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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 922

**[Docket No. FV06–922–2 FIR]**

### Apricots Grown in Designated Counties in Washington; Temporary Relaxation of the Minimum Grade Requirement

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that relaxed the minimum grade requirement prescribed under the Washington apricot marketing order for the 2006 shipping season. The marketing order regulates the handling of fresh apricots grown in designated counties in the State of Washington, and is administered locally by the Washington Apricot Marketing Committee (Committee). This rule continues in effect the action that relaxed the fresh apricot minimum grade requirement from Washington No. 1 grade to Washington No. 2 grade. Taking into consideration pre-harvest hail damage, this change was made for the purpose of increasing the supply of marketable fresh apricots while increasing the potential for higher producer returns.

**EFFECTIVE DATE:** December 13, 2006.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Curry or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, Oregon 97204–2807; Telephone: (503) 326–2724; Fax: (503) 326–7440; or E-Mail: *Robert.Curry@usda.gov* or *GaryD.Olson@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone (202) 720–2491; Fax: (202) 720–8938; or E-mail: *Jay.Guerber@usda.gov*.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 922 (7 CFR part 922) regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The interim final rule being adopted by this rule relaxed the minimum grade requirement for fresh apricots produced in Washington State from Washington No. 1 grade to Washington No. 2 grade. Based on pre-harvest hail damage, this change was made for the purpose of increasing the supply of marketable fresh apricots while increasing the potential for higher producer returns. The minimum grade requirement will revert to Washington No. 1 grade on April 1, 2007, for the 2007 and future seasons.

Section 922.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, pack, and container for any variety of apricots grown in the production area. Section 922.53 further authorizes the modification, suspension, or termination of regulations issued pursuant to § 922.52. Section 922.55 provides that whenever apricots are regulated pursuant to §§ 922.52 or 922.53, such apricots must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

Minimum grade, maturity, color, and size requirements for Washington apricots regulated under the order are specified in § 922.321 *Apricot Regulation 21*. Section 922.321 provides, in part, that no handler shall handle any container of apricots unless such apricots grade not less than Washington No. 1, except for shipments subject to exemption under the regulation. In addition, the section provides that the Moorpark variety in open containers must be generally well matured. That section also provides that, with the exception of exempt shipments, apricots must be at least reasonably uniform in color, and be not less than 1⅝ inches in diameter, except for the Blenheim, Blenril, and Tilton varieties which must be not less than 1¼ inches in diameter. Individual shipments of apricots are exempt from these requirements if sold for home use only, do not, in the aggregate, exceed 500 pounds net weight, and each container is stamped or marked with the words ''not for resale.''

The interim final rule being adopted by this action revised paragraph (a)(1) of § 922.321 by temporarily changing the minimum grade requirement for fresh shipments of apricots from Washington No. 1 grade to Washington No. 2 grade for the 2006 shipping season only. This change was based on a request from a handler representing several producers and recommended by the Committee in a vote of nine to one to facilitate the handling of fruit damaged by hail. The

2006 Washington apricot shipping season started in late June and ended in early September, with most shipments made by early August. The Washington No. 1 minimum grade requirement will resume April 1, 2007, for the 2007 season and future seasons.

The Committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Washington apricots which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The USDA reviews information submitted by, and recommendations from, the Committee and other available information to determine whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Last spring, the Committee conveyed to USDA that widely scattered hail damage was reported within the Washington apricot production area as a result of late spring storms. The severe weather conditions resulted in damage to the crop making it difficult for apricots to meet the minimum grade requirements of Washington No. 1. The relaxation in the grade requirement provided for the handling of a larger portion of the Washington apricot crop than would have been permitted if the minimum grade requirement had remained at Washington No. 1. This action helped the industry meet consumer demand while providing for better producer returns.

**Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 apricot producers within the regulated production area and approximately 22 regulated handlers. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

For the 2005 apricot shipping season, the Washington Agricultural Statistics Service prepared a preliminary report showing that the total 5,600 ton apricot utilization sold for an average of $997 per ton. Based on the number of producers in the production area (300), the average annual producer revenue from the sale of apricots in 2005 can thus be estimated at approximately $18,611.

Average revenue per handler can be estimated using f.o.b. prices. According to USDA's Market News Service, 2005 fresh apricot f.o.b. prices ranged from $15.00 to $20.00 per 24-pound loose-pack container, and from $14.00 to $24.00 for 2-layer tray pack containers (which weigh an average of about 20 pounds each). Total apricot sales revenue at the f.o.b. shipper level can be estimated by taking the midpoints of each of the two ranges ($17.50 and $19.00) as representative annual average prices for each of the container types. The 2005 season fresh apricot pack-out of 4,471 tons can be assumed to be equally divided between the two container types, yielding an estimated quantity packed in each container type of 2,235.5 tons, or 4.471 million pounds. Dividing this quantity by the pounds per container yields the following handler sales revenue estimates: (a) 186,292 24-pound loose-pack containers, with an average price of $17.50, valued at $3,260,110 and (b) 223,550 two-layer tray pack containers, with an average price of $19.00, valued at $4,246,500. Combining the estimated handler sales revenue for the two container types ($7,506,610) and dividing by the number of handlers (22) yields an annual average fresh apricot sales revenue estimate per handler of $341,210. Since both the average annual producer and handler revenue figures are under the limits established by SBA, it is reasonable to assume that the majority of producers and handlers of Washington apricots may be classified as small entities.

This rule adopts, as a final rule, an interim final rule that revised paragraph (a)(1) of § 922.321 by temporarily changing the minimum grade requirement for fresh shipments of apricots from Washington No. 1 grade to Washington No. 2 grade for the 2006 season only. The Washington No. 1 minimum grade requirement will resume April 1, 2007, for the 2007 season and future seasons. Section 922.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, pack, and container for any variety of apricots grown in the production area. Section 922.53 further authorizes the modification, suspension, or termination of regulations issued pursuant to § 922.52.

The Committee believes that this action has not negatively impacted small businesses. The interim final rule relaxed the minimum grade requirement in the order's handling regulations and was intended to provide enhanced marketing opportunities for the Washington apricot industry.

Given the emergency nature of the relaxation, the Committee's recommendation was made via the vote-by-mail procedures of the order. With ten of the twelve members responding, nine members supported the temporary grade change and one member opposed it. The only alternative to a grade relaxation offered on the ballot was to leave the minimum grade at Washington No. 1, which was not adopted.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

An interim final rule regarding this action was published in the **Federal Register** on August 2, 2006. Copies of the rule were made available to the apricot industry by the Committee's staff, as well as through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended October 2, 2006. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that the

interim final rule, without change, as published in the **Federal Register** (71 FR 43643, August 2, 2006) will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 922**

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

## PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ Accordingly, the interim final rule amending 7 CFR part 922 which was published at 71 FR 43643 on August 2, 2006, is adopted as a final rule without change.

Dated: November 7, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E6–19079 Filed 11–9–06; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 930

**[Docket No. FV06–930–1 FIR]**

## Tart Cherries Grown in the States of Michigan, et al.; Change in Certain Provisions/Procedures Under the Handling Regulations for Tart Cherries

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, with a change, an interim final rule removing volume limitations on new product development, new market development and market expansion activities to facilitate such activities; allowing handlers to receive diversion credit for the voluntary destruction of finished, marketable products that have deteriorated in condition to provide handlers more flexibility; adding a procedure to keep Cherry Industry Administrative Board (Board) representation in line with current district production levels; and revising grower application and mapping procedures under the grower diversion program to make the process less burdensome. These changes are intended to improve the operation of the marketing order and to increase the demand for tart cherries and tart cherry products. The changes were unanimously recommended by the Board, the body that locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

**EFFECTIVE DATE:** December 13, 2006.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; Telephone: (301) 734–5243, or Fax: (301) 734–5275.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempt therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect changes to § 930.162, Exemptions, that removed volume limitations on new product development, new market development, and market expansion activities utilized by handlers to earn diversion credits to meet restricted percentage regulation withholding requirements. Handler diversion is authorized under § 930.59 of the order and, when volume regulation is in effect, handlers may fulfill restricted percentage requirements by diverting cherries or cherry products rather than placing tart cherries in an inventory reserve. Volume regulation is intended to help the tart cherry industry stabilize supplies and prices in years of excess production. Volume regulation percentages are in effect for the 2005–2006 crop year (71 FR 1915, January 12, 2006). This rule also continues in effect an action that allowed handlers to receive diversion credit for the voluntary destruction of finished marketable product; added a procedure to keep Board representation in line with district production levels; and revised grower application and mapping procedures.

Section 930.62 provides that the Board, with the approval of the Secretary, may exempt from the provisions of §§ 930.41 (Assessments), 930.44 (Quality control), 930.51 (Issuance of volume regulations), 930.53 (Modification, suspension, or termination of regulations), and 930.55 through 930.57 (Reserve regulations) cherries which are diverted in accordance with § 930.59. According to § 930.62, cherries that are diverted in accordance with § 930.59 may be used for new product development and new market development, used for experimental purposes, or used for any other purpose designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries were utilized.

Section 930.162 specifies procedures for obtaining approval for exempt uses which include new product development, new market development, and market expansion. Currently, these provisions specify volume limitations for these exempt uses. The limitations are specified in § 930.162(b)(1) which states that once total industry utilization for a new product exceeds 2 percent of the 5-year average production of tart cherries, the product shall no longer be considered under development and not be eligible for a new product development exemption. The maximum

duration of any new product credit activity is three years from the first date of shipment.

Section 930.162(b)(2) regarding new market development and market expansion specifies the annual industry-wide maximum diversion credit volume at 10 million pounds RPE (Raw Product Equivalent) of cherry products for all expansion activities which is allocated pro rata among participating handlers.

When these limitations were added, the Board believed that these markets should be developed slowly. However, it now believes that these limitations are a disincentive to new product, market development, and market expansion activities involving large quantities. If a handler's new product activity involves moving 8 million pounds of exempt tart cherries, and 2 percent of the 5-year average production is 5 million pounds, the handler would only receive 5 million pounds of diversion credit, not 8 million pounds. The Board now believes that this unnecessarily restricts these handler activities and that handlers should receive diversion credit for the full diversion amount to stimulate handler interest and facilitate new product development activities.

With respect to new market development and market expansion activities, if the same handler had a pro rata allocation representing 20 percent of the industry-wide 10 million pound limitation for all handlers participating in these activities, this handler would only receive diversion credit for 1.6 million pounds, not 8 million pounds. The Board believes that this provision should be removed to facilitate handler interest in new market development and market expansion.

To facilitate these activities, the Board recommended that the volume limitations be removed from paragraphs (b)(1) and (b)(2) of § 930.162 to foster further handler interest in new product, new market development, and market expansion activities. This is expected to result in an increase in demand for tart cherries and tart cherry products. The time limitation for new product development will remain in effect.

As previously stated in this document, handler diversion is authorized under § 930.59. Section 930.159 of the rules and regulations under the order allows handlers to divert cherries by destruction of the cherries at the handler's facility. At-plant diversion of cherries takes place prior to placing cherries into the processing line to ensure that the cherries diverted were not simply an undesirable or unmarketable byproduct of processing. Handlers also can receive diversion credit for finished, marketable tart cherry products that were accidentally destroyed. Finished, marketable cherry products might be accidentally destroyed in a fire, explosion, or because of a freezer malfunction.

Handlers sometimes voluntarily destroy finished, marketable cherry products if the cherry products sustain a loss of condition that renders them unacceptable for use in normal market channels (free tonnage outlets). To permit handlers to recover some of their costs incurred in acquiring, processing, and storing such cherries, the Board unanimously recommended that the at-plant diversion procedures be broadened so handlers can receive diversion credit for the voluntary destruction of such cherries. The handler would not have to purchase additional cherries to meet his/her restricted percentage obligation, but could simply use the diversion credit received for the voluntarily destroyed product.

To receive diversion credit under this added option, the Board recommended that the cherry products meet similar criteria as accidentally destroyed marketable product. That is, such cherry products must: (1) Be owned by the handler at the time of the voluntary destruction; (2) be a marketable product at the time of processing; (3) be included in the handler's end of year handler plan; and (4) have been assigned a Raw Product Equivalent (RPE) by the handler to determine the volume of cherries. In addition, the condition and the voluntary destruction as well as the disposition of the finished tart cherry product must be verified by a USDA inspector or a Board agent or employee.

Handlers wishing to obtain diversion certificates for finished tart cherry products that are voluntarily destroyed must apply for such diversion certificates and sign an agreement that disposition of the destroyed product will take place under the supervision of USDA's Processed Products Branch inspectors or Board inspectors. This will allow the Board to verify that the finished product was marketable, but sustained a loss of condition, and that it was disposed of properly.

Once diversion is satisfactorily accomplished, handlers will receive diversion certificates from the Board stating the weight of cherries diverted. Such diversion certificates can be used to satisfy a handler's restricted percentage obligation.

Section 930.158 provides that growers, in districts subject to volume regulation, may voluntarily divert their tart cherry production. Growers may then offer their diversion certificates to handlers for their use in meeting their restricted percentage obligation. The four types of grower diversion are: Random row, whole block, partial block, and in-orchard tank diversion. This action changes the procedures for grower mapping under the grower diversion program. Currently, under § 930.158 growers that wish to divert cherries using methods other than in-orchard tank must file maps every year if they intend to participate in the voluntary grower diversion program. Growers applying for diversion must sign a Grower Diversion Application which states that the grower agrees to comply with the regulations established for the tart cherry diversion program. Each map must contain the grower's name and number assigned by the Board, the grower's address, the block name or number when appropriate, the location of the orchard or orchards, and other information which may be necessary to accomplish the desired diversion.

Growers then inform the Board what type of diversion will be used: Random row, partial block, whole block or in-orchard tank diversion. Growers who have filed a Grower Diversion Application but have not submitted an orchard map with the Board can only participate in in-orchard tank diversion activities.

The Board has recommended that the original map and application have an ongoing, continuing effect. Annual resubmissions of the map and application would no longer be required. Growers will only submit an application and map if they are participating in the grower diversion program for the first time. Growers would need only to submit a new orchard map if he/she added a new block of trees or changed the orchard layout differently from the map previously submitted to the Board. This action will slightly decrease reporting burdens on growers participating in the grower diversion program.

This action continues in effect a revision to the provisions to § 930.120 for reallocating Board representation. Currently, § 930.20 allocates producer and handler representation on the Board based upon the previous 3-year average production of each district in the production area. When the production level in a district reaches various specified thresholds, the number of representatives from that district either increases or decreases: districts with production up to and including 10 million pounds shall have one member; districts with production greater than 10 million and up to and including 40

million pounds shall have 2 members; and districts with production greater than 40 million pounds and up to and including 80 million pounds shall have 3 members; and districts with production greater than 80 million pounds shall have 4 members.

The Board recommended that in the event that a district's 3-year average production decreases to a level requiring a reduction in membership on the Board, representation of the district shall be determined by: (1) Agreement of the elected members and alternate members of the specific district; or (2) if an agreement cannot be reached, the members and alternates having the shortest amount of time remaining in their terms of office would be removed from the Board. However, the Board's recommendation required modification.

Because the Secretary of Agriculture (Secretary) has sole authority to remove and select persons who can serve on the Board, it would not be appropriate to give direct responsibility to current Board members in a specific district to determine who is removed from the Board when production levels decrease. Accordingly, when a district is faced with losing Board representation, the regulations will require the members of the specific district to make a recommendation to the Board as to who should be removed from the Board, and the Board will then submit its recommendation to the Secretary for approval.

In the event a district's 3-year average production increases such that it warrants additional seats on the Board, the seats shall be allocated following the criteria in § 930.20(b)(5). Nomination and selection of members to fill the additional seats would follow the procedures specified in §§ 930.23 and 930.24.

In addition, § 930.158(a) was revised to delete obsolete dates in that section and § 930.158(b) was revised to clarify the requirement to submit a map for random-row diversion use.

**Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $6,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the producers and handlers of tart cherries under the order are considered small entities under SBA's standards.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 2000/2001 through 2004/2005, approximately 93.4 percent of the U.S. tart cherry crop, or 216.8 million pounds, was processed annually. Of the 216.8 million pounds of tart cherries processed, 59 percent was frozen, 28 percent was canned, and 13 percent was utilized for juice and other products.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. Bearing acreage has declined from a high of 50,050 acres in 1987/88 to 36,950 acres in 2004/2005. This represents a 26 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 73 percent of the total and produces about 70 percent of the U.S. tart cherry crop each year.

This action continues in effect a rule that removed volume limitations on market expansion activities used by handlers to earn diversion credits to meet their restricted volume obligations; allowed handlers to earn diversion credits when they voluntarily destroy finished marketable products that have been damaged or deteriorated in condition in some manner; revised grower application/mapping procedures under the grower division program to make the procedures less burdensome; and added a procedure regarding the reallocation of Board representation to reflect current district production levels. These changes to the marketing order are authorized under §§ 930.62, 930.59, 930.58, and 930.20, respectively.

It is expected that the benefits resulting from this rulemaking will impact both small and large handlers positively by helping them increase market demand and by improving the operation of the marketing order. It also will benefit producers by making the in-orchard diversion application/mapping procedures less burdensome and improve the operation of the program.

Regarding alternatives, the Board discussed leaving the provisions unchanged, but determined that the changes were a more viable course of action. The program improvements expected to result because of these changes will positively impact producers and handlers under the marketing order, regardless of size.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

USDA has determined that this action will have a small impact on the reporting and recordkeeping requirements imposed under the tart cherry marketing order. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) under OMB No. 0581–0177, Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, M.O. No. 930.

This rule, which changes procedures for growers submitting applications and maps, will result in a slight decrease in reporting and recordkeeping requirements on growers who participate in the voluntary diversion program. In addition, a slight increase in reporting and recordkeeping requirements for handlers who voluntarily destroy tart cherry products would be within the current information collection burden approved by OMB.

Reporting and recordkeeping requirements are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies.

AMS is committed to compliance with the E-Government Act, to promote

the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

An interim final rule concerning this action was published in the **Federal Register** on April 5, 2006 (71 FR 16982). Copies of the rule were mailed by the Board's staff to all Board members and tart cherry handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended June 5, 2006. Two comments were received. One comment was received from a tart cherry grower and the other comment was from the Executive Director of the Board.

The comment from the grower supported USDA's modification to the Board's recommendation concerning the authority of the Secretary to remove or select members of the Board. The Board had recommended that current Board members in a specific district determine who is removed from the Board when production levels decrease. USDA modified the recommendation so it stated that when a district falls below the threshold level, members from the district should make a recommendation to the Board. The Board would then submit its recommendation to the Secretary for approval. The commenter agreed with this modification.

The comment from the Executive Director of the Board concerned two issues contained in the interim final rule: (1) Grower mapping requirements; and (2) reallocating Board representation. With respect to the first issue, the commenter urges USDA to remove the requirement now included in § 930.158(b) that if a grower decides not to participate in the grower diversion program for a year, the grower must inform the Board of his/her non-participation. USDA agrees that this requirement is not necessary for the operation of the grower diversion program. As such, this requirement is being deleted from § 930.158(b).

The second issue the Executive Director addressed concerned the reallocation of Board membership. The commenter asserted that the recommendation of the Board, concerning reallocation, should be adopted without the USDA modification that the Secretary will make the final decision based on a Board recommendation. The Board's recommendation, however, did not take into account the Secretary's sole authority to remove and select persons to serve on the Board. As previously discussed, it would not be appropriate to give direct responsibility to current Board members in a specific district to determine who is removed from the Board when production levels decrease. Therefore, the commenter's second suggestion is not adopted in this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that finalizing the interim final rule, with a change, as published in the **Federal Register** (71 FR 16982, April 5, 2006) will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 930**

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

■ For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

## PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ Accordingly, the interim final rule amending 7 CFR part 930 which was published at 71 FR 16982 on April 5, 2006, is adopted as a final rule with the following change.

## PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for part 930 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. In § 930.158, the introductory text of paragraph (b) is revised to read as follows:

**§ 930.158 Grower diversion and grower diversion certificates.**

* * * * *

(b) *Application and mapping for diversion.* Any grower desiring to divert cherries using methods other than in-orchard tank shall submit a map of the orchard or orchards to be diverted, along with a completed Grower Diversion Application, to the Board by April 15 of each crop year. The application includes a statement which must be signed by the grower which states that the grower agrees to comply with the regulations established for a tart cherry diversion program. Each map shall contain the grower's name and number assigned by the Board, the grower's address, block name or number when appropriate, location of orchard or orchards and other information which may be necessary to accomplish the desired diversion. On or before July 1, the grower should inform the Board of such grower's intention to divert in-orchard and what type of diversion will be used. The four types of diversion are random row diversion, whole block diversion, partial block diversion and in-orchard tank diversion. A grower who informs the Board about the type of diversion he or she wishes to use by July 1 can elect to use any diversion method or combination of diversion methods. Only random row or in-orchard tank diversion methods may be used if the Board is not so informed by July 1. Trees that are four years or younger do not qualify for diversion. Annual resubmissions of either the map or application will no longer be required. Growers will only submit a new application and map if they are participating in the grower diversion program for the first time. Growers will need only to submit a new orchard map if he/she adds a new block of trees to the orchard or changes the orchard layout differently from the map previously submitted to the Board.

* * * * *

Dated: November 7, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E6–19078 Filed 11–9–06; 8:45 am]

BILLING CODE 3410–02–P

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 328

**RIN 3064–AD05**

### Advertisement of Membership

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** The FDIC is promulgating a final rule revising its regulation governing official FDIC signs and advertising of FDIC membership. The final rule replaces the separate signs used by Bank Insurance Fund (BIF) and Savings Association Insurance Fund (SAIF) members with a new sign, or insurance logo, to be used by all insured

depository institutions. In addition, the final rule extends the advertising requirements to savings associations, consolidates the exceptions to those requirements, and restricts the use of the official advertising statement when advertising non-deposit products. The final rule also restructures the text in certain sections in order to make them easier to read. Lastly, the final rule places the current prohibition pertaining to receipt of deposits at the same teller station or window as noninsured institutions in its own section.

**DATES:** The final rule will become effective on November 13, 2007.

**FOR FURTHER INFORMATION CONTACT:** David P. Lafleur, Policy Analyst, (202) 898–6569, Division of Supervision and Consumer Protection (DSC); John M. Jackwood, Acting Chief, Compliance Section, (202) 898–3991, DSC; Kathleen G. Nagle, Supervisory Consumer Affairs Specialist, (202) 898–6541, DSC; or Richard B. Foley, Counsel, (202) 898–3784, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

## I. Background

A notice of proposed rulemaking (NPR) was published in the **Federal Register** at 71 FR 40440 (July 17, 2006). The public comment period ended on September 15, 2006. The FDIC received a total of twelve comments. Nine of the comments were from insured depository institutions and three were from trade associations.

## II. The Final Rule

### *A. Section 328.0—Scope*

(i) *Proposed rule.* Under the proposed rule, the scope provision would be revised by the proposed rule to reflect that there would now be one sign used by all insured depository institutions and the advertising requirements in § 328.3 would be extended to savings associations.

(ii) *Comments.* No comments were received on this aspect of the proposed rule.

(iii) *Final rule.* No changes were made to this aspect of the proposed rule.

### *B. Section 328.1—Official Sign*

(i) *Proposed rule.* Pursuant to section 18(a) of the Federal Deposit Insurance Act (FDI Act), as amended by section 2(c)(2) of the Federal Deposit Insurance Reform Conforming Amendments Act of 2005, Public Law 109–173, 119 Stat. 3601–19 (FDIRCA Act), the proposed rule would revise § 328.1 to eliminate the separate official bank sign and official savings association sign, and to display a black and white version of the new official sign that would be used by all insured depository institutions.

Under the proposed rule, the official sign would be 7″ by 3″ in size, with black lettering and gold background. The design is similar in color scheme and layout to the current bank sign but with the following differences: First, the language above ''FDIC'' states ''Each depositor insured to at least $100,000,'' instead of ''Each depositor insured to $100,000.'' The revised language more accurately reflects the new deposit insurance coverage limits in the FDIRCA Act and the Federal Deposit Insurance Reform Act of 2005, Public Law 109–171, title II, subtitle B, 120 Stat. 9–21. Second, the proposed sign includes the FDIC's internet Web site and leaves out the FDIC seal. Finally, the full faith and credit statement required by the FDIRCA Act is in italics on the left side of the proposed sign and is bordered by a semi-circle of stars, a design that partially reflects the current savings association sign.

Section 328.1 also describes the ''symbol'' of the Corporation that insured depository institutions could use at their option as the official advertising statement. Under the proposed rule, the symbol would be that portion of the proposed official sign consisting of ''FDIC'' and the two lines of smaller type above and below ''FDIC.''

(ii) *Comments.* Some commenters expressed support for having one official sign for all insured depository institutions, but one of those commenters objected to the language ''Each depositor insured to at least $100,000,'' arguing that the language may require changing the official sign every five years if the insurance limit changes.

(iii) *Final rule.* No changes were made to this aspect of the proposed rule. The FDIC believes that the proposed language indicating the minimum dollar amount of insurance coverage provides customers with important information, despite the fact that a depositor may in some situations have greater insurance coverage and the minimum dollar amount of insurance coverage may increase in the future. By saying that each depositor is insured to ''at least''—rather than ''up to''—$100,000, the new official sign will remain accurate even if there are future increases in insurance coverage.

### *C. Section 328.2—Display and Procurement of Official Sign*

(i) *Proposed rule.* The proposed rule would make conforming changes to this section so that it applies to all insured depository institutions, not just insured banks. The proposed rule also restructures this section to make it easier to read but without making any substantive changes.

Part 328 uses the term ''automatic service facilities'' in some places, and the term ''remote service facilities'' in other places, although the two terms have the same meaning within that part. The proposed rule uses the term ''remote service facility'' in each place and defines that term in § 328.2(a)(1)(ii) to include any automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received.

The current §§ 328.2 and 328.4 are virtually identical, except that one applies to insured banks and the other applies to insured savings associations. The key difference between these provisions is that § 328.4 has a paragraph (e) prohibiting insured savings associations from using the official bank sign. As the new official sign would be applicable to all insured depository institutions, the proposed rule would combine current §§ 328.2 and 328.4 into a new § 328.2.

As in the current § 328.2, the proposed revision would allow an insured depository institution to vary the size, color, or material of the official sign at its expense, and to display such altered signs within the institution at locations other than where insured deposits are received. However, under the proposed rule, only the official sign adhering to the specifications of § 328.1 could have been displayed where insured deposits are received. The proposed rule refers to the FDIC's internet Web site, *http://www.fdic.gov*, for information on obtaining the official sign.

(ii) *Comments.* Some commenters opposed the requirement in the proposed rule that only the official sign—*i.e.*, the black and gold design specified in § 328.1—could be displayed at each station or window where insured deposits are received. Those commenters maintained that the FDIC currently allows institutions to display signs that vary in color or material at stations or windows where insured deposits are received.

Some commenters noted that section 18(a)(1)(A) of the FDI Act, 12 U.S.C. 1828(a)(1)(A), requires an insured depository institution to display a sign ''at each place of business maintained by that institution,'' not at each station or window where insured deposits are received. Therefore, according to those commenters, the FDIC could simply

require that the official sign be displayed at each customer entrance to an institution's office.

Some commenters stated that they assumed the FDIC would provide insured depository institutions, without charge, as many official signs as they need to comply with the final rule. However, one of those commenters suggested that current signage could be ''grandfathered,'' since providing the new signs would impose a cost on taxpayers for what could be considered a non-substantive change.

(iii) *Final rule.* The final rule retains the longstanding requirement that the official sign be displayed at each station or window where insured deposits are received. Requiring that signs be displayed at each station or window where insured deposits are received, rather than at each customer entrance to an institution's office, is consistent with section 18(a)(1)(A) of the FDI Act. Moreover, because depository institutions offer uninsured non-deposit products in other parts of their premises, the requirement better informs customers about where FDIC-insured deposits are received.[1]

The final rule permits an institution to display signs varying in size, color, or material from the specifications for the official sign in § 328.1 at stations or windows where insured deposits are received. However, in locations where display of the official sign is required under § 328.2(a), the final rule prohibits variations in size that are smaller than the official sign. In the required locations, signs must also use the same color for the text and symbols. These requirements are intended to ensure that customers are able to recognize the sign. A new sub-paragraph (2) of § 328.2(a) implements these changes, and § 328.2(a)(2) of the proposed rule has been redesignated as § 328.2(a)(3). Finally, § 328.2(a)(1)(i) of the proposed rule has been revised to provide that, in addition to those locations where the official sign must be displayed under § 328.2(a), an institution may display the official sign in other locations at the institution.

Like the proposed rule, the final rule will allow insured depository institutions to obtain from the FDIC, at no charge, the official signs they need to comply with part 328. The final rule does not adopt the suggestion by one commenter that current signage could be ''grandfathered,'' since that would be inconsistent with section 18(a) of the FDI Act.

*D. Section 328.3—Official Advertising Statement Requirements*

(1) Proposal To Extend Official Advertising Statement Requirement to Savings Associations

(i) *Proposed rule.* Section 328.3 requires insured banks to include the official advertising statement in all their advertisements (with certain exceptions). The basic form of the statement is ''Member of the Federal Deposit Insurance Corporation,'' which may be shortened to ''Member FDIC.'' There is no equivalent requirement for insured savings associations. The proposed rule would revise § 328.3 to provide for consistent treatment of banks and savings associations by requiring all insured depository institutions to include the official advertising statement in their advertisements.

(ii) *Comments.* One commenter voiced support for this aspect of the proposed rule. No commenters objected to it.

(iii) *Final rule.* No changes were made to this aspect of the proposed rule.

(2) Proposals To Consolidate Exceptions to the Required Use of the Official Advertising Statement

(i) *Proposed rule.* There are currently twenty exceptions to the required use of the official advertising statement. The proposed rule would have simplified the advertising requirements by reducing the number of exceptions to five. The proposed rule would have done this by limiting the applicability of § 328.3 to advertisements that specifically promote deposit products or generally promote banking services offered by an insured depository institution. The latter would have included advertisements that contain an institution's name and a statement about the availability of general banking services. The term ''advertisement'' would have been defined as a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business. By limiting the applicability of § 328.3 in this way, the NPR asserted that most of the current exceptions to the advertising requirements would become unnecessary. The exemptions eliminated from the proposed rule would have been for: Statements and reports of condition; bank supplies; listings in directories; and advertisements relating to loan services, safekeeping box services, trust services, real estate services, armored car services, service or analysis charges, securities services, travel department business, and savings bank life insurance.

(ii) *Comments.* Some commenters found the phrase ''generally promote banking services'' ambiguous enough to be interpreted to include advertisements that fall within the current exceptions—*e.g.*, the exceptions for bank supplies, listings in directories, and advertisements for loan and safekeeping box services. Those commenters maintained that the advertising requirements should only apply to advertisements promoting deposit products. One commenter suggested clarifying the final rule by explaining that promoting only non-deposit banking products is not ''generally promoting banking services.'' Another commenter suggested substituting the phrase ''promote non-specific banking services'' for ''generally promoting banking services.'' Some commenters advocated retaining the current list of exceptions to the advertising requirements. One commenter thought that the paragraph heading for 328.3(c)—''Use of official advertising statement in all advertisements''—should be revised by deleting the word ''all,'' since there will no longer be a laundry list of exceptions.

