order to ensure that grant program activities address the needs of private school children, LEAs must engage in timely and meaningful consultation with private school officials during the design and development of the program. This consultation must take place before any decision is made that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate.

In order to ensure equitable participation of private school children, teachers, and other educational personnel, an LEA must consult with private school officials on issues such as: hazards/vulnerabilities unique to private schools in the LEA's service area, training needs, and existing emergency management plans and crisis response resources already available at private schools.

(b) *Maintenance of Effort.* Section 9521 of the Elementary and Secondary Education Act of 1964, as amended (ESEA), requires that LEAs may receive a grant only if the State educational agency finds that the combined fiscal effort per student or the aggregate expenditures of the LEA and the State with respect to the provision of free public education by the LEA for the preceding fiscal year was not less than 90 percent of the combined effort or aggregate expenditures for the second preceding fiscal year.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.184E.

You may also download the application from the Department of Education's Web site at: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

The public can also obtain applications directly from the program office: Tara Hill, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E340, Washington, DC. 20202–6450. Telephone: (202) 708–4850 or by e-mail: *tara.hill@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:* Applications Available: May 11, 2006.

Deadline for Transmittal of Applications: June 22, 2006.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV(6). *Other Submission Requirements in this notice.*

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: August 24, 2006.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* If you choose to submit your application to us electronically, you must use e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Office of Safe and Drug-Free Schools after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Office of Safe and Drug-Free Schools at (202) 205–5722.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184E), 400 Maryland Avenue, SW., Washington, DC 20202–4260. or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.184E), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184E), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. You must also submit a progress report nine months after the award date. This report should provide the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Secretary has established the following performance measures for assessing the effectiveness of the Emergency Response and Crisis Management Grant Program:

- Demonstration of increased number of hazards addressed by the improved school emergency response plan as compared to the baseline plan;
- Demonstration of improved response time and quality of response to practice drills and simulated crises; and
- A plan for and commitment to the sustainability and continuous improvement of the school emergency response plan by the district and community partners beyond the period of Federal financial assistance.

These three measures constitute the Department's indicators of success for this program. Consequently, applicants for a grant under this program are advised to give careful consideration to these three measures in conceptualizing the approach and evaluation of their proposed project. If funded, applicants will be asked to collect and report data in their performance and final reports about progress toward these measures.

VII. Agency Contact

For Further Information Contact: Tara Hill, U.S. Department of Education, 400 Maryland Ave., SW., Room 3E340, Washington, DC 20202–6450. Telephone: (202) 708–4850 or by e-mail: *tara.hill@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

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Dated: May 8, 2006.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 06–4407 Filed 5–10–06; 8:45 am]

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