(iii) *Final rule.* In order to avoid ambiguity as to the scope of the advertising requirements, the final rule substitutes the phrase, ''promote non-specific banking products and services,'' for the phrase, ''generally promote banking services.'' In addition, the final rule explains that an advertisement promotes non-specific banking products and services if it includes the name of the insured depository institution but does not list or describe particular products or services offered by the institution—*e.g.*, ''Anytown Bank, offering a full range of banking services.'' Lastly, the final rule explicitly references the exceptions listed at § 328.3(c)(1), (2), (4), (5) and (6) of the current rule. The word ''all'' has been deleted from the heading for § 328.3(c), as suggested by one commenter. Taken together, these revisions clarify when the advertising requirements apply and when they do not apply. The final rule is not intended to expand the applicability of the advertising requirements.

(3) Other Proposed Revisions

(i) *Proposed rule.* The proposed rule also would make certain clarifying, non-substantive, and conforming editorial

[1] Insured depository institutions are required to disclose that certain non-deposit products are not FDIC-insured, and such products generally must be sold at physical locations distinct from the area where retail deposits are taken. *See* 12 CFR part 343 (Consumer Protection in Sales of Insurance—rules applicable to FDIC-supervised institutions) and the *Interagency Policy Statement on Retail Sales of Nondeposit Investment Products*, issued on February 15, 1994 (NDIP Policy Statement).

changes in § 328.3. In addition, three provisions in the current rule have not been included in the proposed rule because they address narrow situations that rarely occur. The first provision, § 328.3(a)(2), allows the Board to grant temporary exemptions from the advertising requirements for good cause. The second provision, § 328.3(a)(3), concerns advertising copy not including the official advertising statement that is on hand on the date the advertising requirements become operative. The third provision, § 328.3(d), addresses how to handle outstanding billboard advertisements that require use of the official advertising statement.

(ii) *Comments.* One commenter voiced no objection to this aspect of the proposed rule.

(iii) *Final rule.* No changes were made to this aspect of the proposed rule.

*E. Section 328.3(e)—Restrictions on Using the Official Advertising Statement When Advertising Non-Deposit Products*

(i) *Proposed rule.* The NPR solicited comment on whether the final rule should include a provision that would: (1) Prohibit use of the official advertising statement in advertisements relating solely to non-deposit products (NDPs) or hybrid products containing NDP and deposit features (*e.g.*, sweep accounts); and (2) require that the official advertising statement be clearly segregated from information about NDPs in advertisements containing information about both NDPs and insured deposit products.

(ii) *Comments.* Several commenters supported having a provision in the final rule setting forth the requirements for using, not using, and/or segregating the official advertising statement in advertisements for NDPs only, advertisements for hybrid products, and advertisements for both NDPs and insured deposit products. Some commenters advocated clarification of the advertising requirements in the final rule. One commenter recommended that the final rule clarify the advertising requirements by providing that the official advertising statement is not mandatory in advertisements for NDPs only or in advertisements for hybrid products. One commenter thought the proposal is consistent with the NDIP Policy Statement except with regard to hybrid products. That commenter opposed the prohibition against displaying the official advertising statement in advertisements for hybrid products only. Another commenter asserted that the proposed provision is unnecessary, but argued that if the FDIC acted in this area, it should do so through a separate rulemaking.

(iii) *Final rule.* The final rule includes a new provision, in § 328.3(e), restricting use of the official advertising statement when advertising NDPs, as described above and in the NPR. The final rule defines the term ''non-deposit product'' to include, without limitation, insurance products, annuities, mutual funds, and securities. The products specifically included in the definition of non-deposit product are products that, in the FDIC's experience, have been mistakenly viewed by customers as being FDIC-insured. Credit products are excluded from this definition. The term ''hybrid product'' is defined as a product or service that has both deposit and non-deposit product features—*e.g.*, a sweep account.

Under § 328.3(e), insured depository institutions will be prohibited from using the official advertising statement in advertisements containing information only about NDPs or hybrid products. In mixed advertisements, containing information about both NDPs or hybrid products and insured deposit products, the official advertising statement will have to be clearly segregated from information about the NDPs or hybrid products in order to make it clear that the statement refers only to the insured deposit products. Since the new provision is consistent with the proposal set forth in the NPR, the FDIC does not believe that a separate rulemaking is necessary for this provision. Section 328.3(e) of the proposed rule has been redesignated as § 328.3(f).

*F. Section 328.4—Prohibition Against Receiving Deposits at Same Teller Station or Window as Noninsured Institution*

(i) *Proposed rule.* Section 328.2 currently has a provision that prohibits banks from receiving deposits at the same teller station or window where a noninsured institution receives deposits, except for a remote service facility. Since this provision does not relate directly to the display and procurement of the official sign and is significant enough that it should be set apart in a separate section, the proposed rule would move the provision to § 328.4.

(ii) *Comments.* One commenter voiced no objection to this aspect of the proposed rule.

(iii) *Final rule.* No changes were made to this aspect of the proposed rule.

*G. Effective Date*

(i) *Proposed rule.* The NPR also solicited comment on whether the proposed effective date of six months after publication of the final rule in the **Federal Register** would give insured depository institutions sufficient time to adjust to the new requirements in the proposed revision of part 328.

(ii) *Comments.* Several commenters advocated a one-year transition period. Some commenters believed that six months would not be enough time for institutions to use their existing inventory of promotional materials containing the current official signs and to change such materials to comply with the requirements for the new sign. One commenter maintained that six months might be enough time for display of the official sign at teller windows, but at least one year should be allowed with respect to paper supplies. One commenter thought January 17, 2007, would be appropriate for site specific advertising, such as signs on teller windows or bank doors, and for modifying an institution's internet pages, but felt that for changing paper materials the effective date should be extended to January 1, 2008.

One commenter was concerned that the effective date provision in the preamble to the NPR would not allow institutions to implement measures to comply with requirements of the final rule until the very end of the transition period, because doing so earlier would violate the current requirements in Part 328. That commenter also believed that institutions should be allowed to use existing stocks of printed materials until they are exhausted.

(iii) *Final rule.* The final rule extends the effective date until one year after the date when it is published in **Federal Register**. Such a transition period should give institutions sufficient time to use existing printed materials before the new requirements become mandatory. During the transition period, between publication of the final rule in the **Federal Register** and the effective date, insured depository institutions will not be deemed in violation of the current requirements in Part 328 if they implement measures to comply with requirements of the final rule. Indeed, the very purpose of the transition period is to give institutions time to implement such measures.

**III. Paperwork Reduction Act**

The final rule does not contain any ''collections of information'' within the meaning of section 3502(3) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3502(3)).

**IV. Regulatory Flexibility Act**

Display of the official sign is required by section 18(a) of FDI Act, as amended by section 2(c)(2) of the FDIRCA Act. There would not be any significant

compliance costs with displaying the official sign, because it would be provided by the FDIC free of charge. Insured banks have complied with similar advertising requirements for over seventy years without significant expense. Although savings associations have not been subject to such advertising requirements, many have used the official advertising statement voluntarily. Moreover, mandatory compliance with the advertising requirements by savings association would not entail significant expense. Accordingly, the Board hereby certifies that the final rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601–612).

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

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

### VI. Small Business Regulatory Enforcement Fairness Act

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

### List of Subjects in 12 CFR Part 328

Advertising, Bank deposit insurance, Savings associations, Signs and symbols.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends title 12, chapter III of the Code of Federal Regulations by revising part 328 to read as follows:

## PART 328—ADVERTISEMENT OF MEMBERSHIP

Sec.
328.0 Scope.
328.1 Official sign.
328.2 Display and procurement of official sign.
328.3 Official advertising statement requirements.
328.4 Prohibition against receiving deposits at same teller station or window as noninsured institution.

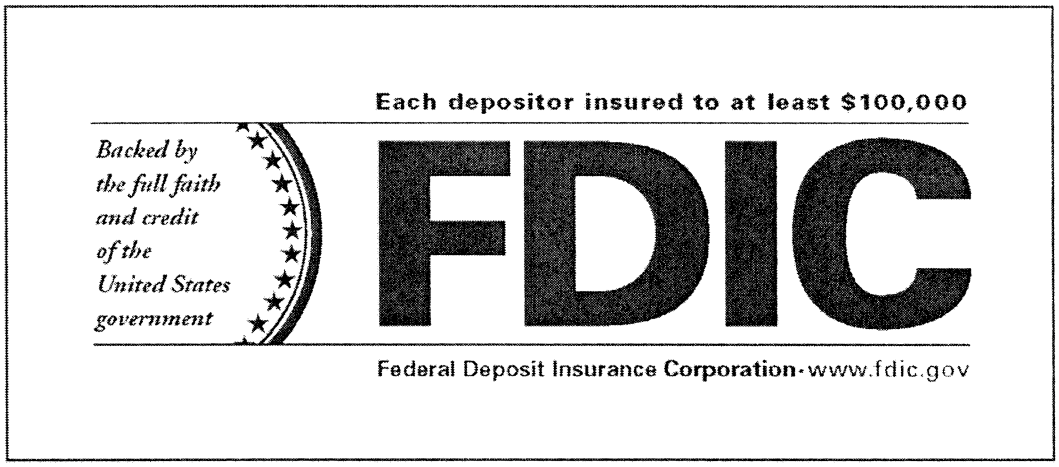
**Authority:** 12 U.S.C. 1818(a), 1819 (Tenth), 1828(a).

### § 328.0 Scope.

Part 328 describes the official sign of the FDIC and prescribes its use by insured depository institutions. It also prescribes the official advertising statement insured depository institutions must include in their advertisements. For purposes of part 328, the term ''insured depository institution'' includes insured branches of a foreign depository institution. Part 328 does not apply to non-insured offices or branches of insured depository institutions located in foreign countries.

### § 328.1 Official sign.

(a) The official sign referred to in this part shall be 7″ by 3″ in size, with black lettering and gold background, and of the following design:




(b) The ''symbol'' of the Corporation, as used in this part, shall be that portion of the official sign consisting of ''FDIC'' and the two lines of smaller type above and below ''FDIC.''

### § 328.2 Display and procurement of official sign.

(a) *Display of official sign.* Each insured depository institution shall continuously display the official sign at each station or window where insured deposits are usually and normally received in the depository institution's principal place of business and in all its branches.

(1) *Other locations*—

(i) *Within the institution.* In addition to locations where display of the official sign is required under this § 328.2(a), an insured depository institution may display the official sign in other locations at the institution.

(ii) *Other facilities.* An insured depository institution may display the official sign on or at Remote Service Facilities. If an insured depository institution displays the official sign at a Remote Service Facility, and if there are any noninsured institutions that share in the Remote Service Facility, any insured depository institution that displays the official sign must clearly show that the sign refers only to a designated insured depository institution(s). As used in this part, the term ''Remote Service Facility'' includes any automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received.

(2) *Varied signs.* Instead of displaying the official sign, an insured depository institution may display signs that vary from the official sign in size, color, or material at any location where display

of the official sign is required or permitted under this § 328.2(a). However, any such varied sign that is displayed in locations where display of the official sign is required under this § 328.2(a) must not be smaller in size than the official sign and must have the same color for the text and symbols.

(3) *Newly insured institutions.* A depository institution shall display the official sign no later than its twenty-first day of operation as an insured depository institution, unless the institution promptly requested the official sign from the Corporation, but did not receive it before that date.

(b) *Procuring official sign.* An insured depository institution may procure the official sign from the Corporation for official use at no charge. Information on obtaining the official sign is posted on the FDIC's internet Web site, *http://www.fdic.gov.* Alternatively, insured depository institutions may, at their expense, procure from commercial suppliers signs that vary from the official sign in size, color, or material. Any insured depository institution which has promptly submitted a written request for an official sign to the Corporation shall not be deemed to have violated this § 328.2 by failing to display the official sign, unless the insured depository institution fails to display the official sign after receipt thereof.

(c) *Required changes in sign.* The Corporation may require any insured depository institution, upon at least thirty (30) days' written notice, to change the wording of the official sign in a manner deemed necessary for the protection of depositors or others.

**§ 328.3 Official advertising statement requirements.**

(a) *Advertisement defined.* The term ''advertisement,'' as used in this part, shall mean a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business.

(b) *Official advertising statement.* The official advertising statement shall be in substance as follows: ''Member of the Federal Deposit Insurance Corporation.''

(1) *Optional short title and symbol.* The short title ''Member of FDIC'' or ''Member FDIC,'' or a reproduction of the symbol of the Corporation (as described in § 328.1(b)), may be used by insured depository institutions at their option as the official advertising statement.

(2) *Size and print.* The official advertising statement shall be of such size and print to be clearly legible. If the symbol of the Corporation is used as the official advertising statement, and the symbol must be reduced to such proportions that the two lines of smaller type above and below ''FDIC'' are indistinct and illegible, those lines of smaller type may be blocked out or dropped.

(c) *Use of official advertising statement in advertisements*—(1) *General requirement.* Except as provided in § 328.3(d), each insured depository institution shall include the official advertising statement prescribed in § 328.3(b) in all advertisements that either promote deposit products and services or promote non-specific banking products and services offered by the institution. For purposes of this § 328.3, an advertisement promotes non-specific banking products and services if it includes the name of the insured depository institution but does not list or describe particular products or services offered by the institution. An example of such an advertisement would be, ''Anytown Bank, offering a full range of banking services.''

(2) *Foreign depository institutions.* When a foreign depository institution has both insured and noninsured U.S. branches, the depository institution must also identify which branches are insured and which branches are not insured in all of its advertisements requiring use of the official advertising statement.

(3) *Newly insured institutions.* A depository institution shall include the official advertising statement in its advertisements no later than its twenty-first day of operation as an insured depository institution.

(d) *Types of advertisements which do not require the official advertising statement.* The following types of advertisements do not require use of the official advertising statement:

(1) Statements of condition and reports of condition of an insured depository institution which are required to be published by State or Federal law;

(2) Insured depository institution supplies such as stationery (except when used for circular letters), envelopes, deposit slips, checks, drafts, signature cards, deposit passbooks, certificates of deposit, etc.;

(3) Signs or plates in the insured depository institution offices or attached to the building or buildings in which such offices are located;

(4) Listings in directories;

(5) Advertisements not setting forth the name of the insured depository institution;

(6) Entries in a depository institution directory, provided the name of the insured depository institution is listed on any page in the directory with a symbol or other descriptive matter indicating it is a member of the Federal Deposit Insurance Corporation;

(7) Joint or group advertisements of depository institution services where the names of insured depository institutions and noninsured institutions are listed and form a part of such advertisements;

(8) Advertisements by radio or television, other than display advertisements, which do not exceed thirty (30) seconds in time;

(9) Advertisements which are of the type or character that make it impractical to include the official advertising statement, including, but not limited to, promotional items such as calendars, matchbooks, pens, pencils, and key chains; and

(10) Advertisements which contain a statement to the effect that the depository institution is a member of the Federal Deposit Insurance Corporation, or that the depository institution is insured by the Federal Deposit Insurance Corporation, or that its deposits or depositors are insured by the Federal Deposit Insurance Corporation to at least $100,000 for each depositor.

(e) *Restrictions on using the official advertising statement when advertising non-deposit products*—(1) *Definitions*—

(i) *Non-deposit product.* As used in this part, the term ''non-deposit product'' shall include, but is not limited to, insurance products, annuities, mutual funds, and securities. For purposes of this definition, a credit product is not a non-deposit product.

(ii) *Hybrid product.* As used in this part, the term ''hybrid product'' shall mean a product or service that has both deposit product features and non-deposit product features. A sweep account is an example of a hybrid product.

(2) *Non-deposit product advertisements.* Except as provided in § 328.3(e)(4), an insured depository institution shall not include the official advertising statement, or any other statement or symbol which implies or suggests the existence of Federal deposit insurance, in any advertisement relating solely to non-deposit products.

(3) *Hybrid product advertisements.* Except as provided in § 328.3(e)(4), an insured depository institution shall not include the official advertising statement, or any other statement or symbol which implies or suggests the existence of federal deposit insurance, in any advertisement relating solely to hybrid products.

(4) *Mixed advertisements.* In advertisements containing information about both insured deposit products and non-deposit products or hybrid

products, an insured depository institution shall clearly segregate the official advertising statement or any similar statement from that portion of the advertisement that relates to the non-deposit products.

(f) *Official advertising statement in non-English language.* The non-English equivalent of the official advertising statement may be used in any advertisement, provided that the translation has had the prior written approval of the Corporation.

**§ 328.4 Prohibition against receiving deposits at same teller station or window as noninsured institution.**

(a) *Prohibition.* An insured depository institution may not receive deposits at any teller station or window where any noninsured institution receives deposits or similar liabilities.

(b) *Exception.* This § 328.4 does not apply to deposits received at a Remote Service Facility.

By order of the Board of Directors.

Dated at Washington, DC, this 2nd day of November, 2006.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. E6–18802 Filed 11–9–06; 8:45 am]

**BILLING CODE 6714–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2006–25388; Directorate Identifier 2006–NM–086–AD; Amendment 39–14824; AD 2006–23–12]**

**RIN 2120–AA64**

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

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes equipped with certain hydraulic accumulators. This AD requires inspecting the hydraulic accumulators to identify certain serial numbers, and replacing any affected accumulator with a new or serviceable accumulator. Operators may delay doing the replacement by doing repetitive inspections of the affected hydraulic accumulators for signs of failure (leaking or cracking), and replacing any failed accumulator with a new or serviceable unit. This AD results from a report that one hydraulic accumulator failed in service, which caused the loss of the yellow hydraulic system when the airplane was configured for landing. We are issuing this AD to prevent damage to the pressure skin, failure of certain hydraulic systems, contamination of the cabin with hydraulic mist, increased workload for the flightcrew associated with the loss of one or more hydraulic circuits, and consequent reduced controllability of the airplane.

**DATES:** This AD becomes effective December 18, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 18, 2006.

**ADDRESSES:** You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

### Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes equipped with certain hydraulic accumulators. That NPRM was published in the **Federal Register** on July 19, 2006 (71 FR 40940). That NPRM proposed to require inspecting the hydraulic accumulators to identify certain serial numbers, and replacing any affected accumulator with a new or serviceable accumulator. Operators may delay doing the replacement by doing repetitive inspections of the affected hydraulic accumulators for signs of failure (leaking or cracking), and replacing any failed accumulator with a new or serviceable unit.

### Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment received.

### Request To Change Incorporation of Certain Information

The Modification and Replacement Parts Association (MARPA) states that, typically, airworthiness directives are based on service information originating with the type certificate holder or its suppliers. MARPA adds that manufacturer service documents are privately authored instruments generally having copyright protection against duplication and distribution. MARPA notes that when a service document is incorporated by reference into a public document, such as an airworthiness directive, it loses its private, protected status and becomes a public document. MARPA adds that, if a service document is used as a mandatory element of compliance, it should not simply be referenced, but should be incorporated into the regulatory document; by definition, public laws must be public, which means they cannot rely upon private writings. MARPA is concerned that the failure to incorporate essential service information could result in a court decision invalidating the AD.

MARPA adds that incorporated by reference service documents should be made available to the public by publication in the Document Management System (DMS), keyed to the action that incorporates them. MARPA notes that the stated purpose of the incorporation by reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals; traditionally, ''affected individuals'' means aircraft owners and operators, who are generally provided service information by the manufacturer. MARPA adds that a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing and

repair shops, parts purveyors and distributors, and organizations manufacturing or servicing alternatively certified parts § 21.303 (''Parts manufacturer approval'') of the Federal Aviation Regulations (14 CFR part 21). MARPA adds that the concept of brevity is now nearly archaic as documents exist more frequently in electronic format than on paper. Therefore, MARPA asks that the service documents deemed essential to the accomplishment of the NPRM be incorporated by reference into the regulatory instrument, and published in the DMS.

We do not agree that documents should be incorporated by reference during the NPRM phase of rulemaking. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the document necessary for the accomplishment of the requirements mandated by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

Additionally, we do not publish service documents in DMS. We are currently reviewing our practice of publishing proprietary service information. Once we have thoroughly examined all aspects of this issue, and have made a final determination, we will consider whether our current practice needs to be revised. However, we consider that to delay this AD action for that reason would be inappropriate, since we have determined that an unsafe condition exists and that the requirements in this AD must be accomplished to ensure continued safety. Therefore, we have not changed the AD in this regard.

## Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

## Costs of Compliance

This AD affects 42 airplanes of U.S. registry. The inspection to determine the serial number takes about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $3,360, or $80 per airplane.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2006–23–12 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft):** Amendment 39–14824. Docket No. FAA–2006–25388; Directorate Identifier 2006–NM–086–AD.

**Effective Date**

(a) This AD becomes effective December 18, 2006.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category; equipped with hydraulic accumulators part number (P/N) AIR91666–0, –1, or –2 installed.

**Unsafe Condition**

(d) This AD results from report that one hydraulic accumulator failed in service, which caused the loss of the yellow hydraulic system when the airplane was configured for landing. We are issuing this AD to prevent damage to the pressure skin, failure of certain hydraulic systems, contamination of the cabin with hydraulic mist, increased workload for the flightcrew associated with the loss of one or more hydraulic circuits, and consequent reduced controllability of the airplane.

**Compliance**

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

**Inspection To Determine Serial Number (S/N)**

(f) Within 48 hours after the effective date of this AD, inspect all P/N AIR91666–0, –1, and –2 hydraulic accumulators to determine whether any hydraulic accumulator is installed that has an S/N identified in paragraph C of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.29–A046, dated March 14, 2006. A review of airplane maintenance records is acceptable in lieu of this inspection if the S/N can be conclusively determined from that review.

**Replacement or Repetitive Inspections**

(g) If any accumulator with an affected S/N is identified during the inspection required by paragraph (f) of this AD, do the action in paragraph (g)(1) or (g)(2) of this AD. Do all actions in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.29–A046, dated March 14, 2006, except where the service bulletin specifies to submit certain information to the

manufacturer, this AD does not include that requirement.

(1) Before further flight: Replace the hydraulic accumulator with a new or serviceable accumulator.

(2) Before further flight: Do a detailed inspection for signs of failure (leaking or cracking) of the hydraulic accumulator, and replace any failed accumulator before further flight. If there is no sign of failure, repeat the inspection thereafter at the applicable interval in paragraph (g)(2)(i) or (g)(2)(ii) of this AD. Within 75 days after the effective date of this AD, replace the affected hydraulic accumulator with a new or serviceable accumulator. Doing the replacement terminates the repetitive inspections.

(i) At intervals not to exceed 48 hours.

(ii) Before further flight following a report of hydraulic fumes in the cabin air supply, or after a hydraulic fluid low-level warning; and thereafter at intervals not to exceed 48 hours.

(h) For airplanes on which more than one affected accumulator is identified during the inspection required by paragraph (f) of this AD: Within 12 days after the effective date of this AD, replace any affected accumulator in accordance with paragraph (g)(1) of this AD, so that no more than one accumulator with an affected S/N remains on the airplane; and inspect any remaining accumulator at the applicable interval in paragraph (g)(2) of this AD.

**Note 1:** BAE Systems (Operations) Limited Service Bulletin ISB.29–A046, dated March 14, 2006, refers to APPH Service Bulletin AIR91666–29–02, dated March 2006, as an additional source of service information for determining if an accumulator is a serviceable accumulator. The procedures include disassembling the accumulator cylinder, and testing it for cracking.

**Note 2:** For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, *etc.*, may be necessary. Surface cleaning and elaborate procedures may be required.''

**Parts Installation**

(i) Except as provided by paragraph (g)(2) of this AD: As of the effective date of this AD, no hydraulic accumulator having P/N AIR91666–0, –1, or –2 that has an S/N identified in paragraph C. of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.29–A046, dated March 14, 2006, may be installed on any airplane except for accumulators on which the actions specified in the Accomplishment Instructions of APPH Service Bulletin AIR91666–29–02, dated March 2006, have been done.

**Special Flight Permit Limited**

(j) Using special flight permits (14 CFR 21.197 and 21.199) before all affected hydraulic actuators are replaced on the airplane is allowed only if the airplane has not flown more than 5 flight cycles since the last inspection done in accordance with paragraph (g)(2) or (h) of this AD, as applicable; and if the flight can be accomplished in one flight cycle with the airplane unpressurized.

**Alternative Methods of Compliance (AMOCs)**

(k)(1) The Manager, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

**Related Information**

(l) European Aviation Safety Agency (EASA) emergency airworthiness directive 2006–0061—E [Corrected], dated March 17, 2006, also addresses the subject of this AD.

**Material Incorporated by Reference**

(m) You must use BAE Systems (Operations) Limited Inspection Service Bulletin ISB.29–A046, dated March 14, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 31, 2006.

**Kalene C. Yanamura,**

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

[FR Doc. E6–18965 Filed 11–9–06; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2006–25337; Directorate Identifier 2006–NM–138–AD; Amendment 39–14825; AD 2006–23–13]**

**RIN 2120–AA64**

## Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model BAe 146 airplanes. This AD requires inspecting the three-phase circuit breakers and three-phase circuit breaker panels for discrepancies; and fixing any discrepancy and replacing unserviceable units with new units, if necessary. This AD results from reports of three-phase circuit breakers overheating on in-service airplanes. We are issuing this AD to prevent failure of a three-phase circuit breaker. Such failure could prevent an electrical load from being isolated from its electrical supply, which could result in smoke or fire in the flight deck.

**DATES:** This AD becomes effective December 18, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 18, 2006.

**ADDRESSES:** You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:** Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the

Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

## Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all BAE Systems (Operations) Limited Model BAe 146 airplanes. That NPRM was published in the **Federal Register** on July 13, 2006 (71 FR 39595). That NPRM proposed to require inspecting the three-phase circuit breakers and three-phase circuit breaker panels for discrepancies; and fixing any discrepancy and replacing unserviceable units with new units, if necessary.

## Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

### Request To Consider Electronic Test in Place of Visual Inspection

The commenter, a private citizen who is also an airplane mechanic, believes that a physical inspection will not adequately determine an operational deficiency. The commenter recommends adding a periodic electrical test of the affected circuit breakers. In support of his recommendation, the commenter describes his experience as a helicopter operator, and states that he built a bench check unit that could verify an operational deficiency of circuit breakers.

We disagree with requiring an electrical test in place of a detailed (physical) inspection of the circuit breakers. Both the original equipment manufacturer and the European Aviation Safety Agency (EASA), which is the airworthiness authority for the European Union, have determined that a detailed inspection is adequate to ensure safety. The commenter did not provide factual or statistical data to show that damaged circuit breakers could remain on the airplane even though the detailed inspection shows no damage. However, the commenter presents some interesting information that we will share with the EASA. We have not changed the AD in this regard.

### Request To Change Incorporation of Certain Information

The Modification and Replacement Parts Association (MARPA) states that, typically, airworthiness directives are based on service information originating with the type certificate holder or its suppliers. MARPA adds that manufacturer service documents are privately authored instruments generally having copyright protection against duplication and distribution. MARPA notes that when a service document is incorporation by reference into a public document, such as an airworthiness directive, it loses its private, protected status and becomes a public document. MARPA adds that, if a service document is used as a mandatory element of compliance, it should not simply be referenced, but should be incorporated into the regulatory document; by definition, public laws must be public, which means they cannot rely upon private writings. MARPA is concerned that the failure to incorporate essential service information could result in a court decision invalidating the AD.

MARPA adds that incorporated by reference service documents should be made available to the public by publication in the Document Management System (DMS), keyed to the action that incorporates them. MARPA notes that the stated purpose of the incorporated by reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals; traditionally, ''affected individuals'' means aircraft owners and operators, who are generally provided service information by the manufacturer. MARPA adds that a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing and repair shops, parts purveyors and distributors, and organizations manufacturing or servicing alternatively certified parts under § 21.303 (''Parts manufacturer approval'') of the Federal Aviation Regulations (14 CFR part 21). MARPA adds that the concept of brevity is now nearly archaic as documents exist more frequently in electronic format than on paper. Therefore, MARPA asks that the service documents deemed essential to the accomplishment of the NPRM be incorporated by reference into the regulatory instrument, and published in the DMS.

We do not agree that documents should be incorporated by reference during the NPRM phase of rulemaking. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the document necessary for the accomplishment of the requirements mandated by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

Additionally, we do not publish service documents in DMS. We are currently reviewing our practice of publishing proprietary service information. Once we have thoroughly examined all aspects of this issue, and have made a final determination, we will consider whether our current practice needs to be revised. However, we consider that to delay this AD action for that reason would be inappropriate, since we have determined that an unsafe condition exists and that the requirements in this AD must be accomplished to ensure continued safety. Therefore, we have not changed the AD in this regard.

### Clarification of Costs of Compliance

We have clarified the Costs of Compliance section in this AD to reflect a revised number of U.S.-registered airplanes.

## Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

## Costs of Compliance

This AD affects about 16 airplanes of U.S. registry. The inspection takes about 5 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $6,400, or $400 per airplane.

## Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

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

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

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2006–23–13 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft):** Amendment 39–14825. Docket No. FAA–2006–25337; Directorate Identifier 2006–NM–138–AD.

**Effective Date**

(a) This AD becomes effective December 18, 2006.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes, certificated in any category.

**Unsafe Condition**

(d) This AD results from reports of three-phase circuit breakers overheating on in-service airplanes. We are issuing this AD to prevent failure of a three-phase circuit breaker. Such failure could prevent an electrical load from being isolated from its electrical supply, which could result in smoke or fire in the flight deck.

**Compliance**

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

**Detailed Inspection and Corrective Actions**

(f) Within 12 months after the effective date of this AD, do a detailed inspection of the three-phase circuit breakers and three-phase circuit breaker panels for discrepancies (including but not limited to physical damage, cracks, deterioration, corrosion, discoloration, contamination by foreign objects, and missing or improperly installed terminal connections or attachments), in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.24–141, dated August 15, 2005. If any discrepancy is found, before further flight, fix the discrepancy and replace unserviceable units with new units, as applicable, in accordance with the inspection service bulletin.

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

**No Reporting**

(g) Although the inspection service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**Alternative Methods of Compliance (AMOCs)**

(h)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

**Related Information**

(i) The European Aviation Safety Agency airworthiness directive 2006–0132, dated May 18, 2006, also addresses the subject of this AD.

**Material Incorporated by Reference**

(j) You must use BAE Systems (Operations) Limited Inspection Service Bulletin ISB.24–141, dated August 15, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 31, 2006.

**Kalene C. Yanamura,**

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

[FR Doc. E6–18966 Filed 11–9–06; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 203

**[Docket No. 1992N–0297 (formerly 92N–0297)]**

**RIN 0905–AC81**

## Distribution of Blood Derivatives by Registered Blood Establishments That Qualify as Health Care Entities; Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Delay of Applicability Date

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; delay of applicability date.

**SUMMARY:** The Food and Drug Administration (FDA) is further delaying, until December 1, 2008, the applicability date of a certain

requirement of a final rule published in the **Federal Register** of December 3, 1999 (64 FR 67720) (the final rule). The final rule implements the Prescription Drug Marketing Act of 1987 (PDMA), as modified by the Prescription Drug Amendments of 1992 (PDA), and the Food and Drug Administration Modernization Act of 1997 (the Modernization Act). The provisions of the final rule became effective on December 4, 2000, except for certain provisions whose effective or applicability dates were delayed in five subsequent **Federal Register** notices, until December 1, 2006. The provision with the delayed applicability date would prohibit wholesale distribution of blood derivatives by registered blood establishments that meet the definition of a ''health care entity.'' In the **Federal Register** of February 1, 2006 (71 FR 5200), FDA published a proposed rule specific to the distribution of blood derivatives by registered blood establishments that qualify as health care entities (the proposed rule). The proposed rule would amend certain limited provisions of the final rule to allow certain registered blood establishments that qualify as health care entities to distribute blood derivatives. In response to the proposed rule, FDA received substantive comments.

As explained in the **SUPPLEMENTARY INFORMATION** section of this document, further delaying the applicability of § 203.3(q) (21 CFR 203.3(q)) to the wholesale distribution of blood derivatives by health care entities is necessary to give the agency additional time to address comments on the proposed rule, consider whether regulatory changes are appropriate, and, if so, to initiate such changes.

**DATES:** The applicability date for § 203.3(q) to the wholesale distribution of blood derivatives by health care entities is delayed until December 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Denise Sánchez, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

**SUPPLEMENTARY INFORMATION:** The PDMA (Pub. L. 100–293) was enacted on April 22, 1988, and was modified by the PDA (Pub. L. 102–353, 106 Stat. 941) on August 26, 1992. The PDMA, as modified, amended the Federal Food, Drug, and Cosmetic Act (the act) to, among other things, prohibit, with certain exceptions, the sale, purchase, or trade (or offer to sell, purchase, or trade) of prescription drugs that were purchased by hospitals or other health care entities (section 503(c)(3)(A)(ii)(I) of the act (21 U.S.C. 353(c)(3)(A)(ii)(I))). Section 503(c)(3) of the act also states that ''[f]or purposes of this paragraph, the term 'entity' does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law * * *.''

On December 3, 1999, the agency published final regulations in part 203 (21 CFR part 203) implementing PDMA (64 FR 67720) that were to take effect on December 4, 2000. Most of the provisions of the final rule took effect on this date. Certain provisions of the final rule, including § 203.3(q) which defines the term ''health care entity,'' were delayed on account of concerns raised by the affected parties. The agency received several letters on, and held several meetings to discuss, the implications of the final rule for blood centers that distribute blood derivative products and provide health care to hospitals and patients. Under the final rule as written, blood establishments functioning as health care entities would not be allowed to engage in wholesale distribution of prescription drugs except for blood and blood components intended for transfusion, which are exempted from the regulations under § 203.1. As discussed in the preamble to the final rule (64 FR 67720 at 67725 to 67727), blood derivatives are not blood components. Therefore, under the final rule as written, registered blood establishments that qualify as health care entities could not distribute blood derivatives. Based on comments from interested parties, FDA decided to delay the applicability of § 203.3(q), until October 1, 2001, and reopened the administrative record to give interested persons until July 3, 2000, to submit written comments on this provision (65 FR 25639, May 3, 2000).

FDA has delayed the applicability date of § 203.3(q) four more times, most recently until December 1, 2006. On these occasions, the applicability date was delayed to give the agency time to consider whether regulatory changes were warranted (66 FR 12850, March 1, 2001; 67 FR 6645, February 13, 2002; 68 FR 4912, January 31, 2003; 69 FR 8105, February 23, 2004). In the **Federal Register** of February 1, 2006 (71 FR 5200), FDA issued a proposed rule that would amend the final rule to allow certain registered blood establishments that qualify as health care entities to distribute blood derivatives. FDA has received substantive comments on the proposed rule from affected parties. Today, FDA is further delaying the applicability of § 203.3(q) to the wholesale distribution of blood derivatives by health care entities to give FDA additional time to address comments on the proposed rule and consider the appropriate regulatory changes.

FDA has examined the impacts of this delay of the applicability date under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this action is consistent with the regulatory philosophy and principles identified in the Executive order. This action will ease the burden on industry by delaying the applicability of § 203.3(q) to the wholesale distribution of blood derivatives by health care entities while FDA continues to address comments on the proposed rule and consider regulatory changes. Thus, this action is not a significant action as defined by the Executive order.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, the agency's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3). Seeking public comment is impracticable, unnecessary, and contrary to the public interest. Given the imminence of the current December 1, 2006, compliance date, seeking prior public comment on this delay is contrary to the public interest in the orderly issuance and implementation of regulations.

This action is being taken under FDA's authority under 21 CFR 10.35(a). The Commissioner of Food and Drugs finds that this delay of the applicability date is in the public interest.

Dated: October 31, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6–18892 Filed 11–9–06; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[DOD–2006–OS–0133; RIN 0790–AI06]**

### 32 CFR Part 245

### Plan for the Emergency Security Control of Air Traffic (ESCAT)

**AGENCY:** Department of Defense.

**ACTION:** Final rule; correction.

**SUMMARY:** This document amends the final rule published on the national plan for security control of air traffic during air defense emergencies to make administrative adjustments and includes correcting the effective date of the final rule, and removes references to State and regional disaster airlift (SARDA), rescinded by the Federal Aviation Administration on March 17, 2005.

**DATES:** The effective date for the final rule published at 71 FR 61889, October 20, 2006, is corrected to read: January 18, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gerald F. Pease, Jr., (703) 697–6937.

**SUPPLEMENTARY INFORMATION:** On October 20, 2006 the Department of Defense published a final rule on Plan for the Emergency Security Control of Air Traffic (ESCAT) which contained errors and outdated criteria.

In rule FR Doc. E6–17179 published on October 20, 2006, (71 FR 61889), make the following corrections:

1. On page 61889, in the first column, in the **DATES** section, revise the effective date to read January 18, 2007.

**§ 245.5 [Corrected]**

■ 2. On page 61890, in the third column, remove the term *State and regional disaster airlift* (*SARDA*) and its definition from § 245.5.

**§ 245.6 [Corrected]**

■ 3. On page 61891, in the first column, remove ''SARDA—State and Regional Disaster Airlift'' from the list of acronyms in § 245.6.

**§ 245.22 [Corrected]**

■ 4. On page 61894, under § 245.22, in the second column, remove paragraph (d) and redesignate paragraph (e) as paragraph (d).

Dated: November 2, 2006.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, DoD.*

[FR Doc. 06–9113 Filed 11–9–06; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[CGD09–06–122]**

**RIN 1625–AA00**

### Safety Zone; St. Louis River/Duluth/Interlake Tar Remediation Site, Duluth, MN

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on the St. Louis River in Duluth, Minnesota. The purpose of the safety zone is to protect the boating public from dangers associated with the cleanup operation in and around Stryker Bay. Entry into this zone will be prohibited unless authorized by the Captain of the Port or his duly appointed representative.

**DATES:** This rule is effective 8 a.m. (CST) on November 30, 2006.

**ADDRESSES:** Comments and material received from the public are part of the docket [CGD09–06–122] and are available for inspection or copying at U.S. Coast Guard Marine Safety Unit Duluth, 600 South Lake Ave, Canal Park, Duluth, Minnesota 55802 between the hours of 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** LCDR Scott Stoermer, U.S. Coast Guard Marine Safety Unit Duluth, at (218) 720–5286, ext. 111.

**SUPPLEMENTARY INFORMATION:**

#### Background and Purpose

On June 23, 2006, the Captain of the Port Duluth issued a Temporary Final Rule (71 FR 36012, CGD9–06–031, 33 CFR 165.T09–031) establishing a safety zone in Stryker Bay and Hallett Slips 6 & 7, which expires on November 30, 2006. Additionally, the Captain of the Port Duluth published a NPRM to make the safety zone permanent (71 FR 44250, CGD9–06–122, 33 CFR 165.927). The Coast Guard, through this action, intends to continue to ensure the safety of the public and boating traffic in the Stryker Bay area during the course of an environmental remediation project. This safety zone is intended to restrict vessel traffic from the portion of St. Louis River where construction and dredging are occurring. The size of the zone was determined by placing the boundaries approximately 50 feet beyond the outermost extent of dredging operations, encompassing all of Stryker Bay and Hallett Slips 6 & 7. The Coast Guard intends to cancel this safety zone upon completion of the remediation which is currently anticipated to last for three years.

#### Discussion of Rule

The Coast Guard is establishing this safety zone to ensure the safety of boaters transiting this portion of the St. Louis River. The safety zone is identical to the current safety zone established by the temporary final rule discussed above.

The safety zone would encompass all waters of Stryker Bay and Hallett Slips 6 & 7 which are located north of a boundary line delineated by the following points: From the shoreline at 46° 43′10.00″ N, 092°10′31.66″ W, then south to 46°43′06.24″ N, 092°10′31.66″ W, then east to 46°43′06.24″ N, 092°09′41.76″ W, then north to the shoreline at 46°43′10.04″ N, 092°09′41.76″ W. These coordinates are based upon North American Datum 1983 [NAD 83].

The safety zone requires that all persons and vessels comply with the instructions of the Captain of the Port Duluth or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone would be prohibited unless authorized by the Captain of the Port Duluth or his designated on-scene representative. The Captain of the Port or his designated representative may be contacted at Coast Guard Marine Safety Unit Duluth at (218) 720–5286.

#### Regulatory Evaluation

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

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

This determination is based on the absence of any commercial vessel traffic in this portion of the St. Louis River. There are currently no operational marine terminals west of Hallett Slip 7, which is part of the remediation.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered

whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the St. Louis River in the above described zone during the effective period.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: Hallett Slips 6 & 7 are industrial properties not generally used by the public, and Stryker Bay already has posted warnings against use of those waters. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port Duluth or his designated on-scene representative. Before the effective period, we will issue maritime advisories and ensure they are widely available to users of the St. Louis River.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact MSU Duluth (see **ADDRESSES**).

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have 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. This event establishes a safety zone therefore paragraph (34)(g) of the Instruction applies.

A final ''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 the rule should be categorically excluded from further environmental review.

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

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

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

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

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

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

■ 2. A new § 165.927 is added to read as follows:

**§ 165.927 Safety Zone; St. Louis River, Duluth/Interlake Tar Remediation Site, Duluth, MN.**

(a) Location: The following area is a safety zone: All waters of Stryker Bay and Hallett Slips 6 & 7 which are located north of a boundary line delineated by the following points: From the shoreline at 46°43′10.00″ N, 092°10′31.66″ W, then south to 46°43′06.24″ N, 092°10′31.66″ W, then east to 46°43′06.24″ N, 092°09′41.76″ W, then north to the shoreline at 46°43′10.04″ N, 092°09′41.76″ W. [Datum NAD 83].

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Duluth, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Duluth or his designated on-scene representative.

(3) The ''designated on-scene 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 to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted by calling Coast Guard Marine Safety Unit Duluth at (218) 720–5286.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Duluth 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 Duluth or his on-scene representative.

Dated: October 23, 2006.

**G.T. Croot,**

*Commander, U.S. Coast Guard, Captain of the Port Duluth.*

[FR Doc. E6–19105 Filed 11–9–06; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF TRANSPORTATION

## Saint Lawrence Seaway Development Corporation

## 33 CFR Part 401

**RIN 2135–AA23**

## Seaway Regulations and Rules: Inflation Adjustment of Civil Monetary Penalty

**AGENCY:** Saint Lawrence Seaway Development Corporation, DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Debt Collection Improvement Act of 1996. The rule adjusts the amount of the statutory civil penalty for violation of the Seaway Regulations and Rules under the authority of the Ports and Waterways Safety Act of 1972, as amended (PWSA).

**DATES:** This rule will be effective December 13, 2006.

**FOR FURTHER INFORMATION CONTACT:** Craig H. Middlebrook, Acting Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–0091.

**SUPPLEMENTARY INFORMATION:** The Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461 NOTE, as amended by the Debt Collection Improvement Act of 1996 (Act), Public Law 104–134, April 26, 1996, requires the inflation adjustment of civil monetary penalties (CMP) to ensure that they continue to maintain their deterrent value. The Act requires that not later than 180 days after its enactment, October 23, 1996, and at least once every four years thereafter, the head of each agency shall, by regulation published in the **Federal Register**, adjust each CMP within its jurisdiction by the inflation adjustment described in the 1990 Act. The cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index for all urban consumers (CPI), published annually by the Department of Labor, for the month of June of the calendar year preceding the adjustment, exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted pursuant to law. Nevertheless, the first adjustment to a CMP may not exceed 10 percent of that penalty amount. Any increased penalties shall apply to violations that occur after the date on which the increase takes effect. 33 U.S.C. 1232(a) imposes a maximum $25,000 civil penalty for a violation of a regulation issued under the authority of the PWSA, which includes the Seaway Regulations and Rules in 33 CFR part 401. The penalty was set in 1978. Under the Act, the penalty amount was adjusted in 1996 to $27,500 and in 2002 to $31, 625. The CPI for June 2002 was 538.9. The CPI for June 2005 is 582.6. The inflation factor, therefore, is 582.6/538.9 or 1.081. The maximum penalty amount after the increase and statutory rounding would be $ 36,625 (1.081 × 31,625). Accordingly, paragraph (a) of section 401.102 is being amended to change the amount of the penalty from $31,625 to $36,625.

### Regulatory Evaluation

This final rule is exempt from Office of Management and Budget review under Executive Order 12866 because it is limited to the adoption of statutory language, without interpretation. As stated above, the provisions contained in this final rulemaking set forth the inflation adjustments in compliance with the Act for a specific, applicable CMP under the authority of the Corporation. The great majority of individuals, organizations, and entities addressed through the Seaway Regulations and Rules do not commit violations and, as a result, we believe any aggregate economic impact of this revision will be minimal, affecting only those who violate the regulations. As such, the final rule and its inflation adjustment should have no effect on Federal and State expenditures. This final rule has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the proposed regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

### Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The Saint Lawrence Seaway Regulations and Rules primarily relate to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

### Environmental Impact

This final rule does not require an environmental impact statement under the National Environmental Policy Act

(49 U.S.C. 4321, *et seq.*) because it is not a major Federal action significantly affecting the quality of the human environment.

**Federalism**

The Corporation has analyzed this final rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this rule does not have sufficient federalism implications to warrant a Federalism Assessment.

**Unfunded Mandates**

The Corporation has analyzed this final rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

**Paperwork Reduction Act**

This final rule has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

**Notice and Public Comment**

Notice and an opportunity for public comment under the Administrative Procedure Act (APA) (5 U.S.C. 553) are waived. The APA provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with those procedures because they are impracticable, unnecessary, or contrary to the public interest. The Corporation has determined under 5 U.S.C. 553 (b)(3) that good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, this rulemaking comports with the statutory authority in the Act with no issues of policy discretion. Accordingly, the Corporation finds that the opportunity for prior comment is unnecessary and contrary to the public interest and is issuing this revised regulation as a final rule that will apply to all future cases under this authority.

**List of Subjects in 33 CFR Part 401**

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

■ Accordingly, the Saint Lawrence Seaway Development Corporation is amending 33 CFR Part chapter IV as follows:

## PART 401—SEAWAY REGULATIONS AND RULES

### Subpart B—[Amended]

■ 1. The authority citation for part 401 continues to read as follows:

**Authority:** 33 U.S.C. 983(a) and 984(a)(4), as amended; 49 CFR 1.52, unless otherwise noted.

**§ 401.102 [Amended]**

■ 2. Paragraph (a) of § 401.102 is amended by removing the number ''$31,625'' and adding, in its place, the number ''$36,625''.

Issued at Washington, DC, on November 7, 2006.

Saint Lawrence Seaway Development Corporation.

**Collister Johnson, Jr.,**

*Administrator.*

[FR Doc. E6–19052 Filed 11–9–06; 8:45 am]

BILLING CODE 4910–61–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R06–OAR–2006–0456; FRL–8241–2]**

### Approval and Promulgation of Implementation Plans; Louisiana; 2006 Low Enhanced Vehicle Inspection/ Maintenance (I/M) Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve the State Implementation Plan (SIP) revision of the Low Enhanced Vehicle Inspection/ Maintenance Program for the State of Louisiana. This revision exempts the two newest model year gasoline-fueled passenger cars and trucks from On-Board Diagnostic (OBD) testing. We are taking this action in accordance with Sections 110 and 182 of the Clean Air Act.

**DATES:** This rule is effective on January 12, 2007 without further notice, unless EPA receives relevant adverse comment by December 13, 2006. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R06–OAR–2006–LA–0456, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- U.S. EPA Region 6 ''Contact Us'' Web site: *http://epa.gov/region6/r6coment.htm* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- *E-mail:* Mr. Thomas Diggs at *diggs.thomas@epa.gov.* Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R06–OAR–2006–LA–0456. 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 *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Louisiana Department of Environmental Quality, Air Quality Division, 602 N. Fifth Street, Baton Rouge, Louisiana 70802.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Sandra Rennie, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–7367, e-mail address: *rennie.sandra@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

**Outline**

I. What Action Is the EPA Taking?
II. What Did the State Submit?
III. What Are the Federal Requirements?
IV. What Is the Effect of This Action?
V. Why Can We Approve This Request?
VI. Final Action
VII. Statutory and Executive Order Reviews

## I. What Action Is the EPA Taking?

EPA is taking direct final action to fully approve a revision to the Louisiana SIP. During the 2004 Regular Session of the Louisiana Legislature, legislation was enacted granting the Secretary of the Louisiana Department of Environmental Quality (LDEQ) the power to exempt vehicles of that model year and vehicles from prior model years from OBD testing. The Secretary of LDEQ submitted a SIP Revision for the Low Enhanced Vehicle I/M Program for the Baton Rouge Ozone Nonattainment Area. This nonattainment area consists of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes.

The Clean Air Act as amended in 1990 requires that Baton Rouge implement a vehicle inspection/maintenance program to limit the amounts of VOC and $NO_X$ emitted from motor vehicles. Beginning in February of 1998, the EPA and the state of Louisiana consulted on an approvable I/M Program plan. On September 26, 2002, the EPA approved the I/M program for the Baton Rouge nonattainment area. The program required annual safety inspections on vehicles that are gasoline-fueled and have a gross vehicle weight rating (GVWR) of 10,000 pounds or less that are registered in the covered area. The subject vehicles are identified through the Department of Public Safety Office of Motor Vehicles database of registered vehicles in the five-parish nonattainment area.

## II. What Did the State Submit?

The May 5, 2006, submittal includes a SIP narrative and a modeling demonstration. The State also submitted documentation giving the Secretary of the LDEQ additional authority in administering the I/M program. On July 1, 2004, Act No. 584 of the 2004 Regular Session of the Louisiana Legislature revised section 2054 of the Louisiana Revised Statutes R.S. 30:2054(B)(8) to authorize the secretary of environmental quality at the beginning of each year to exempt vehicles of that calendar year and vehicles from the prior model year from OBD testing. State regulations revised in March 2005 to reflect this change were also submitted. Louisiana Administrative Code Title 55:Part III, Chapter 8 was revised at LAC 55:III: 819(C) in November 2004 to allow the exemptions pursuant to R.S. 30:2054(B)(8). The I/M program grants no other special exemptions.

The modeling demonstration provided 2002 modeling and 2007 projections using MOBILE 6.2.03 emission factor modeling. MOBILE is an EPA emission factor model used to predict pollution from on-road motor vehicles. The model accounts for changes in vehicle population, activity, variation, and emission standards in local conditions such as temperature, humidity, fuel quality, and air quality. The MOBILE6 modeling submitted by LDEQ reflects an overall reduction in VOC and $NO_X$ emissions and demonstrates that the program will continue to meet the performance standard with the first two model years exempted from testing. This data may be found in the technical support document.

## III. What Are the Federal Requirements?

Model year coverage is not strictly specified in 40 CFR 51.356 (Vehicle Coverage) in the Federal I/M rule. Special exemption may be permitted for certain subject vehicles provided a demonstration is made showing the performance standard is met. All model year exemptions are covered by this provision. The state of Louisiana provided sufficient MOBILE6 modeling that supports an overall reduction in $NO_X$ and VOC as required in Section 182(c)(3) of the Clean Air Act. This evidence of an overall reduction in $NO_X$ and VOC demonstrates that this SIP revision meets and complies with section 110(l) of the Act.

## IV. What Is the Effect of This Action?

By definition, the OBD computer system is installed in a vehicle by the manufacturer, and monitors the performance of the vehicle's emissions control equipment. The inspection of the OBD system consists of a visual check of the vehicle's malfunction indicator lamp, and an electronic examination of the OBD system. This exemption alleviates a portion of the waiting time incurred at inspection stations by decreasing the amount of vehicles subject to the entire inspection process. The exempted vehicles are only required to obtain visual anti-tampering checks and gas cap integrity tests.

## V. Why Can We Approve This Revision?

We conclude that the Baton Rouge I/M Program meets the requirements of the Federal I/M regulations. Therefore, EPA can approve the revisions to the Baton Rouge low enhanced vehicle I/M program. The State consulted with EPA's Office of Transportation and Air Quality in preparation of the MOBILE 6.2.03 demonstration. The State submitted the modeling demonstration showing that the low enhanced performance standard, as established in 2002, is met when the two newest model years are exempt from OBD testing. The revision meets the performance standard requirements, and it meets and complies with section 110(l) of the Act.

## VI. Final Action

We are approving this revision to the Baton Rouge I/M program. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on January 12, 2007 without further notice unless we receive adverse comment by December 13, 2006. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## VII. Statutory and Executive Order Reviews

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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of 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).

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 January 12, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 23, 2006.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

■ 40 CFR part 52 is amended as follows:

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

## PART 52—[AMENDED]

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

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

## Subpart T—Louisiana

■ 2. The table in 40 CFR 52.970(c) entitled ''EPA Approved Louisiana Regulations in the Louisiana SIP,'' is amended by revising Section 819 in LAC Title 55, Part III, Motor Vehicles, Chapter 8, Motor Vehicle Inspection as shown below:

### § 52.970 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP

| State citation | Title/subject | State submittal/ approval date | EPA approval date | Comments |
|---|---|---|---|---|
| * * * | * | * | * | * |
| **LAC Title 55. Part III. Motor Vehicles, Chapter 8. Motor Vehicle Inspections** | | | | |
| * * * | * | * | * | * |
| **Subchapter C. Vehicle Emission Inspection and Maintenance Program** | | | | |
| * * * | * | * | * | * |
| Section 819 | Anti-tampering and Inspection and Maintenance Parameters. | May 5, 2006 | November 13, 2006, [Insert **Federal Register** page number]. | |
| * * * | * | * | * | * |

[FR Doc. E6–19020 Filed 11–9–06; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 271

**[EPA–R06–RCRA–2006–0914; FRL–8241–3]**

## Louisiana: Final Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** Louisiana has applied to the EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this immediate final action. The EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Louisiana's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

**DATES:** This final authorization will become effective on January 12, 2007 unless the EPA receives adverse written comment by December 13, 2006. If the 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 by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
2. *E-mail: patterson.alima@epa.gov*.
3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.
4. *Hand Delivery or Courier.* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

*Instructions:* Do not submit information that you consider to be CBI or otherwise protected through *regulations.gov*, or e-mail. The Federal *regulations.gov* Web site is an ''anonymous access'' system, which means the 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 the EPA without going through *regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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. You can view and copy Louisiana's application and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following locations: Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70884–2178, phone number (225) 219–3559 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–8533. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

**FOR FURTHER INFORMATION CONTACT:** Alima Patterson, Region 6 Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, (214) 665–8533), EPA Region, 1145 Ross Avenue, Dallas, Texas 75202–2733, and E-mail address *patterson.alima@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from the 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 the 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 the 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 Louisiana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Louisiana final authorization to operate its hazardous waste program with the changes described in the authorization application. Louisiana has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) 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 the EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Louisiana including issuing permits, until the State is granted authorization to do so.

**C. What Is the Effect of Today's Authorization Decision?**

The effect of this decision is that a facility in Louisiana 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. Louisiana has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits and
- 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 Louisiana is being authorized by today's action are already effective under State law, and are not changed by today's action.

**D. Why Wasn't There a Proposed Rule Before Today's Rule?**

The 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 the EPA Receives Comments That Oppose This Action?**

If the 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. The 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 only 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. For What Has Louisiana Previously Been Authorized?**

The State of Louisiana initially received final authorization on February 7, 1985, (50 FR 3348), to implement its base Hazardous Waste Management Program. We granted authorization for changes to their program on November 28, 1989 (54 FR 48889) effective January 29, 1990; August 26, 1991 (56 FR 41958) effective August 26, 1991; November 7, 1994 (59 FR 55368) effective January 23, 1995; December 23, 1994 (59 FR 66200) effective March 8, 1995; there were technical corrections made on January 23, 1995 (60 FR 4380), effective January 23, 1995; and another technical correction was made on April 11, 1995 (60 FR 18360) effective April 11, 1995; October 17, 1995 (60 FR 53704) effective January 2, 1996; March 28, 1996 (61 FR 13777) effective June 11, 1996; December 29, 1997 (62 FR 67572) effective March 16, 1998; October 23, 1998 (63 FR 56830) effective December 22, 1998; August 25, 1999 (64 FR 46302) effective October 25, 1999; September 2, 1999 (64 FR 48099) effective November 1, 1999; February 28, 2000 (65 FR 10411) effective April 28, 2000; January 2, 2001 (66 FR 23) effective March 5, 2001; December 9, 2003 (68 FR 68526) effective February 9, 2004 and June 10, 2005 (70 FR 33852) effective August 9, 2005. On February 3, 2006, Louisiana applied for approval of its program revisions for RCRA Cluster XIV. In this application, Louisiana is seeking approval of RCRA Cluster XIV in accordance with 40 CFR 271.21(b)(3).

Since 1979, through the Environmental Affairs Act, Act 449 enabling the Office of Environmental Affairs within the Louisiana Department of Natural Resources, as well as, the Environmental Control Commission conducted an effective program designed to regulate those who generate, transport, treat, store, dispose or recycle hazardous waste. During the 1983 Regular Session of the Louisiana Legislature, Act 97 was adopted, which amended and reenacted La. R. S. 30:1051 *et seq.* as the Environmental Quality Act, renaming the Environmental Quality (LDEQ), including provisions for new offices within this new Department of Environmental Quality. Act 97 also transferred the duties and responsibilities previously delegated to the Department of Natural Resources, Office of Environmental Affairs, to the new Department. The LDEQ has lead agency jurisdictional authority for administering the Resource Recovery and Conservation Act (RCRA) Subtitle C program in Louisiana. Also, the LDEQ is designated to facilitate communication between the EPA and the State. During the 1999 Regular Session of Louisiana Legislature, Act 303 revised the La. R. S. 30:2011 *et. seq.* allowing LDEQ to reengineer the Department to perform more efficiently and to meet its strategic goals.

It is the intention of the State, through this application, to demonstrate its equivalence and consistency with the Federal statutory tests, which are outlined in the United States Environmental Protection Agency regulatory requirements under 40 CFR part 271, Subpart A, for final authorization. The submittal of this application is in keeping with the spirit and intent of RCRA, which provides equivalent States the opportunity to apply for final authorization to operate all aspects of their hazardous waste management programs in lieu of the Federal government. The Louisiana Environmental Quality Act authorizes the State's program, Subtitle II of Title 30 of the Louisiana Revised Statutes. The State program is equivalent to the Federal program as outlined in the revision Checklist 203 and 205. The State has determined it will not promulgate the Performance Track Program (PTP). The State has its own environmental leadership program that

parallels the Federal PTP. The State is also requesting concurrence of other state-initiated rules that may be more stringent than the RCRA rules or indirectly affect the State hazardous waste program.

*State Initiated Changes*

The State has made amendments to the provisions listed in the table which follows. These amendments clarify the State's regulations and make the State's regulations more internally consistent. The State's laws and regulations, as amended by these provisions, provide authority which remains equivalent to and no less stringent than the Federal laws and regulations. These State initiated changes are submitted under the requirements of 40 CFR 271.21(a).

| State citation | Federal citation | Rule (effective date) |
|---|---|---|
| LAC 33:v.105 | 261.22 | November 20, 2004. |
| LAC 33:I. 4501, 4503, 4701–4707, 4711, 4717, 4719, 4901, 5103, 5301, 5303, 5311, 5315, 5701, 5901–5915. | No Analog | July 20, 2005. |
| LAC 33:I.2501–2505 | No Analog | August 20, 2005. |
| LAC 33:I.4501 and 4719 | No Analog | March 20, 2003. |
| LAC 33:I.101, 103, 105, 107, 109 | No Analog | October 20, 2003. |
| LAC 33:I.2303–2309 | No Analog | May 20, 2003. |
| LAC 33:I Chapter 5 | No Analog | April 20, 2004. |
| LAC 33:I.705 | No Analog | March 20, 2004. |
| LAC 33:33:I. 3903, 3915, 3917, 3919, 3923, 3931, 6919, 6923; III.1105, 1513, 2103, 2115, 2303, 2307, 2719, 5107, 5151; V.1109, 1913, 2271, 2805, 2909, 4101, 4107, 4211, 4241, 5309, VI.201; VII.315, 711, 713, 715; IX., 503, 2701; XI707, 713, 715; XV.341, 485, 486, 492, 712, and 2051. | No Analog | August 20, 2004. |
| LAC 33:I.1901, 1903, 1907, 1909, 1911; III.505, 517, 521; V.321, 4303; VII.517, IX.2701, 2901, 2903 and 2905. | No Analog | October 20, 2005. |
| LAC 33:III, 2799, 2805; XI.1305; and XV.487, 712 and 1013 | No Analog | December 20, 2004 |
| LAC 33:I.601, 603, 605, 607, and 609 | No Analog | June 20, 2005. |

## G. What Changes Are We Authorizing With Today's Action?

On February 3, 2006, Louisiana submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Louisiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant the State of Louisiana Final authorization for the following changes: The State of Louisiana's program revisions consist of regulations which specifically govern RCRA Cluster XIV as documented below:

| Description of Federal requirement (include checklist #, if relevant) | **Federal Register** date and page (and/or RCRA statutory authority | Analogous State authority |
|---|---|---|
| 1. Recycled Used Oil Management Standards; Clarification. (Checklist 203). | 68 FR 44659–44665, July 30, 2003. | Louisiana Revised Statutes (LRS) 30: Section 2001 *et seq.,* with specific cites of 2174, 2175, and 2180 effective December 31, 2004; Supplement effective January through March 2005; Louisiana Hazardous Waste Regulations (LHWR) Sections 108.J, 4003 intro, 4003.I, effective October 20, 2005; 4085.B, 4085.B, and 4085.B.1–4, effective December 31, 2004; Supplement effective January through March 2005. |
| 2. NESHAP: Surface Coating of Automobiles and Light-Duty Trucks. (Checklist 205). | 69 FR 22601–22662, April 26, 2004. | LRS: 30: 2001 *et seq.* with specific cites of 2174, 2180, effective December 31, 2004; Supplement effective January through March 2005; LHWR Sections 1717.F, 1717.G, 4561 and 4561.F, effective October 20, 2005. |

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

The State's hazardous regulations for Checklists 203 and 205 are consistent, equivalent and no less stringent than the Federal regulations. The provisions that are more stringent are (1) Petitions to Exclude a Waste Produced at a Particular Facility: Hazardous Waste Delisting General Provisions: LAC 33:v.105 LAC 33:I.4501, 4503, 4701–4707, 4711, 4717, 4719, 4901, 5103, 5301 November 20, 2004. Petitioners will be required to use an independent laboratory and an independent data validator; (2) Facility Name and Ownership/Operator changes: LAC 33:I.1901, 1903, 1907, 1909, 1911; III.505, 517, 521; V.321,4303; VII.517, IX.2701, 2901, 2903 and 2905, October 20, 2005, adds more requirements by providing a unified procedure for all media that will result in cleaner notification procedures for the regulated community; (3) Penalty Determination Methodology: LAC 33:I.705, March 20, 2004 added standardized requirements to how LDEQ calculates penalties regarding facilities with environmental violations; and (4) LAC 33:I. Chapter 5: Confidential Information and Records adds more clarifications to procedures for submission of information and records that met the criteria for confidentiality under LAC 30:2030 Louisiana Public Records Act. However, the following provisions of the State's initiated changes are broader in scope: (1) LAC 33:III, 2799, 2805; XI.1305; and XV.487, 712 and 1013, regarding Social Security numbers, (2) and, LAC 33:I.601, 603, 605, 607, and 609 relating to Security-Sensitive information, (3) LAC 33:I.4501, 4503, 4701–4707, 4711, 4717, 4719, 4901, 5103, 5301, 5303, 5311, 5315, 5701, 5901–5915: Laboratory Accreditation, (4) LAC 33:I2501–2505: Beneficial Environmental Project, (5) LAC 33:I.4501 and 4719: Commercial Laboratories Pending Accreditation, (6) LAC 33:I.101, 103, 105, 107 and 109: Public Notification of Contamination, (7) LAC 33:33:I. 3903, 3915, 3917, 3919,

3923, 3931, 6919, 6923; III.1105, 1513, 2103, 2115, 2303, 2307, 2719, 5107, 5151; V.1109, 1913, 2271, 2805, 2909, 4101, 4107, 4211, 4241, 5309, VI.201; VII.315, 711, 713, 715; IX.503, 2701; XI.707, 713, 715; XV.341, 485, 486, 492, 712, and 2051, (8) LAC 33:I.601, 603, 605, 607 and 609: Security-Sensitive Information, and (9) LAC 33:III.2799, 2805; XI.1305; XV.487, 712 and 1013: Social Security Number Confidentiality are considered to be broader in scope. Therefore, EPA cannot enforce broader in scope provisions and they are not part of the authorized regulations in this document.

**I. Who Handles Permits After the Authorization Takes Effect?**

Louisiana will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The 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. We will not issue any more new permits or new portions of permits for the provisions listed in the Table in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Louisiana is not yet authorized.

**J. How Does Today's Action Affect Indian Country in Louisiana?**

Louisiana is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country.

**K. What Is Codification and Is the EPA Codifying Louisiana'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 CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart T for this authorization of Louisiana's program changes until a later date. In this authorization application the EPA is not codifying the rules documented in this **Federal Register** notice.

**M. Statutory and Executive Order Reviews**

The Office of Management and Budget (OMB) 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 preexisting 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), the 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 the 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, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The 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. The 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 January 12, 2007.

**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, 6974(b).

Dated: September 26, 2006.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

[FR Doc. E6–19089 Filed 11–9–06; 8:45 am]

BILLING CODE 6560–50–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1834, 1842, and 1852

**RIN 2700–AD29**

## NASA Implementation of Earned Value Management (EVM)

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule revises the NASA FAR Supplement (NFS) to implement the Federal Acquisition Regulation (FAR) EVM coverage issued in Federal Acquisition Circular (FAC) 2005–11.

**DATES:** *Effective date:* This interim rule is effective November 13, 2006.

*Comment date:* Interested parties should submit comments to NASA at the address below on or before January 12, 2007 to be considered in formulation of the final rule.

**ADDRESSES:** Interested parties may submit comments, identified by RIN number 2700–AD29, via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments may also be submitted to Ken Sateriale, NASA Headquarters, Office of Procurement, Contract Management Division, Washington, DC 20546. Comments may also be submitted by e-mail to *ken.sateriale@nasa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ken Sateriale, NASA, Office of Procurement, Contract Management Division (Suite 5K86); (202) 358–0491; e-mail: *ken.sateriale@nasa.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Background

FAC 2005–11 established the requirement for EVM to be implemented on major acquisitions as defined in OMB Circular A–11. The FAR permits agencies to develop provisions and clauses for their own use as long as they are substantially the same as those provided in the FAR.

Accordingly, NASA has developed its own provision and clause, and supplemental guidance for EVM implementation. In addition to requiring the application of EVM to major acquisitions as described in OMB Circular A–11, NASA's coverage provides contract value dollar thresholds for EVM implementation.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This interim rule is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

NASA certifies that this interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it merely implements the FAR EVM coverage and does not impose an economic impact beyond that addressed in the FAC 2005–11 publication of the FAR final rule.

### C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) is not applicable because the NFS changes do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### D. Determination To Issue an Interim Rule

In accordance with 41 U.S.C. 418(d), NASA has determined that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to harmonize the NFS EVM coverage with that in the FAR which was effective on July 5, 2006. However, pursuant to Pub. L. 98–577 and FAR 1.501, NASA will consider public comments received in response to this interim rule in the formation of the final rule.

### List of Subjects in 48 CFR Parts 1834, 1842, and 1852

Government procurement.

**Tom Luedtke,**

*Assistant Administrator for Procurement.*

■ Accordingly, 48 CFR Chapter XVIII is amended as follows:

**CHAPTER XVIII—[AMENDED]**

■ 1. Part 1834 is added to subchapter F to read as follows:

## PART 1834—MAJOR SYSTEM ACQUISITION

### Subpart 1834.2—Earned Value Management System

Sec.

1834.201 Policy.
1834.203 Solicitation provisions and contract clause.
1834.203–70 NASA solicitation provision and contract clause.

**Authority:** 42 U.S.C. 2473(c)(1).

### Subpart 1834.2—Earned Value Management System

#### 1834.201 Policy.

(a) Application of an Earned Value Management System (EVMS) is required for all acquisitions for development designated as major in accordance with OMB Circular A–11, and for development or production contracts and subcontracts, including those for flight and ground support requirements, and institutional requirements (facility, IT investment, etc.) as follows:

(i) For contracts and subcontracts valued at $20M or more, and contracts and subcontracts for major acquisitions valued at less than $20M, the EVMS shall comply with the guidelines in the ANSI/EIA–748 Standard.

(ii) For contracts and subcontracts valued at $50M or more, the contractor shall have an EVMS that has been formally validated and accepted by the Government.

(iii) For contracts and subcontracts for other than major acquisitions valued at less than $20M, earned value management application is optional and is a risk-based decision that is at the discretion of the program/project manager.

(iv) EVM is not required on contracts for non-developmental engineering support services, steady state operations, basic and applied research, and routine services such as janitorial services or grounds maintenance services. In these cases, application of EVM is at the discretion of the program/project manager.

(e) Contracting officers shall request the assistance of the cognizant Defense Contract Management Agency (DCMA) office in determining the adequacy of proposed EVMS plans.

#### 1834.203 Solicitation provisions and contract clause.

The FAR EVMS solicitation provisions and contract clause are not used in NASA contracts. See 1834.203–70 for the NASA EVMS solicitation provision and contract clause.

#### 1834.203–70 NASA solicitation provision and contract clause.

Except for the contracts identified in 1834.201(a)(iv), the contracting officer shall insert—

(a) The provision at 1852.234–1, Notice of Earned Value Management System, in solicitations for contracts for—

(1) Development or production, including flight and ground support projects, and institutional projects (facility, IT investment, etc.), with a value exceeding $20M; and

(2) Acquisitions of any value designated as major by the project manager in accordance with OMB Circular A–11; and

(b) The clause at 1852.234–2, Earned Value Management System, in solicitations and contracts with a value exceeding $50M that include the provision at 1852.234–1. The contracting officer shall use the clause with its Alternate I when the contract value is less than $50M.

## PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 2. The authority citation for 48 CFR part 1842 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

## Subpart 1842.74—[Removed]

■ 3. Part 1842 is amended by removing Subpart 1842.74.

## PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. The authority citation for 48 CFR part 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

■ 5. Sections 1852.234–1 and 1852.234–2 are added to read as follows:

### 1852.234–1 Notice of Earned Value Management System.

As prescribed in 1834.203–70(a), insert the following provision:

**Notice of Earned Value Management System (NOV 2006)**

(a) The offeror shall provide documentation that its proposed Earned Value Management System (EVMS) complies with the EVMS guidelines in the American National Standards Institute (ANSI)/Electronic Industries Alliance (EIA)–748 Standard, Earned Value Management Systems.

(b) If the offeror proposes to use a system that currently does not meet the requirements of paragraph (a) of this provision, the offeror shall submit its comprehensive plan for compliance with the EVMS guidelines to the Government for approval.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contract;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the EVMS guidelines in ANSI/EIA–748;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

(iv) Describe the proposed procedure for application of the EVMS requirements to subcontractors;

(v) Describe how the offeror will ensure EVMS compliance for each subcontractor subject to the flowdown requirement in paragraph (c) whose EVMS has not been recognized by the Cognizant Federal Agency as compliant according to paragraph (a);

(vi) Provide documentation describing the process and results, including Government participation, of any third-party or self-evaluation of the system's compliance with the EVMS guidelines; and

(vii) If the value of the offeror's proposal, including options, is $50 million or more, provide a schedule of events leading up to formal validation and Government acceptance of the Contractor's EVMS. This schedule should include progress assistance visits, the first visit occurring no later than 30 days after contract award, and a compliance review as soon as practicable. The Department of Defense Earned Value Management Implementation Guide (*https://acc.dau.mil/CommunityBrowser.aspx?id=19557*) outlines the requirements for conducting a progress assistance visit and validation compliance review.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review the offeror's EVMS implementation plan prior to contract award.

(c) The offeror shall identify in its offer the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the EVMS requirement. Prior to contract award, the offeror and NASA shall agree on the subcontractors, or subcontracted effort, subject to the EVMS requirement.

(d) The offeror shall incorporate its compliance evaluation factors for subcontractors into the plan required by paragraph (b) of this provision.

(End of provision)

### 1852.234–2 Earned Value Management System.

As prescribed in 1834.203–70(b) insert the following clause:

**Earned Value Management System (NOV 2006)**

(a) In the performance of this contract, the Contractor shall use—

(1) An Earned Value Management System (EVMS) that has been determined by the Cognizant Federal Agency to be compliant with the EVMS guidelines specified in the American National Standards Institute (ANSI)/Electronic Industries Alliance (EIA)—748 Standard, Industry Guidelines for Earned Value Management Systems (current version at the time of award) to manage this contract; and

(2) Earned Value Management procedures that provide for generation of timely, accurate, reliable, and traceable information for the Contract Performance Report (CPR) required by the contract.

(b) If, at the time of award, the Contractor's EVMS has not been determined by the Cognizant Federal Agency to be compliant with the EVMS guidelines, or the Contractor does not have an existing cost/schedule control system that is compliant with the guidelines in the ANSI/EIA–748 Standard (current version at the time of award), the Contractor shall apply the system to the contract and shall take timely action to implement its plan to obtain compliance/validation. The Contractor shall follow and implement the approved compliance/validation plan in a timely fashion. The Government will conduct a Compliance Review to assess the contactor's compliance with its plan, and if the Contractor does not follow the approved implementation schedule or correct all resulting system deficiencies identified as a result of the compliance review within a reasonable time, the Contracting Officer may take remedial action, that may include, but is not limited to, a reduction in fee.

(c) The Government will conduct Integrated Baseline Reviews (IBRs). Such reviews shall be scheduled and conducted as early as practicable, and if a pre-award IBR has not been conducted, a post-award IBR should be conducted within 180 calendar days after contract award, or the exercise of significant contract options, or within 60 calendar days after distribution of a supplemental agreement that implements a significant funding realignment or effects a significant change in contractual requirements (e.g., incorporation of major modifications). The objective of IBRs is for the Government and the Contractor to jointly assess the Contractor's baseline to be used for performance measurement to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(d) Unless a waiver is granted by the Cognizant Federal Agency, Contractor proposed EVMS changes require approval of the Cognizant Federal Agency prior to implementation. The Cognizant Federal Agency shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the Cognizant Federal Agency, the Contractor shall disclose EVMS changes to the Cognizant Federal Agency at least 14 calendar days prior to the effective date of implementation.

(e) The Contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer or a duly authorized representative. Access is to permit Government surveillance to ensure that the Contractor's EVMS complies, and continues to comply, with the EVMS guidelines referenced in paragraph (a) of this clause, and to demonstrate—

(1) Proper implementation of the procedures generating the cost and schedule information being used to satisfy the contract data requirements;

(2) Continuing application of the accepted company procedures in satisfying the CPR required by the contract through recurring program/project and contract surveillance; and

(3) Implementation of any corrective actions identified during the surveillance process.

(f) The Contractor shall be responsible for ensuring that its subcontractors, identified

below, comply with the EVMS requirements of this clause as follows:

(1) For subcontracts with an estimated dollar value of $50M or more, the following subcontractors shall comply with the requirements of this clause.

(Contracting Officer to insert names of subcontractors or subcontracted effort).

(2) For subcontracts with an estimated dollar value of less than $50M, the following subcontractors shall comply with the requirements of this clause except for the requirement in paragraph (b), if applicable, to obtain compliance/validation.

(Contracting Officer to insert names of subcontractors or subcontracted effort.)

(g) If the contractor identifies a need to deviate from the agreed baseline by working against an Over Target Baseline (OTB) or Over Target Schedule (OTS), the contractor shall submit to the Contracting Officer a request for approval to begin implementation of an OTB or OTS. This request shall include a top-level projection of cost and/or schedule growth, whether or not performance variances will be retained, and a schedule of implementation for the reprogramming adjustment. The Government will approve or deny the request within 30 calendar days after receipt of the request. Failure of the Government to respond within this 30-day period constitutes approval of the request. Approval of the deviation request does not constitute a change, or the basis for a change, to the negotiated cost or price of this contract, or the estimated cost of any undefinitized contract actions.

(End of clause)

**(Alternate I) (NOV 2006)**

As prescribed in 1834.203–70(b), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) If, at the time of award, the Contractor's EVMS has not been determined by the Cognizant Federal Agency to be compliant with the EVMS guidelines, or the Contractor does not have an existing cost/schedule control system that is compliant with the guidelines in the ANSI/EIA–748 Standard (current version at the time of ward), the Contractor shall apply the system to the contract and shall take timely action to implement its plan to be compliant with the guidelines. The Government will not formally validate/accept the Contractor's EVMS with respect to this contract. The use of the Contractor's EVMS for this contract does not imply Government acceptance of the Contractor's EVMS for application to future contracts. The Government will monitor compliance through routine surveillance.

**1852.242–74 through 1852.242–77 [Removed]**

■ 6. Sections 1852.242–74, 1852.242–75, 1842.242–76, and 1852.242–77 are removed.

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

**[Docket No. 060609159–6272–02; I.D. 060606A]**

**RIN 0648–AU12**

## Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Amendment 18

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 18 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 18 responds to a court order by setting the Pacific Fishery Management Council's (Council's) bycatch minimization policies and requirements into the FMP.

**DATES:** Effective December 13, 2006.

**ADDRESSES:** Amendment 18 is available on the Council's Web site at: *http://www.pcouncil.org/groundfish/gffmp.html*.

**FOR FURTHER INFORMATION CONTACT:** Yvonne deReynier (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736; and e-mail: *yvonne.dereynier@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

The proposed and final rules for this action are accessible via the Internet at the Office of the Federal Register's Web site at: *http://www.gpoaccess.gov/fr/index.html*. The FEIS on bycatch mitigation is available on the NMFS Northwest Region Web site at: *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/NEPA-Documents/Programmatic-EIS.cfm* and at the Council's Web site at *http://www.pcouncil.org*.

### Background

Amendment 18 revised the FMP to set the Council's bycatch minimization polices and requirements into the FMP. Amendment 18 responds to court orders in *Pacific Marine Conservation Council* v. *Evans*, 200 F.Supp.2d 1194 (N.D. Calif. 2002) [hereinafter *PMCC* v. *Evans*]. This final rule implements the following actions: require that groundfish fishery management measures take into account the co-occurrence ratios of overfished species with more abundant target stocks; require vessels that participate in the open access groundfish fisheries to carry observers if directed by NMFS; authorize the use of depth-based closed areas as a routine management measure for protecting and rebuilding overfished stocks, preventing the overfishing of any groundfish species, minimizing the incidental harvest of any protected or prohibited non-groundfish species, controlling effort to extend the fishing season, minimizing the disruption of traditional commercial fishing and marketing patterns, spreading the available recreational catch over a large number of anglers, discouraging target fishing while allowing small incidental catches to be landed, and allowing small fisheries to operate outside the normal season; update the boundary definitions of the Klamath and Columbia River Salmon Conservation Zones and Eureka nearshore area to use latitude and longitude coordinates in a style similar to that of the Groundfish Conservation Areas (GCAs); and, allow species to be identified for sorting prior to landing if there is a scientific need for those species to be separately identified upon landing.

A Notice of Availability for Amendment 18 was published on June 9, 2006 (71 FR 33432). NMFS requested comments on the amendment under the Magnuson-Stevens Act FMP amendment review provisions for a 60-day comment period, ending August 8, 2006. A proposed rule was published on June 27, 2006 (71 FR 36506), requesting public comment through August 8, 2006. During the Amendment 18 and proposed rule comment period, NMFS received two letters of comment. These letters are addressed later in the preamble to this final rule. The preamble to the proposed rule for this action provides additional background information on the fishery and on this final rule. Further detail on Amendment 18 also appears in the bycatch mitigation FEIS, referenced above under ''Electronic Access.'' After consideration of the public comments received on the amendment, NMFS approved Amendment 18 on September 6, 2006.

**Comments and Responses**

NMFS received two letters of comment on the proposed rule to implement Amendment 18: one letter was jointly sent by four environmental advocacy organizations, and one letter was sent by the Washington Department of Fish and Wildlife (WDFW). These comments are addressed here:

*Comment 1:* WDFW believes that groundfish species sorting requirements at § 660.306 need to be expanded so that managers may better quantify total catch for some species that are part of the FMP, but which are not required to be sorted because they lack species-specific trip limits, size limits, harvest guidelines, quotas, or optimum yields (OYs). Skates (*Raja* spp.) serve as an example of species for which broadening sorting requirements could greatly improve total catch accounting. There are several West Coast skate species and they are often landed with their wings removed, making these animals particularly difficult to identify by species when they are landed unsorted. Allowing NMFS to designate, upon recommendation by the Council, certain species as required to be sorted under a scientific sorting designation would allow science and management agencies to better assess populations of some of the less commonly caught species within the groundfish complex. Therefore, WDFW suggests that Federal regulations at § 660.306(a)(7) and § 660.370(h)(6) be revised to require that, in addition to other sorting requirements, vessels sort species with ''scientific sorting designation.''

*Response:* NMFS agrees that WDFW's suggestion will be beneficial to improving total catch information on less commonly caught species. The suggested revision to Federal regulations supports language added to the FMP via Amendment 18, found at Section 6.4.1.2, on Commercial Fisheries total catch reporting methodology, ''Catch weight by sorted species category, area of catch, vessel identification number, and other data elements are required on fish tickets. Landings are also sampled in port by State personnel, who collect species composition data, otoliths for ageing, lengths, and other biological data. * * * All landings of groundfish stocks of concern (overfished stocks and stocks below $B_{MSY}$) and target stocks and stock complexes in West Coast fisheries are tracked in Quota Species Monitoring reports of landed catch.'' NMFS anticipates that WDFW's suggestion will allow the Council to target particular stocks for improved species-specific data gathering, and to potentially address a management challenge identified under Section 4.3.3 of the FMP, the inability to conduct species-specific stock assessments on fish stocks without species-specific landings data. Therefore, this final rule includes WDFW's suggested modification to Federal framework regulations at § 660.306(a)(7) and § 660.370(h)(6). No species would be added through this action to the lists at § 660.370(h)(6)(i)–(ii) that designate the species and species groups currently required to be sorted. Species required to be sorted via a scientific sorting designation would be considered through the Council process and through a future Federal rulemaking.

*Comment 2:* The commenting organizations (Natural Resources Defense Council, Pacific Marine Conservation Council, Oceana, and The Ocean Conservancy, hereinafter ''The Four Organizations'') generally agree with the Council's three-part bycatch minimization strategy of: Improving data collection and analysis; improving modeling to better correlate bycatch rates with time, place, and gear type; and developing management measures that minimize bycatch and bycatch mortality. However, for reasons explained in subsequent comments, below, they do not believe that Amendment 18 satisfies the requirements of the Magnuson-Stevens Act and other applicable laws. Pursuant to 16 U.S.C. 1854(a)(3), they call on NMFS to disapprove portions of Amendment 18 on the following grounds: (1) The failure to adopt all practicable bycatch minimization measures; (2) the failure to articulate why certain measures adopted as part of the Council's preferred alternative have been deemed impracticable and thus dismissed from implementation at this time; (3) the failure to provide objectives and targets for implementing currently impracticable measures, or to include performance standards and measurable criteria for determining progress towards reducing bycatch; (4) an inadequate standardized total catch reporting (and observer) program; and (5) other reasons explained below.

*Response:* The Magnuson-Stevens Act at 16 U.S.C. 1854(a)(3) requires that ''The Secretary [of Commerce] shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period [on the FMP or FMP amendment] by written notice to the Council.'' NMFS sent written notice to the Council on September 6, 2006 that the agency had fully approved Amendment 18 to the FMP, prior to the Magnuson-Stevens Act's 30-day deadline from the end of the comment period. NMFS approved Amendment 18, after taking into account all comments received, because it revises the FMP to meet the requirements of the Magnuson-Stevens Act to minimize bycatch to the extent practicable, and to provide a standardized bycatch reporting methodology. As discussed in the proposed rule for this action, Amendment 18 significantly revised Chapter 6 of the FMP, ''Management Measures'' to address the bycatch monitoring and minimization requirements of the Magnuson-Stevens Act. With Amendment 18's revisions, the FMP sets a high priority on bycatch minimization and requires the use of practicable bycatch minimization measures, including: A total catch reporting and compliance program (Section 6.4); bycatch mitigation measures to be implemented if practicable, such as full retention programs, sector-specific and vessel-specific total catch limit programs, and catch allocation to or gear flexibility for gear types with lower bycatch rates (Section 6.5); gear definitions and restrictions (Section 6.6); catch restrictions such as quotas, size limits, trip limits, and bag limits (Section 6.7); time/area closures for bycatch mitigation and habitat protection (Section 6.8); capacity control measures such as permits and licenses (Section 6.9); and enforcement and safety standards (Section 6.10). The FMP at 6.5.1 states that ''The Council has all of the management measures detailed in Sections 6.5–6.10 at its disposal to manage directed catch and reduce bycatch of groundfish species in the groundfish fisheries. Because of the interaction among the various species and the regular incorporation of new information into the management system, the details of the specific measures will change over the years, or within years, based on the best available science. Management measures will be designed taking into account the co-occurrence ratios of target stocks with overfished stocks. To protect overfished species and minimize bycatch through reducing incidental catch of those species, the Council will particularly use, but is not limited to: Catch restrictions detailed in Section 6.7 to constrain the catch of more abundant stocks that commingle with overfished species, in times and areas where higher abundance of overfished species are expected to occur; time/area closures detailed in Section 6.8 and designed to prevent vessels from operating during times when or in areas where overfished species are most vulnerable to a

particular gear type or fishery; and gear restrictions described in Section 6.6, where that gear restriction has been shown to be practicable in reducing overfished species incidental catch rates.'' The groundfish FMP addresses over 90 species; its management area spans the length of the U.S. West Coast; and its fisheries affecting groundfish range from treaty tribal ceremonial fisheries, to commercial fisheries with international markets varying from elite delicacies to mass-market surimi, to family weekend sport fishing trips. The diverse array of management measures required in the FMP for bycatch mitigation reflects the Council's philosophy that there is not one single solution for minimizing bycatch in such a diverse set of fisheries, and that addressing bycatch is an ongoing process.

NMFS notes that although The Four Organizations requested partial disapproval of Amendment 18, their comments did not specify which sections of Amendment 18 they wished NMFS to disapprove. The Four Organizations also state that ''NMFS must reject the portions of the proposed rule implementing Amendment 18 that fail to comply with the bycatch requirements of the Magnuson-Stevens Act, and the reasoned decision-making standard of the Administrative Procedures Act (APA.)'' The Four Organizations elaborated on each of the five points on which they based their request that NMFS disapprove portions of Amendment 18. NMFS has approved all of Amendment 18 and its implementing regulations because they are consistent with the Magnuson-Stevens Act and other applicable laws. NMFS responds below to both the general and detailed comments of The Four Organizations, which they had summarized as stated in Comment 2 as the introduction to their letter.

*Comment 3:* The Four Organizations believe that Amendment 18 fails to adopt all practicable management measures. The Magnuson-Stevens Act requires that NMFS implement all ''practicable'' bycatch minimization measures (16 U.S.C. 1853(a)(11).) Although NMFS has some discretion in determining which measures are practicable, mere ''[i]nconvenience is not an excuse'' for finding a particular measure impracticable (63 FR 24212 at 24224, May 1, 1998—Preamble to National Standard Guidelines.) The only bycatch minimization measures required by Amendment 18—(1) Gear restrictions found in FMP Section 6.6; (2) catch restrictions found in FMP Section 6.7; and (3) time-area closures contained in FMP Section 6.8—have already been part of the status quo management of the fishery for several years. All other measures remain discretionary or are deemed not yet practicable. Thus, the only measures that the Council considers to be practicable in 2006 are those that have comprised the status quo since prior to the decision in *PMCC* v. *Evans*.

*Response:* As discussed in the preamble to the proposed rule for this action, *PMCC* v. *Evans* addressed Amendment 13, which NMFS approved on December 31, 2001. The Four Organizations are incorrect in asserting that the Council only considers measures implemented in 2001 and earlier to be practicable in 2006. NMFS provided a list of bycatch management measures required by the FMP, via Amendment 18, in the response to Comment 2, above. Since 2001, and in response to the Court's decision in 2002 on Amendment 13, NMFS and the Council have evaluated and implemented numerous new bycatch minimization measures through the FMP's framework authority. The following list of measures implemented since 2001 does not include either the Amendment 18 regulations or those additional bycatch minimization measures that NMFS has proposed to be implemented for the 2007–2008 groundfish fisheries via the groundfish specifications and management measures process (71 FR 57764, September 29, 2006):

*Standardized Total Catch Reporting Methodologies*

- Requirement for participants in the West Coast groundfish fisheries to carry one or more Federal observers onboard their vessels. Observer program regulations implemented May 24, 2001 (66 FR 20609, April 24, 2001).
- NMFS's West Coast Groundfish Observer Program (WCGOP) begins placing observers on vessels that participate in the groundfish fisheries in Federal waters (August 2001).
- NMFS first uses a bycatch model, populated by data from historical experiments, to set groundfish trip limits that vary by time of year and depth, in accordance with co-occurrence ratios in the bycatch model (67 FR 1555, January 11, 2002).
- NMFS completes analysis of first year's worth of data from WCGOP in January 2003 (*http://www.nwfsc.noaa.gov/research/divisions/fram/observer/datareport/trawl/datareportjan2003.cfm*)
- NMFS approves Amendment 16–1 to the FMP on November 13, 2003. In addition to setting a framework for incorporating overfished species rebuilding plans into the FMP, Amendment 16–1 revises the FMP to make a groundfish observer program a mandatory tool in fishery management (69 FR 8861, February 26, 2004).
- NMFS reconstructs groundfish fishery bycatch model and populates it with WCGOP data to model species co-occurrence ratios, plus trip limit and depth-based management regimes for the 2004 fishing year, effective January 1, 2004 (69 FR 1380, January 8, 2004).
- Requirement for at-sea processors and catcher-processors to carry one or more Federal observers onboard their vessels implemented July 7, 2004. These vessels had previously been carrying observers voluntarily for their participation in the at-sea whiting fishery, but NMFS viewed mandatory coverage as needed in order to ensure observer data integrity (69 FR 31751, June 7, 2004).

*Fleet-Size/Effort Reduction (With Direct or Indirect Bycatch Minimization Effects)*

- Restriction on the frequency of limited entry permit transfers in order to restrict the number of vessels that may use a permit within a calendar year implemented August 1, 2001 (66 FR 40918, August 6, 2001).
- Amendment 14 to the FMP, program to consolidate limited entry sablefish fleet by allowing vessels to stack up to three permits on the same vessel, implemented August 2, 2001 (66 FR 41152, August 7, 2001). Between 2001 and the present, fleet size reduced by approximately 50 percent.
- Limited entry trawl permit and vessel buyback program; fleet size reduced by 34 percent between July and December 2003 (68 FR 42613, July 18, 2003).
- The Council announces its intent to consider implementing an individual quota program for the limited entry trawl fishery, setting a control date for considerations of qualifying catch (69 FR 1563, January 9, 2004).
- The Council announces its intent to consider a license limitation program for the open access fishery, setting a control date for considerations of qualifying catch (**Federal Register** publication anticipated by November 15, 2006).

*Marine Areas Closed to Fishing*

- Eastern and Western Cowcod Conservation Areas implemented in Southern California Bight, January 5, 2001 (66 FR 2338, January 11, 2001).
- Darkblotched Rockfish Conservation Area (RCA) implemented for trawlers operating north of Cape Mendocino, CA for the months of

September–December 2002 (67 FR 57973, September 13, 2002).

• Darkblotched RCA replaced with coastwide (U.S. border with Canada to U.S. border with Mexico) RCAs for commercial fisheries, primarily closing fishing on the continental shelf (68 FR 908, January 7, 2003, and 68 FR 11182, March 7, 2003).

• Yelloweye Rockfish Conservation Area implemented off Washington coast (68 FR 908, January 7, 2003, and 68 FR 11182, March 7, 2003).

• Vessel monitoring system requirements for limited entry fleet implemented January 1, 2004 (68 FR 62374, November 4, 2003).

• Recreational fisheries first subject to RCAs and depth-based management (69 FR 1322, January 8, 2004, and 69 FR 11064, March 9, 2004).

• NMFS establishes for the 2005 Pacific whiting fishery, via emergency rule, the Ocean Salmon Conservation Zone, closing the whiting fishery shoreward of the 100-fm depth contour (70 FR 51682, August 31, 2005).

• NMFS implements 51 new closed areas within the West Coast Exclusive Economic Zone for the protection of groundfish Essential Fish Habitat (71 FR 27408, May 11, 2006.)

*Gear Restrictions or Incentives*

• Differential trip limits are introduced for vessels using small footrope gear, intended to discourage fishing in areas where nearshore and shelf rockfish occur, January 5, 2001 (66 FR 2338, January 11, 2001.)

• Selective flatfish trawl gear required for trawl vessels operating shoreward of the RCAs and north of Cape Mendocino, CA, effective January 1, 2005 (69 FR 77012, December 23, 2004.)

*Comment 4:* The Four Organizations believe that Amendment 18 fails to adopt all practicable management measures. According to the bycatch mitigation EIS, the preferred alternative that Amendment 18 purports to implement would: ''primarily use sector allocations and reward those sectors with the best bycatch minimization performance. It would encourage individual vessels to carry observers at the vessel's expense and provide larger trip limits for those vessels, in combination with catch limits for overfished species. Those vessels that participate would be exempted from the sectors and not be closed if a sector were closed.''

*Response:* The Four Organizations have quoted a discussion of a portion of the preferred alternative from the EIS's Executive Summary, not the preferred alternative itself, which the Council developed to incorporate elements from several of the EIS's alternatives. NMFS addresses sector bycatch caps in its responses to Comments 5 and 6. Here, NMFS provides the text of the preferred alternative, so that readers may be clear as to the precise wording:

''Create a new Alternative 7 that includes elements of Alternatives 1, 4, and 5. Elements from Alternative 1 that would be included in Alternative 7 would be all current programs for bycatch minimization and management, including but not limited to: setting optimum yield specifications, gear restrictions, area closures, variable trip and bag limits, season closures, establishing landings limits for target species based on co-occurrence ratios with overfished stocks, etc. The FMP would be amended to more fully describe our standardized reporting methodology program and to require the use of bycatch management measures indicated under Alternative 1 for the protection of overfished and depleted groundfish stocks and to reduce bycatch and bycatch mortality to the extent practicable. These would be used until replaced by better tools as they are developed.

Elements from Alternative 4 that would be included in Alternative 7 would be the development and adoption of sector-specific caps for overfished and depleted groundfish species where practicable. We anticipate phasing in sector bycatch caps that would include: Monitoring standards, full retention programs, and individual vessel incentives for exemption from caps.

Elements of Alternative 5 that would be included in Alternative 7 would be the support of future use of Individual Fishing Quota programs for appropriate sectors of the fishery. The FMP would incorporate the Strategic Plan's goal of reducing overcapacity in all commercial fisheries. Additionally, baseline accounting of bycatch by sector shall be established for the purpose of establishing future bycatch program goals.''

*Comment 5:* The Four Organizations believe that Amendment 18 fails to adopt all practicable management measures. They believe that NMFS must implement hard bycatch caps for all sectors targeting Pacific groundfish. Continued delay in setting hard caps and other important bycatch reduction measures is irresponsible, because it promotes overfishing and fails to promote a more efficient and thus more profitable fishery. Hard caps, along with rapid inseason management responses and robust monitoring, are necessary to prevent exceeding the OY of Pacific groundfish. Absent these measures, they believe that the fisheries risk exceeding the Acceptable Biological Catch (ABC) and/or OY on a regular basis, as they assert occurred with lingcod, Dover sole, canary rockfish, bocaccio, shortspine thornyheads, and black rockfish in 2003 and with darkblotched rockfish and canary rockfish in 2004. Moreover, from an ecosystem-based perspective, The Four Organizations believe that NMFS must improve the counting and control of bycatch of all marine life since fishing affects not only targeted and overfished species, but also marine ecosystems more broadly.

*Response:* NMFS has determined, as explained below, that ''hard'' bycatch caps are not practicable at this time. The Four Organizations are incorrect in asserting that hard bycatch caps are necessary to prevent overfishing. While Amendment 18 endorses the use of sector bycatch caps, where practicable, hard bycatch caps are not a prerequisite for preventing overfishing, nor are bycatch caps the sole management measure available to prevent overfishing.

Amendment 18 discusses sector-specific total catch limit programs in Section 6.5.3.2 as follows: ''A sector-specific total catch limit program is one in which a fishery sector would have access to a pre-determined (probably through the harvest specifications and management measure process, Section 6.2, C) amount of a groundfish FMU species, stock, or stock complex that would be allowed to be caught by vessels in that sector. Once a total catch limit is attained, all vessels in the sector would have to cease fishing until the end of the limit period, unless the total catch limit is increased by the transfer of an additional limit amount. A sector-specific total catch limit program could be based on either: (1) Monitoring of landed catch and inseason modeling of total catch based on past landed catch and bycatch rates, or (2) monitoring of total catch and real-time delivery of total catch data. If a sector-specific total catch limit program is based on inseason monitoring of landed catch, a sector would close when inseason total catch modeling estimated that the sector had achieved an FMU [Fishery Management Unit] species, stock, or stock complex total catch limit. If a sector-specific total catch limit program is based on inseason monitoring of total catch, a sector would close when inseason total catch monitoring estimated that the sector had achieved an FMU species, stock, or stock complex total catch limit.''

Currently, before the start of a two-year management cycle, the Council and NMFS use projection models incorporating past WCGOP data to set

fishery management measures so that they best reflect the known catch ratios between target and rebuilding species. During each two-year management cycle, new WCGOP data is incorporated into the model and total catch is estimated so that management measures may be revised inseason to keep the fishery within OYs. Following each fishing year, WCGOP data for that year are used for post-season total catch evaluations, and are then used in setting or revising management measures for subsequent fishing years. Taking these three evaluation and implementation steps—pre-season, inseason, and post-season—ensures that NMFS and the Council are using the best available scientific information to minimize bycatch to keep total catch within OYs, and to ensure that management is constantly improved through the use of updated information. The OYs of non-target species serve as total catch limits for those species, although most species are not allocated by sector. If a species is not allocated by sector, a higher-than-predicted catch in one sector may be accounted for by constraining catch in another sector with lower-than-predicted catch for that species.

For example, in summer 2006, the Council used an inseason bycatch limit to ensure that the summer fisheries' incidental catch of canary rockfish remained low enough so that autumn and winter fisheries with incidental rockfish catch would not have to be closed to keep the catch of canary rockfish within its OY, recommending that: ''If the catch of canary in the LE bottom trawl sector is projected to reach 7.75 mt of the end of either July or August, NMFS will move the shoreward boundary of the RCA in to the shore north of 40° 10′ N. lat. at the end of that month. The Groundfish Management Team will reevaluate management measures relative to canary rockfish at the Council's September meeting.'' That Council recommendation illustrates the type of bycatch limit that is both possible and effective in groundfish fishery management, a limit that relies on projections from data received inseason, rather than on real-time estimates of the exact amount of catch being taken at a given time. Because the current management system is more flexible than a hard bycatch cap system, it allows overages discovered inseason for one portion of the fishery, or with research catch, to be accommodated with reductions in available bycatch amounts in other portions of the fishery.

Regarding whether overfishing occurred on darkblotched and canary rockfish in 2004, NMFS has recent revised estimates that show overfishing did not occur. Under the FMP, ABCs for all species are set at the $F_{MSY}$ level or its proxy the level that, for a particular year, is intended to produce maximum sustainable yield for that species on a continuing basis. OYs for most groundfish species are set below their ABCs. Overfishing occurs when the total catch of a species exceeds that species' ABC. NMFS completed its post-season evaluation of the 2004 fisheries in early 2006. In an analysis by NMFS Northwest Fisheries Science Center dated May 18, 2006, NMFS estimated that overfishing had occurred on darkblotched rockfish in 2004. Subsequently, NMFS determined that some double-counting had occurred in the summarization of landed catches in the May 18, 2006, analysis. A revised analysis of total fishing mortality, or total catch, was published on the Northwest Fisheries Science Center Web site on September 29, 2006. [*http://www.nwfsc.noaa.gov/research/divisions/fram/observer/datareport/docs/revised_total_fg_catch_estimation2004.pdf*] Based on the September 29, 2006 analysis, NMFS estimates that no species were subject to overfishing during the 2004 fishing year. The total catch of darkblotched rockfish, which was previously estimated to have exceeded the 240 mt ABC by 1.6 mt, is now estimated to have been 9.1 mt below the ABC. The September 29, 2006, analysis estimates that the 2004 total catch of canary rockfish exceeded the 47.3 mt OY by 0.8 mt. This does not represent overfishing because the total catch was below the ABC of 243 mt. In no other instance did the estimated 2004 total catch of a species exceed that species ABC.

As reported in Table 4–2 in the final EIS for the 2005–2006 groundfish specifications and management measures, estimated 2003 lingcod total catch exceeded the lingcod ABC of 841 mt by 525.6 mt. The lingcod stock, which had previously been listed as overfished, completed its rebuilding ahead of its 2009 anticipated rebuilt date and was announced as rebuilt in 2005. The 2003 shortspine thornyhead estimated total catch exceeded its ABC of 1,004 mt by 216.2 mt. These two species were subject to overfishing, but were protected from overfishing in subsequent years both by a more conservative management regime and by a more consistent total catch calculation methodology between the pre-season period and the inseason management period, as described below. Dover sole, canary rockfish and bocaccio estimated total catch levels exceeded their OYs: Dover sole estimated total catch was 8,342.2 mt, between its 7,440 mt OY and its 8,510 ABC; canary rockfish estimated total catch was 46.8 mt, between its 44 mt OY and its 272 mt ABC; and bocaccio estimated total catch was 29.1 mt, between its 20 mt OY and its 198 mt ABC. Bycatch rate and total catch estimation was particularly challenging in 2003, because NMFS had modeled bycatch rates prior to the fishing year based on pre-WCGOP data, then revised its bycatch rate estimates inseason based on data from WCGOP's first year, which became available for management use for the first time in January 2003. Post-season total catch estimates also used WCGOP data to assess total catch. The number of species with catches in excess of their OYs in 2003 is an indicator of the challenge of managing a fishery to use best and most recently available science, when the new scientific data in question represents a significant shift in scientific method. However, when the newly available science revealed that the fishery had or was projected to exceed its 2003 OY level, NMFS and the Council responded quickly with inseason actions to constrain the fisheries. The effects of newly available inseason observer data have diminished over time as more years of observer data are added to the management process, since those additional years of data provide NMFS with a more complete picture of how fishing vessel behavior and groundfish stock migrations change during the calendar year. The effects of all harvest levels, whether under or over OYs, are accounted for in subsequent stock assessments.

Finally, The Four Organizations state that NMFS must improve the counting and control of bycatch of all marine life, because they believe that fishing affects not only targeted and overfished species, but also marine ecosystems more broadly. NMFS agrees that it is important to assess and minimize the bycatch of marine species other than those that are either targeted or overfished. Many of the measures currently in place reduce bycatch of all species; for example, the gear restrictions described in the response to comment 6. See also the response to comment 14. Because of the Magnuson-Stevens Act's mandate to rebuild overfished species, and because of the unusually long lives and low productivity levels of rockfish managed under rebuilding plans, NMFS places its highest bycatch minimization priority on constraining incidental catch of overfished species. NMFS most recently described its approach to overfished species rebuilding in the preamble to

the proposed rule to implement Amendment 16–4 to the FMP and the 2007–2008 groundfish specifications and management measures (71 FR 57764, September 29, 2006.) A more detailed analysis of this management approach is also available in the Final EIS for that action, available online from the Council at: *http://www.pcouncil.org/nepa/nepatrack.html.*

*Comment 6:* The Four Organizations believe that the proposed rule fails to provide a rational basis for dismissing measures as impracticable. Neither the proposed rule nor Amendment 18 explains sufficiently why other measures that the Council analyzed but did not adopt, such as hard sector caps, are not currently practicable. NMFS has dismissed certain measures by simply labeling them impracticable, without fully considering the practicability of achieving those measures and without explaining why they are impracticable. In Amendment 13, NMFS dismissed as ''impracticable without an observer program'' two methods of reducing bycatch: (1) ''the use of incentives for vessels with lower bycatch rates, such as allowing higher landing limits (and thus greater fishing profits) for fishing vessels that fish selectively and thus have relatively low discard rates;'' and (2) ''the use of discard caps to manage the fishery'' (*PMCC* v. *Evans*). The agency argued that ''both alternatives are deemed impracticable without a full observer program, since both would require individual vessel monitoring'' (*PMCC* v. *Evans*). The agency never explained why full observer coverage was impracticable; it just concluded that it was so.

Several bycatch minimization programs that were chosen as part of the agency's preferred alternative have been dismissed as impracticable at the present time, including: full retention programs, sector-specific total catch limits, vessel-specific total catch limits, and providing increased catch allocations to or gear flexibility for gear types with lower bycatch rates. NMFS states that the reasons for this are that ''[s]ector specific limits are not practicable until the shore-based retention and monitoring program is more fully developed'' and vessel-based limits ''would be dependent upon a more intense level of monitoring than is practicable under the current management regime * * *.'' (71 FR 36506 at 36510, June 27, 2006.) This rationale is wholly insufficient to satisfy the Administrative Procedures Act's (APA's) requirement for reasoned decision-making, just as the court in *PMCC* v. *Evans* found inadequate NMFS's explanation in Amendment 13 that ''the type of observer program that would be needed to implement a vessel incentive program is not practicable.'' (66 FR 29729, at 29731 (June 1, 2001)). In *PMCC* v. *Evans,* the Court found that NMFS had engaged in ''unreasoned decision-making'' because it ''did not fully consider the practicability of the more comprehensive observer program necessary to administer vessel incentives or discard caps in light of the factors set forth in 50 CFR 600.350(d)(3)(i).'' The Council's ''Preliminary Discussion Draft Practicability Analysis for Amendment 18'' does not suffice. It was not included in the analysis of either the proposed rule or Amendment 18 and, even if it had been, the draft is confusing and incomplete. For example, the analysis only considers the socio-economic obstacles or costs of individual fishing quotas, which are but one of several measures from the preferred alternative in the PEIS that are dismissed as impracticable in the proposed rule. Other measures, such as hard sector caps and the use of performance standards, are not similarly evaluated.

*Response: PMCC* v. *Evans* addressed Amendment 13, which as mentioned above, NMFS approved on December 21, 2001. This final rule implements Amendment 18, which NMFS approved on September 6, 2006. The Four Organizations have quoted the agency's record for Amendment 13. NMFS analyses for Amendment 18 are separate from its analyses for Amendment 13.

In its National Standard 9, the Magnuson-Stevens Act requires bycatch to be minimized to the extent practicable. The issue of which management measures are and are not practicable at this time or into the future is central to Amendment 18, its program for bycatch minimization into the future, and to Federal regulations as amended through this final rule. The bycatch mitigation EIS, completed in September 2004, discussed the practicability of each of the alternatives when weighed against each other.

NMFS and the Council dealt further with practicability through the development of Amendment 18, which recommends different bycatch minimization measures in different fisheries and sectors, as practicable. The Council finalized Amendment 18 at its November 2005 meeting. For that meeting, NMFS provided the Council with a draft practicability analysis that evaluated the practicability of Amendment 18 within a framework of the Federal guidelines on National Standard 9 at § 660.350(d)(3). Those guidelines provide factors that should be considered when determining whether a conservation and management measure minimizes bycatch or bycatch mortality to the extent practicable. It became clear from Council discussions, however, that the Council and the public were more focused on evaluating the practicability of particular management tools, such as fleet capacity reduction or sector bycatch caps. Therefore, NMFS revised its practicability analysis to evaluate major bycatch accounting and minimization tools, in order to better inform the agency's decision on Amendment 18 under the Magnuson-Stevens Act and for the Record of Decision on the EIS. The final practicability analysis is available from NMFS's Northwest Region (see **ADDRESSES**) and the portions of that document that addressed vessel incentives, sector bycatch caps, full retention programs, and gear restrictions and catch incentives for lower bycatch gear are provided here, since The Four Organizations explicitly mentioned those four potential management tools. NMFS addressed some practicability issues associated with sector bycatch caps in its response to Comment 5; that discussion is supplemented here.

The Magnuson-Stevens Act provides for a deliberative fishery management council process, followed by a Federal rulemaking process, both with multiple opportunities for public review and comment on fishery management concepts as they are developed in the Council and on the Federal regulations that implement Council recommendations. Other laws, such as NEPA and the Regulatory Flexibility Act (RFA,) require that NMFS and the Council analyze the potential effects of fishery management actions on the physical, biological, and socio-economic environment, and particularly on small business entities within the socio-economic environment. In completing the analytical documents needed to assess the Council's recommendation on a preferred alternative for the bycatch mitigation EIS and on Amendment 18 language, NMFS evaluated the meaning of the requirement to minimize bycatch ''to the extent practicable'' in light of the current state of the groundfish fishery. The evaluative processes required by the Magnuson-Stevens Act, NEPA, RFA, and other applicable law, provide the framework for the agency's reasoned decision-making on both the EIS's preferred alternative and approval of Amendment 18.

The Magnuson-Stevens Act does not define what is meant by ''to the extent practicable'' when referring to the requirement to minimize bycatch. For the purposes of this discussion, NMFS

defines practicable for bycatch minimization measures to mean a measure that is ''reasonable and capable of being done in light of available technology and economic considerations.'' In other words, it may be possible to imagine a particular management tool, or to have seen it used in other fisheries, without that management tool being practicable for the West Coast groundfish fishery in particular. This definition is consistent with standard dictionaries, and with the intent of Congress, as expressed in the Congressional Record on the Sustainable Fisheries Act, ''The use of the term 'to the extent practicable' was chosen deliberately by both the Senate and the House. Both bodies recognize that bycatch can occur in any fishery, and that complete avoidance of mortality is impossible. Councils should make reasonable efforts in their management plans to prevent bycatch and minimize its mortality. However, it is not the intent of the Congress that the councils ban a type of fishing gear or a type of fishing in order to comply with this standard. 'Practicable' requires an analysis of the cost of imposing a management action; the Congress does not intend that this provision will be used to allocate among fishing gear groups, nor to impose costs on fishermen and processors that cannot be reasonably met.'' (104 Cong. Rec., H11437 (1996).) The agency's definition of the term practicable has also been tested in court and affirmed for bycatch minimization and essential fish habitat (EFH) protection for Federal fishery management off New England (*Oceana* v. *Evans,* No. 04–0811 (ESH) (Mar. 9, 2005.)

The Council addressed the question of practicability when making its final decision on Amendment 18. At its November 2005 meeting, the Council finalized FMP amendatory language for Amendment 18 and reviewed a draft work plan for future bycatch minimization measures intended to follow on Amendment 18. Council members particularly addressed sector bycatch caps in discussing potential future management measures, saying that, collectively, NMFS, the states, and the industry do not have the ''resources, money, or infrastructure to manage by sector caps.'' Council members expressed an interest in looking at sector bycatch caps for future management, but viewed them as impracticable to implement right now. As explained in the proposed rule for this action, the Council wished to build a management infrastructure for implementing sector bycatch caps where practicable in the future, but also concentrate right now on bycatch minimizing management measures that are more practicable in the near term. In particular, the Council cited two activities that could be done in the near term to minimize bycatch using existing personnel, funds, and management infrastructure: requiring permits in the open access fishery and evaluating the process by which observer and landings data are collected and analyzed for use in the management process. NMFS and the Council have followed up with both of these issues and NMFS anticipates shortly publishing an advance notice of proposed rulemaking on permitting the open access fishery.

NMFS has also fully considered the practicability of a more comprehensive observer program throughout the process of developing Amendment 18 and concurrent regulatory programs. In addition to the bycatch mitigation EIS, NMFS has evaluated observer coverage in two Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analyses (EA/RIR/IRFAs) for observer requirements in the groundfish fishery: a 2000 EA/RIR/IRFA on ''An Observer Program for Catcher Vessels in the Pacific Coast Groundfish Fishery,'' and a 2003 EA/RIR/IRFA on the ''Implementation of an Observer Program for At-Sea Processing Vessels in the Pacific Coast Groundfish Fishery.'' NMFS has analyzed additional monitoring mechanisms in two EA/RIR/IRFAs on vessel monitoring systems, and is currently drafting an EA/RIR/IRFA on implementing electronic monitoring (camera observation) requirements for the shore-based sector of the whiting fishery. These EA/RIR/IRFAs, which have been discussed in the Council process and made available to the public both through the Council and NMFS notice-and-comment processes, evaluate the costs and appropriateness of the different types of monitoring mechanisms for different fishery management goals.

For the practicability analysis on NMFS's decision on Amendment 18, NMFS evaluated the costs of the various monitoring programs currently in place against the expected cost of 100 percent observer coverage. Current WCGOP costs to address the non-whiting portion of the groundfish fleet are approximately $4.5 million per year. NMFS estimates that expanding WCGOP coverage so that all vessels were required to carry an observer whenever they are fishing would cost approximately $13.3 million per year, a significant cost when compared against the commercial fishery's total 2004 ex-vessel revenue of $61 million. NMFS considers implementing WCGOP to be both a practicable observer program to implement, and an appropriate approach to observer coverage for this fishery. An observer program that costs over a fifth of the fishery's revenue is not a program that is ''reasonable and capable of being done in light of current technology and economic considerations,'' particularly bearing in mind the many other costs associated with the science, management, and enforcement programs needed to support this fishery. The remaining paragraphs in this response to Comment 6 are excerpted or summarized from the practicability analysis and provide the agency's reasons for determining particular management measures to be practicable or impracticable at this time.

*Vessel incentive programs.* A vessel incentive program reduces bycatch by rewarding ''clean'' vessels with greater economic opportunity, thereby encouraging vessels to reduce their amount of bycatch. The Council discussed a type of vessel incentive program that would grant higher landings limits to vessels that voluntarily carry and pay for observers. Amendment 16–1 put a mandatory observer program into the FMP. Federal regulations at 50 CFR 660.314(c)(2) state ''When NMFS notifies the vessel owner, operator, or permit holder, or the vessel manager of any requirement to carry an observer, the vessel may not take and retain, possess, or land any groundfish without carrying an observer.''

Observers that are required to be carried onboard vessels as part of a statistical sampling program are observing vessels behaving within the framework of regulations that apply to the fleet as a whole. This type of observer sampling plan allows data from the observed portion of the fleet to be expanded to provide bycatch estimates for the whole fleet.

NMFS does not support an incentive program wherein vessels that voluntarily carry an observer are permitted to access higher landings limits than otherwise allowed, because such a program could undermine NMFS's observer sampling plan. Observers carried on a portion of the fleet under an incentive program that allows vessels to operate outside of the normal regulatory framework do not generate data that are useful to modeling the whole fleet's behavior. Thus, while an incentive-based observer program may be beneficial to the particular participating vessels, it is not necessarily beneficial, and could even be harmful, to the statistical validity of NMFS's sampling program design,

which provides data that support bycatch modeling on the groundfish fisheries. In addition to these scientific concerns, even if vessels were to pay for observers outside of the WCGOP program, NMFS would need to pay for the infrastructure to train the observers and process and analyze their data—a benefit to the participating vessels, but not to the fishery as a whole. For these reasons, NMFS does not consider an incentive-based observer program to be a practicable bycatch minimization measure for implementation in the groundfish fishery.

*Discard caps or bycatch limits.* Discard caps or total catch limits reduce bycatch by restricting fisheries when those limits are reached. A vessel cap works similarly to a vessel incentive in that target fishing can occur so long as the vessel does not reach a particular cap. This essentially rewards a vessel or fleet with fishing opportunity if they fish cleanly. The Council's preferred alternative includes the use of this mechanism for reducing bycatch when practicable. In addition, bycatch limits have been in place for the Pacific whiting fishery since 2004.

NMFS uses the term ''bycatch limit,'' rather than ''discard cap,'' because a bycatch limit is more appropriate in a multi-species fishery, where species that are incidentally caught may be retained or discarded. Either term may be confusing, since the Magnuson-Stevens Act defines bycatch as only those fish that are discarded, whereas the groundfish FMP views bycatch species as those species that may not have been one of the target species, but which were taken incidentally to the targeted species. In the case of overfished species, NMFS and the Council manage the fishery to minimize the total catch of each overfished species, including the discards of those species. The term ''discard cap'' might be more appropriate for a fishery where a single species is targeted and all non-target species are discarded. West Coast groundfish fisheries are multi-species fisheries and management measures are intended to either ensure that non-target species are avoided (*e.g.* the Rockfish Conservation Areas,) or to allow non-target species to be retained when caught in common with target species (*e.g.* trip limits for minor slope rockfish in association with fixed gear sablefish limits.)

NMFS quoted Amendment 18's provisions for sector total catch limit programs in the response to Comment 5, above. NMFS also provided an example of how bycatch limits work under the current management system, which relies on inseason catch projections, rather than on real-time catch estimates, to calculate current catch. The only groundfish fishery sector with total catch limits based on near real-time data for both landings and discards is the whiting fishery. In 2004, NMFS first implemented overfished species bycatch limits for canary and darkblotched rockfish taken incidentally in the Pacific whiting fishery via emergency rule and inseason action (August 3, 2004, 69 FR 46448, and; October 6, 2004, 69 59816). The final rule for the 2005–2006 groundfish specifications and management measures implemented bycatch limits for canary and widow rockfish taken incidentally in the 2005 and 2006 Pacific whiting fisheries (December 23, 2004, 69 FR 77012.) NMFS subsequently implemented a bycatch limit for darkblotched rockfish in the 2006 Pacific whiting fishery on July 1, 2006 (71 FR 37844, July 3, 2006.) These limits apply to the non-tribal whiting fishery, in which two of the three participating sectors have at least 100 percent observer coverage, the catcher-processor and mothership sectors. The shore-based whiting sector, which consists of catcher vessels that deliver their catch to processing plants on land, has been managed in 2004–2006 under an EFP that requires vessels to carry electronic monitoring (EM) systems. On whiting catcherboats, EM systems were used to monitor whether vessels were retaining all of their catch or discarding a portion of catch, since this fishery is known to have relatively low bycatch rates and is assumed to maximize its retention of all fish caught. As applied in this fishery, EM technology is not capable of estimating species-specific discards for trawl fisheries at this time; however, it may provide an independent source of information for estimating total catch.

Several practical considerations make implementing near real-time bycatch limits practicable for the whiting fishery, but would make them impracticable for the remainder of the groundfish fleet. Near real-time monitoring would be required to implement near real-time bycatch limits. West Coast groundfish trawl vessels, which tend to be larger than non-trawl vessels, have an average size of about 70 feet in length overall. Vessels of this size have limited deck space for catch sampling, and restricted bunk space for accommodating observers on overnight trips. Some vessels that operate in nearshore waters are so small, under 20 feet in length overall, that vessel operators take their boats out alone, not having space for crew, let alone observers. By contrast, the catcher-processor and mothership vessels that participate in the at-sea whiting fishery carry two observers apiece and are all at least 125 feet in length overall, with some are over 250 feet in length overall. Also unlike the whiting fishery, the multi-species groundfish fishery has not been very profitable for many of its participants in recent years, which at times means that vessel owners cannot afford to keep their vessels in optimal condition. Since WCGOP's inception in 2001, NMFS has had to refuse to deploy observers on several vessels that have failed to meet observer safety regulations at 50 CFR 600.746(c) and 660.314(d)(2).

Unlike the whiting fishery, where whiting is the sole target species, the rest of the groundfish fleet tends to target multiple species simultaneously. This means that inseason whiting fishery management requires that managers track fewer than ten species for real-time management issues, while inseason management of the non-whiting groundfish fisheries would require tracking 30+ species or species groups for total catch. Similar to the needs for an IFQ program, the shoreside landings monitoring infrastructure, including the fish ticket system, would need to be greatly expanded to support the data processing speed that would be required to implement a near real-time bycatch limit program for the non-whiting fisheries. Finally, the number of boats in the whiting fishery is relatively small, roughly 40–50 in all three non-tribal sectors, with landings occurring at few ports. Tracking these few vessels and ports is much more straightforward than would be the case in the overall groundfish fishery, which has over a thousand vessels making landings in dozens of ports coastwide.

Regardless of the type of bycatch limit implemented, moving the bycatch limit program beyond the whiting fishery would require that the Council allocate the species intended to be limited between the fishing sectors. Species or species groups that are currently subject to allocations are managed with sector-specific total catch limits, are monitored inseason for their landed catch and modeled for total catch based on past landed catch and bycatch rates, and are closed if those allocations are achieved. For all species except Pacific whiting and sablefish, the allocations are primarily between the limited entry and open access portions of the commercial fishery. These are relatively large sectors, which means that the activities of one portion of a sector may affect the fishing opportunities of another portion of the sector. For example, inseason modeling in 2005 indicated that the

summer flatfish trawl fisheries had taken more petrale sole than had been expected from pre-season modeling, which led the Council to close the fall/winter directed petrale sole fishery.

The Council is developing a multi-species inter-sector allocation EIS that would support transitioning the trawl fleet to an IFQ program. This EIS would also support dividing available groundfish harvest into smaller sector harvest levels than are used under current management. The groundfish fishery's current standardized bycatch reporting methodology is adequate to support the management system of pre-season, inseason, and post-season total catch evaluation, coupled with inseason management measures revisions. If available groundfish harvest is divided into smaller sectors, NMFS and the Council will need to re-evaluate the fishery's standardized bycatch reporting methodology to determine how to best match the monitoring efforts to management needs.

As total available harvest is divided into smaller percentage shares, the coverage level of associated fishery monitoring usually needs to increase. In a fishery managed with vessel-specific total catch limits, such as in an IFQ program, participating vessels may need 100 percent coverage of at-sea fishing activities. NMFS anticipates that expanding fishery monitoring to support a vessel-specific total catch limit program would cost $13.3 million annually, or nearly $9 million more than the current observer program. That level of funding is not currently available from management agencies. Although other regions have implemented industry-funded observer programs, establishing that type of system requires an adequate study of appropriate checks and balances, assurances that such a program would not encourage the misreporting of observed catch, and an infrastructure to support the training of observers and analysis of observer data. In some fisheries, at-sea monitoring could be managed with EM systems, which may cost less, but those systems would have to be tested for their usability with each particular type of fishery. NMFS, the States, and the whiting industry are in the third year of testing EM systems for the shore-based sector of the whiting fishery.

Fishery or sector total catch limits, in the form of OYs, harvest guidelines, and sector allocations, are part of the current management process and are managed through the pre-season/inseason/post-season evaluation process described above. Dividing current sector allocations into smaller percentages would require the development of the inter-sector allocation EIS, which is underway. Vessel-specific total catch limits would also rely first on harvest allocation between sectors, and then on harvest allocation between individual vessels. The FEIS's preferred alternative supports sector total catch limits, where practicable. The ''hard'' sector caps recommended by The Four Organizations are not now practicable for the groundfish fishery.

*Full or maximized retention programs.* Full or maximized retention programs are designed to eliminate the discard of species caught during fishing activities by requiring fishers to retain species that are caught. Full or maximized retention programs require a different monitoring system than a fishery managed with landing limits for various species. Complete full retention may be a problem in some situations because of safety or other operational reasons; therefore, NMFS is also considering maximized retention programs that would require complete retention of catch except in certain specified circumstances and vessels using best fishing practices to reduce discard. NMFS, the States, and the whiting industry are experimenting with a maximized retention and EM program in the shore-based whiting fishery through an EFP, as discussed above. In a full- or maximized-retention fishery, observers or EM devices are answering a yes/no question: Did the vessel retain all of its catch taken in a particular trip? Operating a fishery with that management question requires higher monitoring coverage than in a fleet sampled for bycatch rates, but less sophisticated evaluation of fishing activities. For example, WCGOP observers are not simply used to determine whether catch is retained, but are instead deployed to determine how much catch is discarded, the species composition of the discarded fish, and collect biological data from discard species. An EM system may be an effective mechanism for answering the yes/no question in a less costly manner, but it cannot collect information at the same sophistication level as that collected by a human observer. Conversely, deploying a human observer simply to answer a yes/no question could be an impractical use of limited staff resources.

Amendment 18 supports the implementation of full retention programs where practicable. The Council is developing a maximized retention management program for the shore-side sector of the whiting fishery, and will next consider that program at its November 2006 meeting. Such management is appropriate for the whiting fishery, because the delay in catch refrigeration that would result from the time needed to sort catch at sea would impair the quality of the target species' flesh for sale. Full retention management may not be appropriate or practicable for other fisheries, particularly under the current rockfish rebuilding regime. Some of the rebuilding rockfish have a high enough market value that a program to require full retention might backfire by providing vessels with incentives to target rebuilding species so as to ensure that they are part of the total catch that is required to be retained.

Although full retention may lead to improved accounting of total catch, it does not eliminate bycatch, as defined in the Magnuson-Steven Act. Fish that are not sold would be regarded as if they were discarded. Many fish that are currently discarded at sea are not landed because they do not meet minimum standards for size or quality that are established by individual processors. NMFS cannot require processors to buy fish for which they have no market. Potential full- or maximized-retention programs need to be evaluated with these practical considerations in mind if they are to be effective at minimizing bycatch to the extent practicable.

*Gear restrictions.* Gear restrictions minimize bycatch in several ways, by: Restricting gears that are prone to catching bycatch species to operating in certain areas; requiring that certain gears be modified so that they either allow bycatch species to escape the gear once caught, or so that they prevent non-target species from being caught on or by the gear; or, requiring a certain gear type be used that is less prone to catching bycatch species. Gear restrictions that either reduce groundfish bycatch, or reduce bycatch in the groundfish fisheries have been implemented for several West Coast fisheries. The State-managed pink shrimp trawl fishery is subject to a finfish excluder device requirement, which is an alteration to the trawl net that allows finfish to escape out of the top of the net before the trawl net's final collection point for shrimp. For groundfish trawl, NMFS prohibits the use of large footrope trawl gear in waters inshore of a boundary line approximating the 100 fm (183 m) depth contour, a measure to prevent vessels from accessing the more rocky habitat where several overfished species congregate. And, north of Cape Mendocino and shoreward of the RCA, trawlers are required to use a selective flatfish trawl net that has been designed

so that it greatly reduces the retention of most rockfish species. Use of this gear has allowed trawlers to retain more of the abundant flatfish species while reducing incidental catch of rockfish. These newer restrictions to aid in rockfish rebuilding are in addition to NMFS regulations that have long been in place to minimize juvenile fish bycatch through a trawl minimum mesh size requirement, and to prevent lost fishpots from ghost fishing (which may be considered a form of bycatch) by requiring those pots to be constructed so that at least a portion of the pot's netting is biodegradable.

Some gear modifications may be appropriate to reduce bycatch in one fishery, but inapplicable and impracticable for another fishery. For example, finfish excluder devices are practicable for reducing finfish bycatch in the pink shrimp trawl fishery, but those same devices are not practicable for shrimp trawl vessels in regions of southern California because the excluders get plugged with sea cucumbers and are rendered ineffective. NMFS has implemented the gear restrictions that are known to be practicable bycatch reduction measures. The FMP provides incentives for experimental fishing that supports development of new and modified gear types by placing its highest priority for experimental harvest set-asides on bycatch reducing experimental measures. NMFS will continue to ensure that future gear modification requirements are adequately tested and studied for their practicability prior to implementation.

*Comment 7:* The Four Organizations believe that the proposed rule fails to provide a rational basis for dismissing measures as impracticable. National Standard 9 guidelines for determining the practicability of a certain bycatch reduction measure allow for some balancing of conservation and economics. However, as the Ninth Circuit recently affirmed ''[t]he purpose of the Act is clearly to give conservation of fisheries priority over short-term economic interests * * * [t]he Act sets this priority in part because the longer-term economic interests of fishing communities are aligned with the conservation goals set forth in the Act.'' *Natural Resources Defense Council* v. *NMFS,* 421 F.3d 872 (9th Cir. 2005) [hereinafter *NRDC* v. *NMFS*]. The particular importance of bycatch reduction for rebuilding overfished species underlies the need to implement bycatch measures that may involve short-term economic costs in order to create a more economically viable, efficient and sustainable fishery over the medium- to long-term.

The benefits to both industry and the environment of reducing bycatch through many of the measures analyzed in the PEIS very likely could outweigh the short-term inconvenience and cost that would be involved. NMFS needs to not only consider the costs but also the economic benefits of implementing those measures. For example, the Council's basis for determining that several measures, such as sector and vessel caps and individual quotas (IQs), are currently impracticable is the lack of a sufficient observer program. (71 FR 36506 at 36510, ''An IQ program with specific bycatch limits would be dependent upon a more intense level of monitoring than is practicable under the current management regime * * *.'') Not only does NMFS fail to explain why a more intense level of monitoring is not currently practicable, but it actually ignores consideration of many of the economic benefits of bycatch reduction that it had considered previously in its EIS, and thus breaches the agency's duty under the APA to give reasoned consideration to the relevant factors and to articulate a rational connection between the facts found and choice made.

The Four Organizations believe that the economic analysis involved in a practicability determination must include the costs of running an inefficient and wasteful fishery absent more effective bycatch measures, in addition to the cost of implementing those more effective measures. The inconvenience of changing business as usual and the costs of administering a transition to a more efficient management regime are only part of the equation and do not, by themselves, make something impracticable.

*Response:* NMFS discussed overfished species rebuilding and the agency's actions in response to court orders from *NRDC* v. *NMFS* in the preamble to the proposed rule to implement Amendment 16–4 and the 2007–2008 groundfish harvest specifications and management measures, published September 29, 2006 (71 FR 57764). Amendment 16–4 and its implementing regulations revise the rebuilding plans for seven rockfish species, in accordance with the court's direction in *NRDC* v. *NMFS* so that the rebuilding periods are as short as possible, taking into account the status and biology of the stocks and the needs of fishing communities. In *NRDC* v. *NMFS,* the court discusses the issue of whether the conservation needs of managed stocks are aligned with the economic interests of fishing communities, ''* * * [M]ay the Agency [NMFS] extend the rebuilding period beyond the shortest possible rebuilding time to account for the needs of fishing communities? It would be possible to resolve the ambiguity by concluding that the [Magnuson-Stevens] Act as a whole makes it clear that the needs of fishing communities are perfectly aligned with the environmental goal of rebuilding fish stocks in as short a time as possible. But if this were the case, the language 'the needs of fishing communities' would be redundant (as these needs would be no different than the need to rebuild stocks in as short a time as possible) * * *. There is therefore an ambiguity in this part of the statute, requiring interpretation.'' The court also noted that ''* * * undoubtably the short-term economic interests of fishing communities diverge in some respects from the needs of fish species.''

In *NRDC* v. *NMFS,* the court spoke to the bycatch of species managed under a rebuilding plan, saying, ''Section 1854(e)(4)(i) [of the Magnuson-Stevens Act,] then, allows the Agency [NMFS] to set limited quotas that would account for the short-term needs of fishing communities (for example, to allow for some fishing of plentiful species despite the inevitability of bycatch), even though this would mean that the rebuilding period would take longer than it would under a total fishing ban.'' As detailed in the EIS for Amendment 16–4 and the 2007–2008 groundfish harvest specifications and management measures, NMFS and the Council anticipate that implementing Amendment 16–4 will cause some short-term economic harm to fishing communities in the form of foregone fishing opportunity for abundant species that co-occur with rebuilding species. Amendments 16–4 and 18 place a priority on conservation, but also take both the short- and long-term needs of fishing communities into account. The Magnuson-Stevens Act does not require that NMFS implement conservation measures that completely disregard the short-term needs of fishing communities.

As part of Comment 7, The Four Organizations have provided a partial quote from the preamble to the proposed rule to implement Amendment 18, ''An IQ program with specific bycatch limits would be dependent upon a more intense level of monitoring than is practicable under the current management regime * * *.'' They then interpret their partial quote to mean that NMFS believes that a more intense level of monitoring is not practicable in the fishery, and that IQ

programs are therefore, impracticable. However, the section of the preamble that they quote is actually a discussion of the current Council process to develop an IQ program for the trawl fishery, including an explanation of how that process links with Amendment 18 and its provisions for IQ and vessel-specific total catch limits. The explanation states in full, ''Amendment 18 revises the FMP to specify that individual fishing quota programs 'would be established for the purposes of reducing fishery capacity, minimizing bycatch, and to meet other goals of the FMP.' An IQ program with specific bycatch limits would be dependent upon a more intense level of monitoring than is practicable under the current management regime and could be designed using the FMP's guidance on vessel-specific total catch limit programs.'' This section of the preamble to the Amendment 18 proposed rule does not, therefore, characterize a more intense level of monitoring as a bar to implementing an IQ program, but rather as an integral part of the implementation of such a program. The cost and practicability of implementing the type of observer program that would be associated with an IQ program, and the reasons that NMFS is not implementing such a program at this time, are discussed above in the response to Comment 6. The Council is in the process of developing an EIS to analyze such a program, see: *http://www.pcouncil.org/groundfish/gfifq.html.* The Council's EIS and IQ program development process is ongoing, and the Council and its advisory bodies will be working on a trawl IQ program in several meetings over the coming fall and winter.

Finally, in Comment 7, The Four Organizations provide NMFS with what they believe to be appropriate elements to an economic analysis for a practicability determination. National Standard 9 Guidelines do not define the phrase ''to the extent practicable'' or require or recommend any specific types of economic analyses such as those suggested by the Four Organizations. However, these Guidelines do list the factors that the Councils are to consider in making decisions related to bycatch. Among the factors listed in the Guidelines, the following are included: Impacts on affected stocks; incomes accruing to participants in directed fisheries in both the short term and the long term; incomes accruing to participants in fisheries that target the bycatch species, which include non-consumptive uses of bycatch species and existence values, as well as recreational values; impacts on other marine organisms; changes in fishing, processing, disposal, and marketing costs; changes in fishing practices and behavior of fishermen; and changes in research, administration, and enforcement costs and management effectiveness. Chapter 4 of the EIS and the practicability analysis provide an assessment of these factors. For example, Chapter Four contains Table 4.6.1. which provides a relative ranking of the bycatch reduction methods (tools) for each alternative used to reduce bycatch and bycatch mortality, and to address accountability issues; Table 4.6.2. ranks alternatives by their effectiveness at reducing bycatch, enforcing and monitoring bycatch measures, and reducing compliance costs to industry and Table 4.7.1 which summarizes the effects of the alternatives on the social and economic environment. The practicability analysis contains a discussion of observer costs and potential ex-vessel values for the groundfish fisheries in a fishery that has seen declining revenues, increased fuel costs, and has a trawl sector that is being taxed at 5 percent to repay a government financed buyback loan. For example, Table 2 provides conceptual estimates of at-sea observers, VMS, enforcement costs, and other cost estimates according to various scenarios such as maintaining the status quo, Sector Bycatch Caps, and IFQs.

NMFS does not agree that the current management scheme is ''wasteful and inefficient.'' As explained above, NMFS has minimized bycatch to the extent practicable by implementing bycatch reduction measures, including but not limited to: Large-scale time-area closures, gear restrictions on use and requirements for configuration, and bycatch limits for appropriate fisheries. As also explained above, the Council and NMFS are developing additional programs, such as the maximized retention and monitoring program for the shore-based whiting fishery, an IQ program for the trawl fishery, and a permitting program for the open access fishery, each of which is being designed in part to either directly or indirectly minimize bycatch. However, as assessed in the practicability analysis, the benefits to the resource that might be derived from implementing a ''hard'' bycatch cap program beyond the whiting fishery do not significantly exceed those of the current pre-season/inseason/post-season catch evaluation and management measures adjustment system described in the response to Comment 5 enough to outweigh the extremely high coast of monitoring and implementing such a program for the fishery. Since the groundfish fishery is divided into six cumulative limit periods each year and is managed with 5–6 opportunities per year for management measure adjustment based on best available data, the West Coast groundfish fisheries do not carry the same risks as derby fisheries, nor would they derive the same benefits from a ''hard'' bycatch cap program as would derby fisheries.

The practicability analysis includes a projection, that should all the overfished species be restored to MSY levels, that the entire commercial groundfish fishery may reach on a average basis, ex-vessel revenues of $100 million. However, the current ex-vessel revenues are about $61 million, annually. Expanding observer coverage to 100 percent of the trawl fleet alone would cost $13.3 million or nearly $9 million more than the current program. Note that these figures do not include vessel fuel costs, other operating costs, State landing fees, Federal buyback loan repayment fees, or the costs to the States, tribes, and Federal goverments for the day-to-day management of such a program.

Therefore, the analyses contained with the NEPA document are consistent with the National Standard Guidelines. NMFS does agree that an increase in cost does not necessarily make something impracticable. However, if a change in the management system cannot be covered by available funding sources (either existing sources or from potentially new sources of funding), that management system simply cannot be implemented, and is therefore not only impracticable but also impossible. Such is the case with 100 percent observer coverage. Requiring fish harvesters to provide such funding via an ex-vessel tax, (limited by Congress to 3 percent of ex-vessel value, and limited only to fisheries managed with IQ programs,) will not be sufficient to cover the cost of that program. Available funding from management agencies is also not sufficient to support such a program. Increasing the funds associated with observer coverage by 200 percent is not a matter of inconvenience but a real budgetary resource problem.

The practicability analysis shows that the costs of several management systems are substantial when compared to the exvessel revenue generated by the fishery. NMFS considered this factor in determining whether to implement these additional management systems at this time, in addition to considering the appropriate factors in the National Standard Guidelines, as described above in the response to Comments 5 and 6.

*Comment 8:* The Four Organizations believe that Amendment 18 does not provide clear objectives, targets, or performance standards for minimizing bycatch. For measures that require interim steps before they can be deemed practicable, the rule should identify the obstacles to achieving those interim steps and contain a plan and schedule for taking those steps. Notwithstanding the declaration that the preferred alternative represented all ''practicable'' measures to minimize bycatch and bycatch mortality, proposed Amendment 18 fails to implement many of the measures because they are deemed not yet practicable. The EIS explains that the Council ''anticipates phasing in'' some of these measures, such as sector bycatch caps, but neither the Council nor NMFS has yet to explain the steps or timeline for such a phase in. The closest the Council or NMFS get to committing to a timeline is by explaining that the monitoring and enforcement infrastructure necessary to implement hard sector caps will be established ''over the next several years.'' Nearly two years later, neither the Council nor NMFS has clarified steps or a timeline for implementation.

The preferred alternative from the EIS, the one that NMFS considers practicable, includes the use of performance standards as a way of measuring progress in reducing bycatch. The EIS explains that such performance standards ''could be based on low catch or catch rates of overfished species, low bycatch of non-groundfish species, or other factors.'' However, the EIS also explains that it plans to define such standards ''at a later date.'' Neither Amendment 18 nor the proposed rule discusses the use of performance standards or goals as a way of reducing bycatch rates over time. This is a significant oversight that NMFS should require the Council to remedy or should do so itself. NMFS and/or the Council must explain this gap and must either commit to defining and adopting such standards or provide reasons for failing to do so. The agency cannot claim that performance standards are practicable on the one hand, yet completely neglect the issue in the implementation of its bycatch plan.

Examples of quantitative bycatch performance standards could include the following: ''within x years, the ratio of total bycatch to total catch will be reduced by y percent'' or, ''within x years, regulatory discards will be reduced to y percent of total landings.'' A bycatch reduction plan could also include evaluating discard ratios and the reasons for discards by sector, with a commitment to mitigate the most severe bycatch problems, and encouraging shifts from high-bycatch gears to lower ones. If, for example, most discarding is the result of trip limits, NMFS should evaluate phasing out trip limits. Or, if particular areas/seasons/gears have very high bycatch ratios, then time/area/gear closures might be the most effective reduction measures.

*Response:* The Magnuson-Stevens Act requires that bycatch be minimized to the extent practicable, which NMFS interprets to mean ''to the extent that a management measures is reasonable and capable of being done in light of available technology and economic considerations.'' As NMFS has discussed throughout this preamble in the responses to several comments, NMFS has determined that Amendment 18 meets that requirement to implement currently practicable bycatch minimization measures in the FMP and Federal regulations. Amendment 18 also goes beyond the Magnuson-Stevens Act's requirements by revising the FMP so that the FMP includes both those bycatch minimization measures that are currently practicable and bycatch minimization measures that are not now practicable, but which may become practicable at a future time.

As detailed above in the response to Comment 3, NMFS and the Council have implemented many management measures since 2001 to minimize bycatch. The Council looks for new ways to minimize bycatch in all of its groundfish management efforts, and recognizes that a requirement to ''minimize'' a type of fishing effect on a natural resource is an ongoing process. In other words, while Amendment 18 minimizes bycatch to the extent currently practicable, the Council is also looking for new ways to continue to further minimize bycatch by making additional bycatch minimization tools practicable in the future. To that end, the Council is developing a bycatch work plan that is intended to prioritize implementation of bycatch minimization measures that are not practicable at this time, but which may become practicable at a future time. As with all of the Council's work planning documents, any timeline in the bycatch work plan could be subject to revision based on emergency need to address other issues. For example, the Council dropped much of its previously-scheduled workload on groundfish and other species groups in the September 2005 through June 2006 period in order to devote adequate time and attention to responding to the court's order in *NRDC* v. *NMFS.*

The Council reviewed its draft work plan at its September meeting and recommended that, for its November 2006 meeting, the work plan be revised to include timelines for potential additional bycatch minimization measures. At each of its meetings, the Council reviews and updates timelines for all of the issues within its major areas of responsibility: Groundfish FMP, Salmon FMP, Coastal Pelagic Species FMP, Highly Migratory Species FMP, Pacific Halibut Catch Sharing Plan, and Habitat and Marine Reserves issues. Among the many issues it will deal with at its November 2006 meeting, the next groundfish fishery bycatch minimization program the Council will address is a maximized retention and electronic monitoring program for the shore-based whiting fishery. The Council will also begin discussing an inter-sector groundfish harvest allocation at its November 2006 meeting, which would need to be completed before hard sector-specific bycatch limits or an IQ program could be considered or implemented.

Alternative 5 of the EIS, ''Individual Fishing (Catch) Quotas and Increased Retention'' discusses an IQ program in which ''some or all of overfished stock's OYs would be reserved for vessels with the best bycatch performance.'' Alternative 7, the preferred alternative, includes elements from Alternative 5, which it articulates as ''support the future use of Individual Fishing Quota programs for appropriate sectors of the fishery.'' The full text of the Council's preferred alternative from the EIS is provided above in the response to Comment 4. As the Council develops IQ programs, where practicable for particular sectors of the commercial groundfish fishery, it may set bycatch performance standards for participants in those IQ fisheries. Quantitative bycatch performance standards of the type suggested by The Four Organizations were not analyzed in EIS, were not part of the preferred Alternative, and are not part of Amendment 18 or the FMP. However, NMFS does not believe that quantitative bycatch performance standards that establish requirements such as those suggested by the Four Organizations would necessarily reflect the best scientific information that becomes available in the future, such as new recruitment information and new stock assessments.

The groundfish fishery is managed with several performance measures that reduce bycatch for different fishing gears. Groundfish trawl gear has minimum mesh size requirements intended to minimize the bycatch of

juvenile groundfish (50 CFR 660.381(b)(2)). Groundfish pot gear is required to have biodegradable escape panels to prevent lost pots from ghost fishing (50 CFR 660.382(b)(3) and 660.383(b)(4). Groundfish trawl gear is also separated into large and small footrope gear, with large footrope gear being prohibited for use shoreward of the 100 fm (183 m) depth contour, so as to prevent large footrope gear from operating in more vulnerable rockfish habitat (50 CFR 660.306(h)(6). And, small footrope trawl gear used north of 40°10′ N. lat. must comply with selective flatfish trawl gear design standards developed to minimize rockfish bycatch in nearshore flatfish trawl fisheries (50 CFR 660.381 (b)(5)(i)). In addition, pot gear must possess a biodegradable escape mechanism to prevent lost pots from ghost fishing.

The EIS's preferred alternative does include a statement that, in addition to other elements, ''baseline accounting of bycatch by sector shall be established for the purpose of establishing future bycatch program goals.'' This preferred alternative element is similar to the suggestion from The Four Organizations that ''[a] bycatch reduction plan could also include evaluating discard ratios and the reasons for discard by sector. * * *'' One of the two measures that the Council identified as practicable to work on in the near-term, is evaluating the speed at which observer and other fishery data enters the Council management process, in order to determine where and how data delivery time might be improved. At the Council's June 2006 meeting, NMFS reported to the Council on observer data delivery timelines and their reliance on data delivery timelines from comparative State-collected data, such as data from trawl logbooks and fish tickets (which are not received real-time). At the Council's September 2006 meeting, NMFS reported to the Council with an update on its bycatch estimation methodologies.

The Four Organizations also suggest ''a commitment to mitigate the most severe bycatch problems, and encouraging shifts from high-bycatch gears to lower ones.'' NMFS and the Council have and will continue to respond to bycatch problems as they are identified, consistent with our responsibility under the FMP and the statute in order to sustainably manage fisheries. The EIS's preferred alternative does not explicitly address gear shifting, but the Council is considering allowing shifts in gear types used as part of its analysis for a trawl IQ program.

Finally, The Four Organizations suggest that ''if particular areas/seasons/gears have very high bycatch ratios, then time/area/gear closures might be the most effective reduction measures.'' NMFS already manages the groundfish fishery with significant time/area/gear closures and cumulative limits based on catch ratios between target and bycatch species, which are designed to minimize bycatch and minimize fishing effects on EFH, as detailed above in the response to Comment 3.

*Comment 9:* For overfished species, the OY serves as a *de facto* bycatch limit because such species are not directly targeted by the fishery. However, The Four Organizations believe that this approach has the Magnuson-Stevens Act's mandate backwards. Instead of using the OY as a limit, and maximizing the catch of healthier co-occurring stocks while minimizing bycatch of overfished species, the Council uses the OY for overfished species as a target. Thus, the selection of OY for overfished species, as deduced from the rebuilding parameters contained in the rebuilding plans, is the driver for how much bycatch of overfished species occurs. However, the law does not allow NMFS to maximize bycatch of overfished species to the highest level that can be justified under the rebuilding plans. The law requires that the agency rebuild overfished species as quickly as possible. Reducing bycatch of overfished species is an essential component of rebuilding those species in the shortest possible time period.

*Response:* As stated above in the response to Comment 8, NMFS has discussed its approach to overfished species rebuilding in the proposed rule to implement Amendment 16–4 and the 2007–2008 groundfish harvest specifications and management measures (71 FR 57764, September 29, 2006). The Magnuson-Stevens Act defines ''optimum yield'' as follows: ''The term 'optimum', with respect to the yield from a fishery, means the amount of fish which—(A) Will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems; (B) is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and (C) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.''

The West Coast groundfish fishery is a mixed-stock fishery, with many healthy stocks co-occurring with overfished stocks. Overfished species are required to be rebuilt as quickly as possible, taking into account the status and biology of the stocks, the needs of fishing communities, and the interaction of the overfished stocks within the marine environment. The Four Organizations are correct in asserting that West Coast fisheries are managed so that overfished species are not target species in any fisheries. Since 2000, NMFS and the Council have implemented harvest specifications and management measures that limit harvest of overfished species to the amount necessary to allow some targeted fishing for the healthy fish stocks that co-occur with overfished species. This policy of preventing the fisheries from having full access to the OYs of healthy stocks that co-occur with overfished species is necessary in order to constrain the incidental catch of overfished species. NMFS recently published a proposed rule to implement Amendment 16–4, which would set overfished species rebuilding plans for 2007 and beyond. Although Amendment 16–4 continues to eliminate target fishing and minimizing bycatch of overfished species, this amendment takes a new approach of considering the interactions of the overfished species with each other and setting fishery management measures to ensure the strongest protections for the least productive of the overfished stocks.

Preventing only the directed catch of overfished species does not allow those stocks to rebuild as quickly as possible; therefore, the indirect catch of those stocks needs to also be limited. NMFS agrees that ''[r]educing bycatch of overfished species is an essential component of rebuilding those species in the shortest possible time period.'' That approach has been the cornerstone of NMFS and Council rebuilding efforts, as evidenced by the many regulations imposed on the fishery to minimize overfished species bycatch—see response to Comment 3, above. A notable result of this policy has been the increasing biomass trends for West Coast overfished species; one of the formerly overfished species, lingcod, has been rebuilt. Another result of this policy has been that fishing communities have not had full access to many of the healthy groundfish stocks, and thus have not been able to achieve the OYs for those species. NMFS, therefore, disagrees with The Four Organizations' assertion that NMFS's groundfish policies are intended to ''maximize bycatch of overfished species to the highest level that can be

justified under the rebuilding plans.'' The proposed rule to implement Amendment 16–4 and the Final EIS analyzing overfished species rebuilding plans more fully describe the approach NMFS and the Council are using to rebuild all seven overfished species collectively through target fishery elimination and bycatch minimization.

*Comment 10:* The Four Organizations believe that the standardized total catch reporting methodology and observer program are inadequate. The MSA requires that all FMP's shall ''establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery.'' 16 U.S.C. 1853(a)(11). The reports on Pacific groundfish discards to date have been incomplete, unclear, untimely, and inconsistent from year to year. Total mortality estimates, including discards, for 2003–2005 were only first provided by NMFS in June 2006. Moreover, discard estimates are still lacking for many species (such as sharks, skates, crab and many rockfish species), reported discards are not presented by fishery and gear type, and they have been reported inconsistently from year to year, making trend evaluation impossible.

NMFS must provide consistent and accurate estimates of discards, including all marine life discarded by fishery and gear type. Consistent with Amendment 18's requirement that catch data be made available for more precise inseason management, information should be collected, analyzed, and made public on as close to a real-time basis as possible, but certainly no less than once annually. This level of reporting is necessary to make informed decisions that protect marine ecosystems and promote sustainable fisheries. The Four Organizations request that NMFS hold an annual meeting to discuss the requested discard reports as a way to review the data and find out where improvements can be made. Another reason for improving the accuracy and timeliness of bycatch data is to provide fishermen with a proactive opportunity to avoid areas and seasons with high bycatch rates. The Four Organizations support the Council's efforts to investigate how to increase the frequency with which observer and total catch data are made available to the Council and the public. The Council has identified several steps in the data aggregation process that need to be reviewed for efficiency. This is a step in the right direction and the Council and NMFS should move expeditiously to implement such steps.

*Response:* Amendment 16–1 established an observer program requirement in the FMP. Amendment 18 revises and expands Section 6.4 of the FMP, ''Standardized Total Catch Reporting and Compliance Monitoring Program.'' Under Amendment 18, the FMP continues to require the observer program that has been in place for the non-whiting groundfish fisheries since 2001 and for the at-sea whiting fisheries since 1991.

As discussed in the preamble to the proposed rule for this action and noted by The Four Organizations, NMFS is working to meet the Council's priority request that the agency review observer data delivery speed with the aim of identifying where that rate of data delivery may be improved. Observer data collection and the calibration of observer data with associated data from State fish tickets and logbooks is a joint agency process between NMFS, the three States, the four groundfish tribes, and the Pacific States Marine Fisheries Commission. Total catch estimation requires that the agencies work together to assess catch from directed and incidental commercial groundfish fisheries, recreational fisheries, tribal fisheries, and scientific research groundfish take. The Council process brings the different data-gathering agencies together; therefore, NMFS is working with the Council and its advisory bodies to improve total catch data delivery so that total catch estimates may be provided on a regular and annual basis. NMFS agrees with the suggestion of The Four Organizations that the agency hold a meeting to discuss the results of observer data collection, analysis, and reporting with interested parties. NMFS will coordinate with the Council to set a first meeting that is open to the public, and available to Council and State participation, for Spring 2007.

*Comment 11:* The Four Organizations believe that the standardized total catch reporting methodology and observer program are inadequate. Other regions have already demonstrated that real-time access to observer data by fishermen is a practicable means of minimizing bycatch. For example, both the Alaska groundfish fishery and the at-sea whiting fishery in the Pacific region use real-time data with great success. The Four Organizations are disappointed that there is no similar effort to move towards real-time or near real-time access to information. There is no excuse for not considering the practicability of these measures that provide fishermen such a powerful tool to reduce bycatch.

*Response:* NMFS addressed the impracticability of implementing the type of observer program used in the Alaska groundfish fishery and the at-sea whiting fishery in the response to Comment 6, above. The fisheries that The Four Organizations cite as examples to follow in designing a standardized total catch reporting methodology have significant operational differences from the West Coast groundfish non-whiting fishery. An at-sea reporting system such as that used in Alaska or the West Coast at-sea whiting sectors is not applicable to the West Coast groundfish fisheries in part because the usual size of the West Coast groundfish vessels is quite small (usually less than 60 feet (18.3 m) and in many cases less than 20 feet (6.1 m) in length) as compared with the Alaska fleet, where vessels are typically greater than 125 feet (38.1 m) in length. The facilities on the small West Coast vessels reflect this small size. Alaska fleet vessels go to sea for weeks at a time, and have computers with a dependable power source and adequate communication systems. West Coast groundfish vessels, by contrast, go to sea for an average of 5 days, and many have limited power and communication systems. Alaska and at-sea whiting vessels have the space to host two observers who can share collection and data submission duties. West Coast groundfish vessels, by contrast, cannot accommodate more than one observer, who must then be available to sample the catch around the clock or for long periods of time. The catch of many of the Alaskan fisheries are higher volume than the West Coast groundfish fishery, but relatively pure, making bycatch sampling more straightforward. West Coast groundfish fisheries, by contrast, are heterogeneous with tens of species in a single haul. Over 60 of the 90+ species managed by the West Coast groundfish FMP are rockfish, many of which are similar in appearance, making correct identification more time consuming. These challenges to mounting an observer program for the West Coast groundfish fisheries have not prevented WCGOP from developing a sampling plan adequate to estimate bycatch in the groundfish fisheries. Observer programs must be tailored to the fisheries they are designed to observe; no single sampling plan is adequate and practicable for all fisheries.

*Comment 12:* Amendment 16–1, now part of the FMP, commits NMFS to publishing, among other things, ''a description of the observer coverage plan in the **Federal Register**.'' FMP at 6.4.1.1. Notwithstanding the stated commitment to develop an observer plan that is sufficient ''to assess the amount and type of bycatch occurring in

the fishery,'' The Four Organizations believe that NMFS is still relying on the observer plan developed in 2001. They also believe that the scope of the observer plan continues to limit the quality and accuracy of the bycatch data on which the Council relies to manage the fishery and the bycatch minimization measures that the Council and NMFS deem currently practicable.

*Response:* NMFS agrees that the 2001 observer coverage plan the agency had previously posted on-line needed to be updated to includ current observer coverage priorities and efforts in the West Coast groundfish fishery. NMFS has updated the observer coverage plan to reflect current practices and posted it online at: *http://www.nwfsc.noaa.gov/research/divisions/fram/observer/index.cfm.* As explained below, NMFS disagrees with the comment about the quality and accuracy of the bycatch data.

*Comment 13:* The Four Organizations request that NMFS implement 100 percent observer coverage for optimal monitoring and inseason management of Pacific groundfish fisheries. In a report on necessary observer coverage levels, it was determined through simulation studies and literature review that if 100 percent observer coverage is not attainable, at least 20 percent observer coverage (of total catch) is necessary for reasonable estimates of common species (species making up 35 percent of total catch) and at least 50 percent observer coverage is necessary for precise and accurate estimates of rare species, such as overfished rockfish. (Babcock, E.A., E.K. Pikitch, and C.G. Hudson, ''How Much Observer Coverage is Enough to Adequately Estimate Bycatch?'' Oceana (2003), [hereinafter Oceana Report] ). Since Pacific Coast groundfish fisheries intercept rare, overfished species, NMFS should require at least 50 percent observer coverage, and preferably 100 percent coverage, in order to have an accurate assessment of bycatch. Robust at-sea monitoring is essential for implementing all practicable bycatch measures.

*Response:* The Four Organizations have asked that NMFS require at least 50 percent observer coverage, preferably 100 percent. The impracticability of 100 percent observer coverage in the West Coast groundfish fisheries is addressed above in the responses to Comments 6 and 11. This response to Comment 13 will focus on the applicability of the Oceana Report to the West Coast groundfish fishery, and on the conclusion of The Four Organizations (one of these organizations is Oceana) that this report requires NMFS to implement 50–100 percent observer coverage for the West Coast groundfish fleet for observer coverage to be considered adequate for estimating total catch. NMFS's Northeast Fisheries Science Center rebutted many of the arguments in the Oceana Report in its Reference Document 05–09, ''NEFSC Bycatch Estimation Methodology: Allocation, Precision, and Accuracy (available online at: *http://www.nefsc.noaa.gov/nefsc/publications/crd/crd0509/*) This response to Comment 13 addresses the Oceana Report as it may or may not apply to the West Coast groundfish fishery.

In the 2005 groundfish fishery, over 90 percent of West Coast groundfish shoreside landings by volume were whiting landed in the shore-based whiting fishery. As mentioned above in the response to Comment 6, the shore-based whiting sector is monitored via an EFP requiring maximized retention and electronic monitoring. Of the non-whiting 2005 groundfish landings, just under 27,000 mt of fish, 80 percent of the landings by weight were made by trawl vessels. (The 2005 non-pollock groundfish catch from the Gulf of Alaska and Bering Sea, by contrast, exceeded 500,000 mt of fish.) WCGOP began operations in 2001 by focusing coverage on the trawl fleet because of its relatively higher percentage of landings. Since that time, WCGOP has expanded coverage to the limited entry fixed gear fishery and several of the open access fisheries that take groundfish incidentally.

Most West Coast groundfish vessels do not participate only in the groundfish fishery in any given year. Instead, they employ a mixed fishing strategy, moving between target fisheries, depending on which seasons are open at what times. One of the major reasons that the groundfish fishery is managed as a year-round fishery is that groundfish is one of the few West Coast species groups that has few natural seasonal constraints on availability. For example, the Dungeness crab season primarily occurs in the winter when crab shells have hardened, while the start and end of the summer albacore tuna season is less predictable and dependent on albacore migrations in association with ocean climate conditions. Observer coverage percentages are a factor of the number of observers deployed over the number of vessels participating in the observed fishery. Because the number of observers WCGOP deploys is relatively constant, while the number of vessels making groundfish landings in any one cumulative limit period varies, observer coverage percentages vary according to the number of vessels participating in the fishery.

WCGOP summarizes observer data, including coverage percentages, in regular reports to the Council and the public (see *http://www.nwfsc.noaa.gov/research/divisions/fram/observer/datareport/index.cfm*). The September 2005 report on trawl observer activities through April 2005 shows that WCGOP sampled 27 percent of non-whiting trawl landings, by volume, in 2004 (Table 1). Following the non-whiting trawl fleet, NMFS prioritized observer coverage on limited entry vessels with sablefish endorsements, which have permits to participate in the larger-volume primary sablefish fishery. The February 2005 report on the sablefish-endorsed limited entry fixed gear fishery shows that WCGOP sampled 13 percent of longline landings and 15 percent of pot landings, by volume in 2004 (Table 1).

Open access groundfish fisheries do not have Federal permits, and many do not have State permits, which makes it difficult for NMFS to identify a population of vessels to be sampled. As discussed above, this inability to identify the pool of possible open access fishery participants spurred the Council to put a high priority on permitting the fishery as a bycatch accounting measure for its bycatch work plan. NMFS works with the States to secure permission to place Federal observers on vessels participating in State-managed fisheries that take groundfish incidentally and to make progress toward identifying total landings by various open access fishery components. This final rule includes a provision to authorize NMFS to place its observers on open access vessels, which will better facilitate agreements with the States, and will give NMFS the authority to better sample vessels in the directed open access groundfish fishery.

The commenters state their belief that a 50–100 percent sampling level is needed to track overfished species in the West Coast groundfish fishery. However, the level of sampling that is needed to achieve precision in documenting relatively rare species depends on whether observers are sampling from and measuring total catch or only the portion of the catch that is discarded. In the West Coast non-whiting fishery, landings records are relied upon to document retained catch. By concentrating on discarded catch, WCGOP observers are able to more thoroughly determine the species and amounts of all fish that are discarded. Therefore, even though some species may be infrequently encountered, when they are encountered on an observed vessel, there is a higher likelihood that

they will be documented. In other fisheries, like some off Alaska, where observers draw small samples of the catch to measure the total catch of all species, there is a greater chance that infrequently occurring species will be missed. Another potential concern with regard to infrequently occurring species is the degree to which all hauls (or sets) on observed trips are sampled. WCGOP observers sample nearly every haul on all observed trips.

As described in the response to Comment 5, NMFS used the 2004 observer data to finalize post-season estimates of 2004 total catch, to revise inseason bycatch rate estimates in 2005 and 2006, and to inform pre-season bycatch rate projections for the 2007–2008 fisheries. The process of using observer data to project bycatch pre-season, and then revising bycatch rate estimates inseason once a new year's worth of observer data becomes available, can cause fluctuations in fishery management. If new observer data are introduced inseason and new bycatch rate calculations are different from those made pre-season, the fisheries may have to be adjusted to prevent OYs from being exceeded.

The best empirical evidence of the adequacy of the current bycatch reporting methodology is the pattern of fishery management fluctuations since NMFS first began using observer data to inform management in 2003. This shift to using new observer data to help manage the fishery caused some fluctuations in fishery management, such that severe catch and area restrictions were needed to constrain catch in the last quarter of 2003 (68 FR 60865, October 24, 2003.) The 2004 fishing year began with the fishery modeled for bycatch using that first year's worth of observer data, with further observer data supplementing the model mid-year. However, NMFS still did not have enough observer data years pre-season to prevent year-end fishery closures in reaction to observer data received inseason. The 2004 fishery ended with nearshore trawl closures to protect canary rockfish and a petrale sole fishery elimination to protect darkblotched rockfish (69 FR 59816, October 6, 2004.)

For the 2005 fishery, the design of which was informed by two years' worth of observer data and two years experience working with that data, the Council and NMFS again implemented a seasonally-varied combination of RCAs and trip limits (69 FR 77012, December 23, 2004.) By the end of 2005, NMFS again had to restrict the trawl fishery to constrain bycatch, but there was an important difference in 2005 from prior years: In 2003 and 2004, year-end restrictions were needed because observer data had showed higher than previously-predicted bycatch rates; in 2005, year-end restrictions were needed because the target species were being caught at a faster-than-predicted rate, so the fisheries were constrained to keep both target species and bycatch species within their OYs (70 FR 58066, October 5, 2005; 70 FR 72385, December 5, 2005.)

The 2006 fishery has been the second year in a two-year management cycle. The Council and NMFS took action in December 2005 (70 FR 72385) and February 2006 to modify the 2006 limits and area closures with best available data from 2005 and prior years (71 FR 8489, February 17, 2006.) As of the Council's September 2006 meeting, total catch from the 2006 trawl fishery was below pre-season predicted levels for both targeted and bycatch species. NMFS was able to modestly increase previously set trip limits for petrale sole and sablefish for the November-December period to allow the fisheries access to OYs for those target species without exceeding overfished species OYs (71 FR 58289, October 3, 2006.) As discussed in the preamble to the October inseason action, the Council and NMFS reduced the whiting fishery's canary rockfish bycatch limit in order to accommodate the higher-than-expected canary rockfish research catch.

Few statistical sampling programs are subject to the immediate real world testing given to fisheries observer data used in fishery management. Instead of waiting for several years' worth of observer data before using the data to inform management, the agency placed a priority on beginning the use of observer information for more informed management on bycatch minimization as soon as possible. Each year that NMFS collects observer data, the agency's confidence in the statistical information about intra-annual variability in bycatch rates improves. This increasing confidence in observer data allows the agency to better predict how the fishery and fish stocks will behave in different seasons within the fishing year. Over time, NMFS expects that a longer time series of data will illustrate inter-annual variability of bycatch rates in response to changing environmental conditions. Over the life of the observer program, observer coverage in the trawl fleet has been in the 20–40 percent range, with many thousands of fishing trips observed. It is true that a greater percentage coverage would have provided NMFS with more vessel-specific data points, but such coverage would not have created a faster solution to the specific challenge of West Coast groundfish management—which is to project fishing activities in a multi-species fishery with seasonal variability in target and bycatch species migrations, so that time- and area-appropriate bycatch minimization measures may be applied when and where they will have their greatest positive benefits to the resource. Observer programs must be designed for the species managed, for the fishing vessels observed, and to support a specific management system. NMFS's data collection and analysis methods have proven their adequacy for management in the rigorous test of inseason management.

*Comment 14:* Bycatch reduction should apply to all species, not just overfished and protected ones. The Four Organizations believe that the proposed rule fails to implement all practicable bycatch minimization measures for non-overfished species. The preamble to NMFS's National Standard Guidelines acknowledges that ''[t]he definition of 'fish' in the Magnuson-Stevens Act includes finfish, shellfish, and invertebrate species, and all other forms of marine animal and plant life except marine mammals and birds; by extension, bycatch applies to these forms of marine life.'' 63 FR 24212, at 24224 (May 1, 1998). The proposed rule to implement Amendment 18 incorporates depth-based management measures, particularly the setting of closed areas as a tool to minimize bycatch of overfished species, prevent overfishing of any groundfish species, and minimize the incidental catch of prohibited and protected species. Area closures are an important tool that has likely reduced bycatch in Pacific groundfish fisheries and their use should be continued to minimize the bycatch of all marine life. The Four Organizations are interested in whether the Council currently uses the habitat suitability data from the essential fish habitat EIS and Amendment 19 in order to calibrate spatial and/or temporal closures to maximize the protection of overfished species, precautionary zone species, and other managed species, as well as benthic invertebrates like corals.

*Response:* As discussed above in the response to Comment 5, NMFS places its highest bycatch minimization priority on constraining the incidental catch of overfished groundfish species. However, many of the bycatch reduction measures detailed in the response to Comment 3 benefit species other than overfished species. For example, the RCAs prevent catch of many continental shelf species, not just the overfished

continental shelf species. In 2005, the fisheries took approximately 60 mt of the 958 mt OY for minor shelf rockfish, and approximately 891 mt of the 3,871 mt OY for yellowtail rockfish (per Pacific Fisheries Information Network, see: *http://www.psmfc.org/pacfin/ber_index.html.*) Management measures for 2005, in response to information on shortspine thornyhead overfishing in 2003, resulted in underharvests (OYs not achieved) of shortspine thornyhead and co-occurring species longspine thornyhead, Dover sole, and sablefish. And, as acknowledged by The Four Organizations, Amendment 18 and this final rule expand the use of area closures so that they may be used to prevent overfishing of groundfish species not managed with rebuilding plans, and to protect prohibited species, among other uses.

The Four Organizations also refer to ''habitat suitability data'' in this comment. Amendment 19 to the FMP, which NMFS approved on March 8, 2006, addressed groundfish EFH. In developing Amendment 19, the Council considered developing what they called ''habitat suitability probability values'' (HSP values) for groundfish species. These HSP values were intended to illustrate links between particular groundfish species and their particular habitats. The intent of developing these species-specific values was to look, in aggregate, at where all of the groundfish species managed under the FMP are found in their habitats at their different life stages. The Council and its Scientific and Statistical Committee (SSC) found, however, that there were insufficient data on all groundfish species and all of their life stages to set life stage or species-specific HSP values. Amendment 19 ultimately looked at aggregated information on all groundfish to delineate a collective EFH for all groundfish species, rather than setting species-specific EFHs. HSP values and the fathom depth contours that inform RCA designation use some common data. However, given the SSC's review of the HSP value system, NMFS is not comfortable using HSP values to define closures to minimize bycatch of overfished species at this time.

The Four Organizations also mention benthic invertebrates, such as coral. The EFH EIS describes the habitats of structure-forming benthic invertebrates, where known. Structure-forming benthic invertebrates occur both within and outside of the 51 EFH Conservation Areas, and both within and outside of the Rockfish Conservation Areas.

*Comment 15:* The proposed rule explains that the use of vessel monitoring systems (VMS) is an important component to enforcing the ''wide variety of marine closed areas'' that are themselves important bycatch minimization measures (71 FR 36506, at 36511.) Amendment 18 would authorize the use of VMS in the FMP, but not require it. Instead, the Council plans on issuing a proposed rule sometime in ''summer 2006'' to mandate the use of VMS within the open-access fishery. The Four Organizations wish to know why this requires a separate process? If VMS is a practicable bycatch minimization measure, or, in the least, supports the implementation of other bycatch measures, NMFS should include the requirement to use VMS in the FMP itself and should not wait to do so.

*Response:* Groundfish limited entry vessels, which make the majority (over 90 percent) of commercial groundfish landings, have been required to carry and use VMS units since January 1, 2004 (68 FR 62374, November 4, 2003.) The Council had recommended this initial coverage in the limited entry fishery with the expectation that coverage requirements would be expanded to the open access fishery. The bycatch mitigation EIS was a program-level EIS, assessing broad-scale programs for the future of groundfish bycatch minimization. The Council evaluated alternatives for requiring the use of VMS via a separate National Environmental Policy Act process, with an Environmental Assessment specific to the purpose and need for that action. The separate processes were needed to ensure that the specific analysis of a requirement for open access vessels to carry VMS did not get lost in the midst of the more broad-scale bycatch EIS. NMFS intends to publish a proposed rule to implement VMS in the open access fisheries as soon as possible.

## Changes From the Proposed Rule

NMFS made changes to regulatory language in 50 CFR 660.314 in order to clarify regulatory text. These changes do not alter the effects of that text, or the persons or organizations to which they apply. NMFS also added changes to regulatory language at 50 CFR 660.306 and 660.370 in accordance with a comment received from Washington Department of Fish and Wildlife, as detailed above in the response to Comment 1.

## Classification

The Administrator, Northwest Region, NMFS, has determined that Amendment 18 and this final rule are necessary for the conservation and management of the Pacific Coast groundfish fishery and that they are consistent with the Magnuson-Stevens Act and other applicable laws.

NMFS prepared an FEIS in support of this action. The FEIS was filed with the Environmental Protection Agency on September 17, 2004. A notice of availability for this FEIS was published on September 24, 2004 (69 FR 57277). In approving Amendment 18, on September 6, 2006, NMFS issued a ROD identifying the selected alternative. A copy of the ROD is available from NMFS (see **ADDRESSES**).

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

NMFS prepared a final regulatory flexibility analysis (FRFA) as part of the regulatory impact review. The FRFA incorporates the IRFA, the comments and responses to the proposed rule, and a summary of the analyses completed to support the action. A copy of the FRFA is available from NMFS (see **ADDRESSES**) and a summary of the FRFA, per the requirements of 5 U.S.C. 604(a), follows: Amendment 18 is intended to respond to court orders in *Pacific Marine Conservation Council* v. *Evans,* 200 F.Supp.2d 1194 (N.D. Calif. 2002) by bringing the Pacific Fishery Management Council's bycatch mitigation program into the FMP. During the comment period for the proposed rule, NMFS received two letters of comment, but neither of these letters addressed the IRFA, although one letter directly or indirectly addressed the economic effects of the rule, as discussed above in the responses to Comments 6–9. Approximately 1,511 vessels participated in the West Coast commercial groundfish fisheries in 2003. Of those, about 498 vessels were registered to limited entry permits issued for either trawl, longline, or pot gear. All but 10–20 of the 1,511 vessels participating in the groundfish fisheries are considered small businesses by the Small Business Administration. In the 2001 recreational fisheries, there were 106 Washington charter vessels engaged in salt water fishing outside of Puget Sound, 232 charter vessels active on the Oregon coast, and 415 charter vessels active on the California coast. Although some charter businesses, particularly those in or near large California cities, may not be small businesses, all are assumed to be small businesses for purposes of this discussion.

This action is not expected to have significant impacts on small entities. The alternatives considered for this action are detailed in the proposed rule to implement Amendment 18. The Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) on

''An Observer Program for Catcher Vessels in the Pacific Coast Groundfish Fishery'' analyzed the effects of implementing an observer program in the West Coast groundfish fishery on the environment, economy, and small businesses. A description of the costs associated with compliance of the proposed rules with regard to Federal observer regulations was summarized in that document. The requirements that (1) Groundfish fishery management measures take into account the co-occurrence ratios of overfished species with more abundant target stocks; (2) the allowance of the use of depth-based closed areas a routine management measure for preventing the overfishing of any groundfish species by minimizing the direct or incidental catch of that species; and (3) the allowance of the use of depth-based closed areas as a routine management measure for minimizing the bycatch of any prohibited or protected species taken incidentally in the groundfish fishery do not increase the costs associated with reporting, record-keeping, or other compliance requirements directly. There are no recordkeeping, reporting, or other compliance issues forthcoming from the proposed rule.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the Pacific Coast groundfish FMP fisheries 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 spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, 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, southern California). These biological opinions have concluded that implementation of the FMP for the Pacific Coast groundfish fishery was 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.

NMFS reinitiated a formal ESA section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999 Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000. Since 1999, annual Chinook bycatch has averaged about 8,450. The Chinook ESUs most likely affected by the whiting fishery has generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior ''no jeopardy'' conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) and the Southern Distinct Population Segment (DPS) of green sturgeon (71 FR 17757, April 7, 2006) were recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its Section 7 consultation on the PFMC's Groundfish FMP. After reviewing the available information, NMFS concluded that, in keeping with Section 7(a)(2) of the ESA, allowing the fishery to continue under Amendment 18 to the FMP would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In accordance with E.O. 13175, this rule was developed after meaningful consultation and collaboration with the tribal representative on the Pacific Council and tribal officials from the tribes affected by this action.

**List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, Indian fisheries.

Dated: November 6, 2006.

**Samuel D. Rauch III,**

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

■ For the reasons set out in the preamble, 50 CFR part 660 is amended 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 § 660.306, paragraph (a)(7) is revised to read as follows:

### § 660.306 Prohibitions.

* * * * *

(a) * * *

(7) Fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY applied.

* * * * *

■ 3. In § 660.314, paragraphs (c)(2), and (f)(1)(v)(B) are revised to read as follows:

### § 660.314 Groundfish observer program.

* * * * *

(c) * * *

(2) *Catcher vessels.* When NMFS notifies the owner, operator, permit holder, or the manager of a catcher vessel of any requirement to carry an observer, the catcher vessel may not be used to fish for groundfish without carrying an observer.

(i) For the purposes of this section, the term ''catcher vessel'' includes all of the following vessels (except vessels described in paragraphs (c)(1) and (c)(3) of this section):

(A) Any vessel registered for use with a Pacific Coast groundfish limited entry permit that fishes off the States of Washington, Oregon, or California seaward of the baseline from which the territorial sea of the United States is measured out to the seaward edge of the EEZ (*i.e.,* 0–200 nm offshore).

(B) Any vessel other than a vessel described in paragraph (c)(2)(i)(A) of this section that is used to take and retain, possess, or land groundfish in or from the EEZ.

(C) Any vessel that is required to take a Federal observer by the applicable State law.

(ii) *Notice of departure—Basic rule.* At least 24 hours (but not more than 36 hours) before departing on a fishing trip, a vessel that has been notified by NMFS that it is required to carry an observer, or that is operating in an active sampling unit, must notify NMFS (or its designated agent) of the vessel's intended time of departure. Notice will be given in a form to be specified by NMFS.

(A) *Optional notice—Weather delays.* A vessel that anticipates a delayed departure due to weather or sea conditions may advise NMFS of the anticipated delay when providing the basic notice described in paragraph (c)(2)(ii) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel must provide an additional notice of departure not less than 4 hours prior to departure, in order to enable NMFS to place an observer.

(B) *Optional notice—Back-to-back fishing trips.* A vessel that intends to make back-to-back fishing trips (*i.e.,* trips with less than 24 hours between offloading from one trip and beginning another), may provide the basic notice described in paragraph (c)(2)(ii)) of this section for both trips, prior to making the first trip. A vessel that has given such notice is not required to give additional notice of the second trip.

(iii) *Cease fishing report.* Within 24 hours of ceasing the taking and retaining of groundfish, vessel owners, operators, or managers must notify NMFS or its designated agent that fishing has ceased. This requirement applies to any vessel that is required to carry an observer, or that is operating in a segment of the fleet that NMFS has identified as an active sampling unit.

* * * * *

(f) * * *

(1) * * *

(v) * * *

(B) *Annual general endorsements.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

* * * * *

■ 4. In § 660.370, paragraphs (b), (c)(3), and (h)(6) introductory text are revised to read as follows:

**§ 660.370 Specifications and management measures.**

* * * * *

(b) *Biennial actions.* The Pacific Coast Groundfish fishery is managed on a biennial, calendar year basis. Harvest specifications and management measures will be announced biennially, with the harvest specifications for each species or species group set for two sequential calendar years. In general, management measures are designed to achieve, but not exceed, the specifications, particularly optimum yields (harvest guidelines and quotas), commercial harvest guidelines and quotas, limited entry and open access allocations, or other approved fishery allocations, and to protect overfished and depleted stocks. Management measures will be designed to take into account the co-occurrence ratios of target species with overfished species, and will select measures that will minimize bycatch to the extent practicable.

(c) * * *

(3) *All fisheries, all gear types, depth-based management measures.* Depth-based management measures, particularly the setting of closed areas known as Groundfish Conservation Areas, may be implemented in any fishery that takes groundfish directly or incidentally. Depth-based management measures are set using specific boundary lines that approximate depth contours with latitude/longitude waypoints found at § 660.390–.394. Depth-based management measures and the setting of closed areas may be used: to protect and rebuild overfished stocks, to prevent the overfishing of any groundfish species by minimizing the direct or incidental catch of that species, to minimize the incidental harvest of any protected or prohibited species taken in the groundfish fishery, to extend the fishing season; for the commercial fisheries, to minimize disruption of traditional fishing and marketing patterns; for the recreational fisheries, to spread the available catch over a large number of anglers; to discourage target fishing while allowing small incidental catches to be landed; and to allow small fisheries to operate outside the normal season.

* * * * *

(h) * * *

(6) *Sorting.* Under § 660.306(a)(7), it is unlawful for any person to ''fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, OY applied.'' The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their State fish tickets. This provision applies to both the limited entry and open access fisheries. The following species must be sorted in 2005 and 2006:

* * * * *

■ 5. In § 660.373, paragraphs (c)(1), (c)(2), and (d) are revised to read as follows:

**§ 660.373 Pacific whiting (whiting) fishery management.**

* * * * *

(c) * * *

(1) *Klamath River Salmon Conservation Zone.* The Klamath River Salmon Conservation Zone is an area off the northern California coast intended to protect salmon from incidental catch in the whiting fishery. The Klamath River Conservation Zone is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(i) 41°38.80′ N. lat., 124°07.49′ W. long.;

(ii) 41°38.80′ N. lat., 124°23.00′ W. long.;

(iii) 41°26.80′ N. lat., 124°19.26′ W. long.;

(iv) 41°26.80′ N. lat., 124°03.80′ W. long.; and connecting back to 41°38.80′ N. lat., 124°07.49′ W. long.

(2) *Columbia River Salmon Conservation Zone.* The Columbia River Salmon Conservation Zone is an area off the northern Oregon and southern Washington coast intended to protect salmon from incidental catch in the whiting fishery. The Columbia River Salmon Conservation Zone is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(i) 46°18.00′ N. lat., 124°04.50′ W. long.;

(ii) 46°18.00′ N. lat., 124°13.30′ W. long.;

(iii) 46°11.10′ N. lat., 124°11.00′ W. long.;

(iv) 46°13.58′ N. lat., 124°01.33′ W. long.; and connecting back to 46°18.00′ N. lat., 124°04.50′ W. long.

(d) *Eureka area trip limits.* Trip landing or frequency limits may be established, modified, or removed under § 660.370 or § 660.373, specifying the amount of Pacific whiting that may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fishes in the Eureka management area (from 43°00.00′ to 40°30.00′ N. lat.) shoreward of a boundary line approximating the 100 fm (183 m) depth contour, as defined with latitude/longitude coordinates at § 660.393.

* * * * *

[FR Doc. E6–19106 Filed 11–9–06; 8:45 am]

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# Proposed Rules

Federal Register
Vol. 71, No. 218
Monday, November 13, 2006

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

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 7 CFR Part 1435

**RIN 0560–AH50**

## Reassignment of Sugar Allocation Shortfalls

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Commodity Credit Corporation (CCC) proposes to clarify Sugar Program regulations for the sugar marketing allotment program. This rule proposes to clarify eligibility requirements for processors to receive reassigned sugar marketing allocations deducted from other processors with insufficient supply to fill their allocations. The intent of this rule is to elaborate upon CCC's broad discretion to conduct allocation reassignments in the current regulations.

**DATES:** Comments on this rule must be submitted by January 12, 2007 to be assured consideration.

**ADDRESSES:** The Farm Service Agency (FSA) invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

*E-mail:* Send comments to *sugar@wdc.usda.gov*.

*Mail:* Submit comments to: Director, Dairy and Sweeteners Analysis Group (DSAG), FSA, United States Department of Agriculture (USDA), STOP 0516, 1400 Independence Avenue, SW., Washington, DC 20250–0516.

*Fax:* Submit comments by facsimile transmission to (202) 690–1480.

*Hand Delivery or Courier:* Deliver comments to the above address.

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

Comments may be inspected in the Office of the Director, DSAG, FSA, USDA, Room 3752-S South Building, Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays. A copy of this proposed rule is available on the DSAG Web site at *http://www.fsa.usda.gov/ao/epas/dsa.htm*.

**FOR FURTHER INFORMATION CONTACT:** Barbara Fecso at (202) 720–4146, or via e-mail at *barbara.fecso@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

### Background

The Sugar Program is authorized by section 359 of the Agricultural Adjustment Act of 1938, as amended by the Farm Security and Rural Investment Act of 2002 (''2002 Act'') (7 U.S.C. 1359aa *et seq.*). The 2002 Act requires CCC to periodically analyze market factors and establish a national sugar marketing allotment to limit the quantity of sugar that processors can market. The goal is to achieve a price level that will minimize sugar loan collateral forfeitures to CCC. Once the overall marketing allotment is established, it is allocated between the beet sugar and cane sugar sectors (54.35 and 45.65 percent, respectively). The beet sugar allotment is allocated directly to beet processors, while the cane sugar allotment is allocated to four cane-producing states (Florida, Louisiana, Hawaii and Texas). The cane allotment is further allocated among sugar cane processing companies within each state.

This rule proposes to alter 7 CFR 1435.309(b) regarding reassignment of allocations among processors. Section 359e(a) of the 2002 Act requires CCC to periodically determine if processors have sufficient supplies to fill their allocations. If CCC determines that a processor has insufficient supply, the CCC is required to redistribute the surplus allocation among the processors that can use it. A major distinction between initial allocations and reassignments is that CCC has no discretion in determining a company's initial allocation. However, CCC, based on its analysis of current market and processor conditions, determines which processors receive the reassigned allocation. This rule proposes to emphasize CCC discretion to deduct allocation from companies and reassign it to other companies by adding a clarifying sentence in 7 CFR 1435.309(b) to affirm that such reassignments, as they always have been, are based on CCC's determination of market and processor needs.

This rule will correct a situation where reassignment, contrary to its objective, fails to add sugar to the market in the current year and increases the sugar supply beyond the allotment in the following year. For example, on August 19, 2005, to release more sugar into the marketplace, CCC increased the Overall Allotment Quantity (OAQ) by 250,000 tons. At that time, CCC and the sugar industry recognized that there would be transportation and other difficulties in delivering the extra sugar into the marketplace. Given the extreme tightness in the sugar market at that time, CCC wanted to avoid reassigning allotment to processors that would merely transfer title of their new reassigned allocation and not actually deliver the sugar until Fiscal Year 2006. It is common for beet sugar processors, with allocation available at the end of the fiscal year, to fill their allocation by transferring title to stocks that will be delivered to users at the beginning of the following fiscal year.

When CCC found that a beet processor had 25,000 tons of allocation that it could not fill due to a production shortfall in August and September 2005, the agency exercised its discretion to reassign this quantity to companies with the greatest capacity to physically deliver the portion of the deficit assigned to it. CCC surveyed beet processors with extensive sugar supply to determine if these companies could physically deliver the sugar in fiscal year 2005. Several companies could not deliver all their supply and CCC reduced their portion of the reassignment accordingly.

Also, for this reassignment of 25,000 tons in 2005, CCC established a fiscal year carryover threshold level at which it was decided that a processor would not be given a share of the reassignment. CCC decided that a processor with more than an estimated 8 percent fiscal year 2005 carryover would not receive any of the 25,000 tons being reassigned. The 8 percent carryover cut-off was used because processors have indicated that they prefer to hold at least a month's supply of sugar, or 8 percent of a year's supply, to meet the next month's

delivery demands. The presumption is that a company will deliver sugar, from an increase in its allocation, into the marketplace in September only if its ending stocks are greater than its October commitments. Thus, it follows that a processor with 8 percent or more of a year's allocation on hand did not need any portion of the reassignment being distributed by CCC in that month.

The carryover limitation had not been used for reassignments prior to this action in 2005. Subsequently, some industry participants disagreed with the CCC determination and suggested that the agency solicit public comment on the reassignment process. For this rule, CCC considered proposing specific eligibility guidelines, such as using a historic date range in an explicit formula, to calculate reassignments. However, because of the constant state of flux in the domestic sugar market, this rule proposes reassignment eligibility rules that maintain the flexibility for CCC to adapt to market changes as necessary.

**Executive Order 12866**

This rule has been determined to be not significant under Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

**Regulatory Flexibility Act**

The requirements of the Regulatory Flexibility Act (5 U.S.C. 601–602) do not apply to this rule because CCC is not required to publish a notice of proposed rulemaking for the subject of this rule. Nonetheless, CCC has determined that this rule will not have a significant economic impact on a substantial number of small entities and a Regulatory Flexibility Analysis was not performed.

**Environmental Assessment**

The environmental impacts of this rule have been considered consistent with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500 through 1508), and regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. An environmental evaluation was completed and the proposed action has been determined not to have the potential to significantly impact the quality of the human environment and no environmental assessment or environmental impact statement is necessary. A copy of the environmental evaluation is available for inspection and review upon request.

**Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before seeking judicial review.

**Executive Order 12372**

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

**Unfunded Mandates Reform Act of 1995**

This rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

**Executive Order 13132**

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

**Paperwork Reduction Act**

Under 7 U.S.C. 7991(c)(2)(A) these regulations may be promulgated and the program administered without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the provisions authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

**Government Paperwork Elimination Act**

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and the FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. Because of the nature of the forms and other information collection activities required for this program, they are not fully implemented in a way that would allow the public to conduct business with CCC electronically. Accordingly, at this time, all forms and information required to be submitted under this rule may be submitted to CCC by mail or FAX.

**E-Government Act Compliance**

CCC is committed to complying with the E-Government Act, 44 U.S.C. 3501, note, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-GOV compliance related to this rule, please contact the person named above under the information contact section.

**List of Subjects in 7 CFR Part 1435**

Agricultural commodities, Loan programs—agriculture, Marketing quotas, Price support programs, Sugar.

Accordingly, 7 CFR part 1435 is proposed to be amended as follows:

## PART 1435—SUGAR PROGRAM

1. The authority citation for part 1435 continues to read as follows:

**Authority:** 7 U.S.C. 1359aa–1359jj and 7272 *et seq.*; 15 U.S.C. 714b and 714c.

## Subpart D—Flexible Marketing Allotments for Sugar

2. In § 1435.309, paragraph (b) is revised to read as follows:

### § 1435.309 Reassignment of deficits.

* * * * *

(b) Sugar beet and sugar cane processors will report to CCC current inventories, estimated production, expected marketings, transportation restrictions, and any other pertinent factors CCC deems appropriate to determine a processor's ability to market and deliver their allocation. Reassignment decisions are made at the discretion of CCC based on the determination of CCC of sugar market and processor needs.

* * * * *

Signed in Washington, DC, on October 25, 2006.

**Thomas B. Hofeller,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. E6–19076 Filed 11–9–06; 8:45 am]

BILLING CODE 3410–05–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA 2006–25671; Airspace Docket No. 06–AWP–15]**

**RIN 2120–AA66**

## Proposed Establishment of Class D Airspace; Castle Airport, Atwater, CA

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class D airspace at Castle Airport, Atwater, CA. A contract Airport Traffic Control Tower (ATCT) is being established at Castle Airport, Atwater, CA, which will meet criteria for Class D airspace. Class D airspace is required when the ATCT is open, and to contain and protect Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class D airspace extending upward from the surface to 2,500 feet Mean Sea Level (MSL) within a 4.5 nautical mile radius of the airport.

**DATES:** Comments must be received on or before December 13, 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 the docket number FAA–2006–25671/ Airspace Docket No. 06–AWP–15, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 2010, 15000 Aviation Boulevard, Lawndale, California 90261.

**FOR FURTHER INFORMATION CONTACT:** Larry Tonish, Airspace Specialist, Airspace Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California; telephone (310) 725–6539.

**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 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–2006–25671/Airspace Docket No. 06–AWP–15.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified 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 the comments received. 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 Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, 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 D airspace at Castle Airport, Atwater, CA. An ATCT is being contracted at Castle Airport, and Class D airspace is required during the hours the ATCT is open. Class D controlled airspace is necessary for the safety of aircraft executing SIAPs and other IFR operations at Castle Airport. Class D airspace will be effective during specified dates and times established in advance by a Notice to Airmen. The effective date and time will, thereafter, be published in the Airport/Facility Directory.

Class D airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations 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. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a 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—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; 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., 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

*Paragraph 5000 Class D Airspace*

* * * * *

**AWP CA D Castle Airport, Atwater, CA [NEW]**

Castle Airport, Atwater, CA
(Lat. 37°22′50″ N, long. 120°34′05″ W)

That airspace extending upward from the surface to 2,500 feet MSL beginning at lat. 37°18′34″ N., long. 120°35′54″ W, and extending clockwise around the 4.5 nautical mile radius of the Castle Airport to lat. 37°21′06″ N., long. 120°28′53″ W, thence to the point of beginning. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

**Leonard Mobley,**

*Acting Area Director, Western Terminal Operations, Western Terminal Area Office.*

[FR Doc. 06–9179 Filed 11–9–06; 8:45 am]

**BILLING CODE 4910–13–M**

## CONSUMER PRODUCT SAFETY COMMISSION

## 16 CFR Parts 1630 and 1631

## Technical Amendment to the Flammability Standards for Carpets and Rugs

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Proposed amendments.

**SUMMARY:** The Commission proposes to amend the flammability standards for carpets and rugs to remove the reference to Eli Lilly Company Product No. 1588 in Catalog No. 79, December 1, 1969, as the standard ignition source and provide a technical specification defining the ignition source.[1] The proposed specification for the standard ignition source is a timed burning tablet, consisting of essentially pure methenamine, with a nominal heat of combustion value of 7180 calories/gram, a mass of 150 mg +/−5 mg, flat, and a nominal diameter of 6 mm. An immediate effective date is also recommended.

**DATES:** Written comments concerning the proposed amendments must be received by the Office of the Secretary not later than January, 29, 2007.

**ADDRESSES:** Comments may be filed by e-mail to *cpsc-os@cpsc.gov,* and should be captioned ''CARPET AND RUG TECHNICAL AMENDMENT.'' Comments may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814, or delivered to the same address (telephone (301) 504–0800). Comments may also be filed by facsimile to (301) 504–0127.

**FOR FURTHER INFORMATION CONTACT:** Patricia K. Adair, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–7536 or e-mail: *padair@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Background

The standards for surface flammability of carpets and rugs appear at 16 CFR Parts 1630 and 1631. They were codified and published in 1975, 40 FR 59931 and 59935 (December 30, 1975). The standards were originally issued in 1970 by the Department of Commerce under the authority of the Flammable Fabrics Act (FFA). Subpart A of 16 CFR Parts 1630 and 1631 sets forth the standards. Subpart B contains the implementing regulations of the standards. Subpart C contains alternative washing procedures for hide carpets and rugs and wool flokati carpets and rugs. Subpart D of 16 CFR 1630 contains the staff interpretations and policies.

16 CFR Parts 1630 and 1631 establish minimum acceptance criteria for the surface flammability of carpets and rugs when exposed to a standard small source of ignition, a burning methenamine tablet, under prescribed conditions (the ''pill test''). These standards reduce the risks of death, personal injury, and property damage associated with fires that result from the surface ignition of carpets and rugs.

Both standards require a timed burning tablet as the standard ignition source for flammability performance testing. The standards define the ignition source at 16 CFR Part 1630.1(f) and 1631.1(f) as a methenamine tablet, weighing approximately 0.149 grams (2.30 grains), sold as Product No. 1588 in Catalog No. 79, December 1, 1969 by the Eli Lilly Company, or an equal tablet.

In April 2002, Commission staff learned that the Eli Lilly Company was no longer producing the methenamine tablets specified in the carpet and rug standards. Although the standards allow for the use of ''an equal'' methenamine tablet and give parameters for chemical composition and weight of the tablet, they do not provide any guidance on determining whether tablets from alternative sources are ''equal'' to those manufactured by the Eli Lilly Company. In July 2003, CPSC staff met with representatives of the Carpet and Rug Institute (CRI) to discuss evaluation of alternative methenamine tablets for use in 16 CFR Part 1630 and Part 1631. CRI members were experiencing differing test results using the old Eli Lilly tablets and currently available tablets. CRI members had begun to study the various characteristics of the current tablets. In one case, about 50% of one manufacturer's tablets were found broken in the bottle, with others breaking later. This problem was attributed to the tablets having a domed top. The problem has since been corrected with a flat tablet.

CRI urged the Commission to specify clearly the characteristics of the ''equal'' tablets that should be used for determining compliance with the carpet and rug standards. In an effort to make such a determination, the Commission staff conducted a comparison study to evaluate the weight, chemical composition, and combustion characteristics of presently available brands of methenamine tablets relative to each other and those produced by the Eli Lilly Company. The outcome of the study indicated that tablets consisting of essentially pure methenamine, having a heat of combustion value of approximately 7180 calories/gram and weighing approximately 0.149 grams may be considered equivalent to the tablets produced by the Eli Lilly Company and referenced in the regulation.

On July 29, 2004, the Commission's Office of Compliance issued a letter to industry in response to inquiries received by the CPSC staff regarding the equivalency of methenamine tablets formerly manufactured by the Eli Lilly Company and similar tablets currently produced by other manufacturers. The letter stated that the Commission staff determined that tablets consisting of essentially pure methenamine and weighing approximately 0.149 grams may be considered equivalent to the tablets formerly produced by the Eli Lilly Company. Therefore, tablets meeting these criteria may be used for

[1] Commissioner Thomas H. Moore filed a statement which is available from the Office of the Secretary or on the Commission's Web site at *http://www.cpsc.gov.*

purposes of determining conformance with the carpet and rug standards.

**B. Amending the Flammability Standards**

*1. Outcome of Commission Testing*

As mentioned above, the Eli Lilly Company is no longer producing the methenamine tablets specified in the carpet and rug standards. The standards allow for the use of ''an equal'' methenamine tablet and give parameters for chemical composition and weight of the tablet, but they do not provide any guidance on determining whether tablets from the alternative sources are ''equal'' to those manufactured by the Eli Lilly Company. The Commission staff conducted a comparison study to evaluate the weight, chemical composition, and combustion characteristics of presently available brands of methenamine tablets relative to each other and those produced by the Eli Lilly Company. The outcome of the Commission's comparative study indicated that tablets consisting of essentially pure methenamine, having a heat of combustion value of approximately 7180 calories/gram and weighing approximately 0.149 grams may be considered equivalent to the tablets formerly produced by the Eli Lilly Company and referenced in the regulation.

*2. Review of Other Existing Standards*

The Commission staff is aware of one U.S. voluntary standard regarding the type of ignition source to be used in testing the flammability of carpets and rugs. This standard, ASTM D2859–04, ''Standard Test Method for Ignition Characteristics of Finished Textile Floor Covering Materials,'' describes the use of the Eli Lilly tablet as satisfactory. It also states that ''normal variation in the weight of the different tablets will not affect the test results.''

There is an existing international voluntary standard developed by the International Organization for Standardization in 1982 (ISO 6925), that describes a tablet test for the flammability of textile floor coverings. The prescribed tablets are of ''hexamethylenetetramine, flat, having a mass of 150mg (plus or minus 5mg) and a diameter of 6mm.'' The allowable variance is about 3.3%. The mass expressed in ISO 6925 is essentially equivalent to that specified in the U.S. Standards under the FFA. While the ISO standard did not identify the Eli Lilly tablet, it noted that the tablets were commercially available. Thus, the ISO-specified tablet is equivalent to the Eli Lilly tablet in its specifications.

Canada's 1973 mandatory standard for carpets and textile floor coverings under the Hazardous Products Act, CGSB 4–GP–2, also specifies in its appendix the Eli Lilly tablet as the ignition source. It notes that ''normal variation in weight * * * will not affect the test results.''

*3. Proposed Amendments*

The carpet and rug flammability standards were issued under section 4 of the FFA (15 U.S.C.1193), which authorizes the issuance or amendment of flammability standards to protect the public against unreasonable risks of fire leading to death, personal injury, or significant property damage. As required by section 4(b) of the FFA, both standards are based on findings that they are needed to adequately protect the public against the unreasonable risk of the occurrence of fire leading to death, personal injury, or significant property damage. That section further requires findings that a flammability standard issued under the FFA is ''reasonable, technologically practicable, and appropriate.''

The proposed change to the standards is needed to remove reference to a product that is no longer being produced and to reflect the parameters defining the timed burning tablet as the standard ignition source.

Section 4(g) of the FFA (15 U.S.C. 1193(g)) states that a proceeding ''for the promulgation of a regulation under this section'' shall be initiated by publication of an advance notice of proposed rulemaking (''ANPR''), and sets forth requirements for the contents of the ANPR. However, these proposed amendments are necessary because the current standards refer to a product, the Eli Lilly tablet, that is no longer being produced or sold. The current standards do allow for the use of a tablet ''equal'' to the Eli Lilly tablet and give parameters for chemical composition and weight of the tablet. The Commission is simply proposing to substitute equivalent technical specifications for a specific product identification. Because the proposed amendments preserve the original intent and effect of the existing test method and the regulatory status quo, the Commission has determined that it is not required to commence this proceeding with an ANPR, nor is it necessary for the Commission to make the findings that sections 1193(g) and (h) of the FFA would otherwise require for promulgation of a new mandatory standard.

*4. Effective Date*

Section 4(b) of the FFA (15 U.S.C. 1193(b)) provides that an amendment of a flammability standard shall become effective one year from the date it is promulgated, unless the Commission finds for good cause that an earlier or later effective date is in the public interest, and publishes that finding. Because manufacturers are already using ''equal'' methenamine tablets as allowed by the current standards, the Commission believes an immediate effective date upon publication of the amendments is appropriate. The Commission invites comments on the proposed effective date and factual information relating to that issue.

**C. Other Issues**

*1. Impact on Small Businesses*

In accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission hereby preliminarily certifies that these amendments to the carpet and rug flammability standards proposed below will not have a significant economic impact on a substantial number of small entities, including small businesses, if issued as proposed.

The proposed amendments keep current industry practices and procedures in place, and no additional actions would be required of small entities. Based on available information, there would be little or no effect on small producers of carpets and rugs, since the standards already require that all carpets and rugs meet the criteria of the tests, and, given the equivalence of the test tablets, the results of the tests should be the same. Consequently, the Commission estimates that the amendments proposed below will have no economic consequences to any manufacturers, large or small, of carpets and rugs.

*2. Environmental Considerations*

The amendments proposed below fall within the categories of Commission actions described at 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. The amendments are not expected to have a significant effect on production processes or on the types or amounts of materials used for the manufacture of carpets and rugs. The amendments will not render existing inventories unsalable, or require destruction of existing goods. The Commission has no information indicating any special circumstances in which these amendments may affect the human environment. For that reason, neither an environmental assessment nor an environmental impact statement is required.

*3. Executive Orders*

Executive Order 12988 (February 5, 1996) requires agencies to state in clear language the preemptive effect, if any, to be given to any new regulation. The amendments proposed below, if issued on a final basis, would modify two flammability standards issued under the FFA. With certain exceptions which are not applicable here, no State or political subdivision of a State may enact or continue in effect ''a flammability standard or other regulation'' applicable to the same fabric or product as an FFA standard if the State or local flammability standard or regulation is ''designed to protect against the same risk of the occurrence of fire'' unless the State or local flammability standard or regulation ''is identical'' to the FFA standard. See section 16 of the FFA (15 U.S.C. 1203). Consequently, if issued as proposed, the amendments proposed below would preempt nonidentical State or local flammability standards or regulations that are intended to address the unreasonable risk of the occurrence of fire associated with ignition of carpets and rugs.

In accordance with Executive Order 12612 (October 26, 1987), the Commission certifies that the proposed amendments do not have sufficient implications for federalism to warrant a Federalism Assessment.

**Conclusion**

Therefore, pursuant to the authority of section 30(b) of the Consumer Product Safety Act (15 U.S.C. 2079(b)) and sections 4 and 5 of the Flammable Fabrics Act (15 U.S.C. 1193, 1194), the Commission hereby proposes to amend title 16 of the Code of Federal Regulations, Chapter II, Subchapter D, Parts 1630 and 1631 to read as follows below.

**List of Subjects in 16 CFR Parts 1630 and 1631**

Carpets, Consumer protection, Flammable materials, Floor coverings, Labeling, Records, Rugs, Textiles, Warranties.

## PART 1630—STANDARD FOR THE SURFACE FLAMMABILITY OF CARPETS AND RUGS

1. The authority for subpart A of part 1630 continues to read as follows:

**Authority:** Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193.

2. Section 1630.1(f) is revised to read as follows:

**§ 1630.1 Definitions.**

* * * * *

(f) *Timed Burning Tablet* (pill) means a methenamine tablet, flat, with a nominal heat of combustion value of 7180 calories/gram, a mass of 150 mg ± 5 mg and a nominal diameter of 6 mm.

* * * * *

3. Section 1630.4(a)(3) is amended by revising the first sentence to read as follows:

**§ 1630.4 Test Procedure.**

(a) * * *

(3) *Standard igniting source.* A methenamine tablet, flat, with a nominal heat of combustion value of 7180 calories/gram, a mass of 150 mg ±5 mg and a nominal diameter of 6mm. * * *

* * * * *

## PART 1631—STANDARD FOR THE SURFACE FLAMMABILITY OF SMALL CARPETS AND RUGS

1. The authority for subpart A of part 1631 continues to read as follows:

**Authority:** Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193.

2. Section 1631.1(f) is revised to read as follows:

**§ 1631.1 Definitions.**

* * * * *

(f) *Timed Burning Tablet* (pill) means a methenamine tablet, flat, with a nominal heat of combustion value of 7180 calories/gram, a mass of 150 mg ± 5 mg and a nominal diameter of 6 mm.

* * * * *

3. Section 1631.4(a)(3) is amended by revising the first sentence to read as follows:

**§ 1631.4 Test Procedure.**

(a) * * *

(3) *Standard igniting source.* A methenamine tablet, flat, with a nominal heat of combustion value of 7180 calories/gram, a mass of 150 mg ± 5 mg and a nominal diameter of 6mm. * * *

* * * * *

Dated: November 7, 2006.

**Alberta E. Mills,**

*Acting Secretary, Consumer Product Safety Commission.*

**List of Relevant Documents**

1. Briefing Memorandum from Patricia K. Adair, Project Manager, Directorate for Engineering Sciences, to the Commission, ''Technical Amendment to the Flammability Standards for Carpets and Rugs; 16 CFR Part 1630 and 16 CFR Part 1631.

2. Memorandum from Linda Fansler, Division of Electrical and Flammability Engineering, ''Evaluation of Methenamine Tablets,'' July 25, 2005.

3. Memorandum from Linda Fansler, Division of Electrical and Flammability Engineering, ''Methenamine Tablet Thickness,'' September 12, 2005.

4. Memorandum from Shing Bong Chen, Ph.D. and Bhawanji K. Jain, Directorate for Laboratory Sciences, Division of Chemistry, ''Chemical Composition of the Methenamine Tablets,'' April 13, 2003.

5. Memorandum from Terrance R. Karels, Directorate for Economic Analysis, ''Preliminary Regulatory Analysis: Amendment to Flammable Fabrics Act; Standards for Carpets and Rugs,'' September 23, 2005.

6. Letter from Alan H. Schoem, Office of Compliance, ''Equivalency of Methenamine Tablets, Standard for Flammability of Carpets and Rugs, 16 CFR Parts 1630 and 1631,'' July 29, 2004.

[FR Doc. E6–19095 Filed 11–9–06; 8:45 am]

BILLING CODE 6355–01–P

## DEPARTMENT OF THE INTERIOR

## National Indian Gaming Commission

## 25 CFR Parts 502 and 546

## Class II Definitions and Game Classification

**AGENCY:** National Indian Gaming Commission, Interior.

**ACTION:** Proposed rule; notice of availability.

**SUMMARY:** This notice announces the availability of two analytical reports commissioned by the National Indian Gaming Commission (NIGC) to analyze the economic impact of proposed class II game classification regulations as well as sets a deadline for comments on these reports. These two reports may be viewed and downloaded by visiting the NIGC Web site *http://www.nigc.gov*. Those individuals who are unable to view or download this Web site may contact Shawn Pensoneau at (202) 632–7003 to obtain a copy of the reports.

**DATES:** The deadline for comments on the economic impact reports is December 15, 2006.

**FOR FURTHER INFORMATION CONTACT:** Penny Coleman, Michael Gross or John Hay at 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** Congress established the National Indian Gaming Commission (NIGC or Commission) under the Indian Gaming Regulatory Act of 1988 (25 U.S.C. 2701 *et seq.*) (IGRA) to regulate gaming on Indian lands. On May 25, 2006, proposed Class II definitions and game classification standards were published in the **Federal Register** (71 FR 30232, 71 FR 30238).

Dated: November 6, 2006.

**Philip N. Hogen,**

*Chairman, National Indian Gaming Commission.*

[FR Doc. E6–19065 Filed 11–9–06; 8:45 am]

**BILLING CODE 7565–01–P**

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 914

**[Docket No. IN–157–FOR]**

## Indiana Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Indiana proposes revisions to its rules to allow commercial forestry (trees) to be planted on reclaimed prime farmland provided all remaining reclamation requirements for prime farmland are met. Indiana also proposes to restructure several of its provisions and make some minor language changes. Indiana intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Indiana program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., e.t., December 13, 2006. If requested, we will hold a public hearing on the amendment on December 8, 2006. We will accept requests to speak at a hearing until 4 p.m., e.t. on November 28, 2006.

**ADDRESSES:** You may submit comments, identified by Docket No. IN–157–FOR, by any of the following methods:

- *E-mail: IFOMAIL@osmre.gov.* Include Docket No. IN–157–FOR in the subject line of the message.
- *Mail/Hand Delivery:* Andrew R. Gilmore, Chief, Alton Field Division—Indianapolis Area Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204.
- *Fax:* (317) 226–6182.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to review copies of the Indiana program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Area Office. Andrew R. Gilmore, Chief, Alton Field Division—Indianapolis Area Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 226–6700, E-mail: *IFOMAIL@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location: Indiana Department of Natural Resources, Division of Reclamation, R. R. 2, Box 129, Jasonville, Indiana 47438–9517, Telephone: (812) 665–2207.

**FOR FURTHER INFORMATION CONTACT:** Andrew R. Gilmore, Chief, Alton Field Division—Indianapolis Area Office. Telephone: (317) 226–6700. E-mail: *IFOMAIL@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background on the Indiana Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

### I. Background on the Indiana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior (Secretary) conditionally approved the Indiana program effective July 29, 1982. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Indiana program in the July 26, 1982, **Federal Register** (47 FR 32071). You can also find later actions concerning the Indiana program and program amendments at 30 CFR 914.10, 914.15, 914.16, and 914.17.

### II. Description of the Proposed Amendment

By letter dated October 23, 2006 (Administrative Record No. IND–1738), Indiana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Indiana sent the amendment at its own initiative. Below is a summary of the changes proposed by Indiana. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

*A. 312 Indiana Administrative Code (IAC) 25–4–102 Special Categories of Mining; Prime Farmland*

1. Indiana proposes to restructure the following provisions with minor changes to the existing language: 312 IAC 25–4–102(a)(1), (a)(3)(A) and (B); (b); (d)(4) and (6); (e)(3); and (f)(5).

2. At 312 IAC 25–4–102, Indiana proposes to add new subdivision (d)(8) to read as follows:

(d)(8) If the applicant proposes to establish commercial forest resources on the prime farmland, the plan must also include the following:

(A) A commercial forest planting plan that shall include the following:

(i) A stocking rate.

(ii) A plan for replanting as needed.

(B) A commercial forest management plan.

(C) Documentation of landowner consent.

*B. 312 IAC 25–6–143 Prime Farmland; Special Performance Standards; Revegetation and Restoration of Soil Productivity*

1. Indiana proposes to restructure the following provisions: 312 IAC 25–6–143(b)(3) and (b)(8).

2. At 312 IAC 25–6–143, Indiana proposes to add new subsection (c) to read as follows:

(c) Commercial forest resources may be established on reclaimed prime farmland provided that productivity is demonstrated by subsection (b) and as follows:

(1) The director has approved a forest planting plan and forest management plan in consultation with the division of forestry.

(2) Landowner consent has been obtained.

(3) Forest compatible, permanent ground cover sufficient to control erosion is established and all erosion areas must be repaired or otherwise stabilized.

(4) The required soil replacement depth is verified and approved before trees are planted.

(5) Soil productivity shall be demonstrated under subsection (b).

## III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

*Written Comments*

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see DATES). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Alton Field Division—Indianapolis Area Office may not be logged in.

*Electronic Comments*

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: Docket No. IN–157–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Alton Field Division—Indianapolis Area Office at (317) 226–6700.

*Availability of Comments*

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

*Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.t. on November 28, 2006. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

*Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

## IV. Procedural Determinations

*Executive Order 12630—Takings*

The provisions in the rule based on counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations. The revisions made at the initiative of the State that do not have Federal counterparts have also been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that this rulemaking has no takings implications.

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

*Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. This determination is based on the fact that the Indiana program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Indiana

program has no effect on Federally-recognized Indian tribes.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) Considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior certifies that a portion of the provisions in 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 they are based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this part of the rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations. The Department of the Interior also certifies that the provisions in this rule that are not based upon counterpart Federal regulations 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.*). This determination is based upon the fact that the provisions are voluntary and as such are not expected to have a substantive effect on the regulated industry.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that a portion of the State provisions are based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are voluntary and as such are not expected to have a substantive effect on the regulated industry.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that a portion of the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are voluntary and as such are not expected to have a substantive effect on the regulated industry.

**List of Subjects in 30 CFR Part 914**

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 27, 2006.

**Charles E. Sandberg,**

*Regional Director, Mid-Continent Region.*

[FR Doc. E6–19085 Filed 11–9–06; 8:45 am]

BILLING CODE 4310–05–P

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 943

**[Docket No. TX–056–FOR]**

## Texas Abandoned Mine Land Reclamation Plan

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Texas abandoned mine land reclamation plan (Texas plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Railroad Commission of Texas, Surface Mining and Reclamation Division (RCT or commission) proposes to assume responsibility of the abandoned mine land reclamation (AMLR) emergency program in Texas. The RCT also proposes to revise its AMLR plan to reflect current practices and to update information regarding procedures for rights of entry, staffing, and emergency purchases. Texas intends to revise the Texas plan to be consistent with the corresponding Federal regulations and to improve operational efficiency.

This document gives the times and locations that the Texas plan and the amendment to that plan are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that will be followed for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., c.t., December 13, 2006. If requested, we will hold a public hearing on the amendment on December 8, 2006. We will accept requests to speak at a hearing until 4 p.m., c.t. on November 28, 2006.

**ADDRESSES:** You may submit comments, identified by Docket No. TX–056–FOR, by any of the following methods:

- *E-mail: mwolfrom@osmre.gov.* Include ''Docket No. TX–056–FOR'' in the subject line of the message.
- *Mail/Hand Delivery:* Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128.
- *Fax:* (918) 581–6419.

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

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to review copies of the Texas program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128, telephone: (918) 581–6430, e-mail: *mwolfrom@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location: Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711–2967, telephone: (512) 463–6900.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. E-mail: *mwolfrom@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background on the Texas Plan
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

## I. Background on the Texas Plan

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and indian tribes to assume exclusive responsibility for reclamation activity within the State or on indian lands if they develop and submit to the Secretary of the Interior (Secretary) for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary approved the Texas plan on June 23, 1980. You can find background information on the Texas plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the June 23, 1980, **Federal Register** (45 FR 41937). You can find later actions concerning the Texas plan and amendments to the plan at 30 CFR 943.25.

## II. Description of the Proposed Amendment

By letter dated October 11, 2006 (Administrative Record No. TAML–661), Texas sent us a proposed amendment to its plan under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment at its own initiative. Texas proposes to assume the AMLR emergency program. Below is a summary of the changes proposed by Texas. The full text of the amendment is available for your inspection at the locations listed above under **ADDRESSES**.

*Texas' Proposed AMLR Plan Revisions*

Section 410 of SMCRA authorizes the Secretary to use funds under the AMLR program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. On September 29, 1982 (47 FR 42729), we invited states to amend their AMLR plans for the purpose of undertaking emergency reclamation programs on our behalf. States would have to demonstrate that they have the statutory authority to undertake emergencies, the technical capability to design and supervise the emergency work, and the administrative mechanisms to quickly respond to emergencies either directly or through contractors.

The RCT submitted documentation to demonstrate the statutory authority, the technical capability, and the administrative mechanisms to quickly respond to emergencies either directly or through contractors to meet our requirements.

Texas proposes changes to its AMLR plan narrative at 884.13(c)(6), rights of entry; 884.13(d)(2), staffing; and 884.13(d)(3), purchasing and procurement. Texas also proposes to add a new section at 884.13(d)(3) for emergency purchases.

1. In the first paragraph of 884.13(c)(6), Texas proposes to update the references to its old regulations at Texas Coal Mining Regulations (TCMR) sections 806, 807, and 807(b) to its recodified regulations at 16 Texas Administrative Code (TAC) sections 12.813, 12.814, and 12.814(c).

In the second paragraph of 884.13(c)(6), Texas proposes to remove the phrase, ''[i]f requested by OSM to perform as its agent or contractor.'' The revised paragraph reads as follows:

> The Commission will enter upon any land where an emergency exists and on any other land to have access to the land where the emergency exists to restore, reclaim, abate, control or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare.

2. Texas proposes to change its AMLR plan narrative at 884.13(d)(2) regarding ''staffing'' to demonstrate Texas'' technical capability to design and supervise the emergency work. Texas also proposes to include an organizational chart. The proposed narrative for this section reads as follows:

> The Surface Mining and Reclamation Division's Abandoned Mine Land Reclamation Program staff has demonstrated experience in developing and managing AML projects. Areas of expertise include realty (rights of entry, appraisal and liens), environmental assessment, engineering design, construction and contract management and revegetation and erosion control.
>
> The Division's Administration and Records Section also provides administrative support. The Commission's Finance and Accounting Division provides purchasing and contracting support and legal support is provided by the Commission's Office of General Counsel.

3. Texas proposes to update its purchasing and procurement procedures at 884.13(d)(3) and to include a new section, emergency purchases.

a. Texas proposes a new introductory paragraph for its general purchasing and procurement procedures as follows:

> The Railroad Commission adheres to purchasing and procurement procedures and regulations established by the Texas Building and Procurement Commission (TBPC). Purchasing and procurement authority has been delegated to the Railroad Commission by TBPC. The appropriate bidding processes are established by TBPC for various purchase amounts (Texas Administrative Code, Title 1, Part 5, Chapter 113, Subchapter A, Section 113.11(e)(4)(C)). The Railroad Commission has correspondingly established purchase authority levels associated with those purchase amount thresholds.

b. Texas also proposes to add a new section regarding emergency purchases.

(1) The new introductory paragraph reads as follows:

> The Texas Building and Procurement Commission authorizes state agencies to make emergency purchases and has established procedures for doing so (Texas Government Code, Title 10, Subtitle D, Section 2155.137, and Title 1, Texas Administrative Code, Title 1, Part 5, Chapter

113, Subchapter A, Section 113.11(e)(4)(C)). Section 2.18 of the State of Texas Procurement Manual reads as follows:

(2) The paragraph on ''agency responsibility'' states that Texas Building and Procurement Commission (TBPC) has delegated to all State agencies the authority to make emergency purchases with the proviso that emergency procurements are subject to TBPC's rules and procedures.

(3) The paragraph on ''solicitation procedures'' allows State agencies to make emergency purchases of at least $25,000 without posting them in the Electronic State Business Daily.

(4) The paragraph on ''justification requirements'' requires State agencies to send a letter of justification to TBPC documenting the emergency.

(5) The paragraph on ''audit requirements'' states that emergency purchases of goods and services over $25,000 are subject to pre-payment audits by TBPC.

## III. Public Comment Procedures

Under the provisions of 30 CFR 884.15(a), we are requesting comments on whether the amendment satisfies the applicable State reclamation plan approval criteria of 30 CFR 884.14. If we approve the amendment, it will become part of the Texas plan and Texas will be eligible to receive funding to conduct the AMLR Emergency Program in Texas.

*Written Comments*

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Tulsa Field Office may not be logged in.

*Electronic Comments*

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: TX–056–FOR '' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581–6430.

*Availability of Comments*

We will make comments, including names and addresses of respondents, available for public review during normal business hours. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

*Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.t. on November 28, 2006. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

*Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

## IV. Procedural Determinations

*Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent required by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and tribal abandoned mine land reclamation plans and plan amendments because each program is drafted and promulgated by a specific State or tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and plan amendments submitted by a State or tribe are based solely on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR part 884 of the Federal regulations.

*Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of abandoned mine land reclamation programs. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 405(d) of SMCRA requires State abandoned mine land reclamation programs to be in compliance with the procedures, guidelines, and requirements established under SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized indian tribes and have determined that the rule does not have substantial direct effects 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. This determination is based on the fact that the Texas plan does not provide for reclamation and restoration of land and water resources adversely affected by

past coal mining on indian lands. Therefore, the Texas plan has no effect on federally-recognized indian tribes.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because agency decisions on proposed State and tribal abandoned mine land reclamation plans and plan amendments are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 13.5B(29)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 943**

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 24, 2006.

**Ervin J. Barchenger,**

*Acting Regional Director, Mid-Continent Region.*

[FR Doc. E6–19084 Filed 11–9–06; 8:45 am]

BILLING CODE 4310–05–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R06–OAR–2006–0456; FRL–8241–1]**

## Approval and Promulgation of Implementation Plans; Louisiana; 2006 Low Enhanced Vehicle Inspection/Maintenance (I/M) Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the State Implementation Plan (SIP) revision to the Low Enhanced Vehicle Inspection/Maintenance Program for the State of Louisiana. This revision addresses the exemption of the two newest model year gasoline-fueled passenger cars and gasoline-fueled trucks from On-Board Diagnostic (OBD) testing. We are taking this action in accordance to Section 110 of the Clean Air Act.

**DATES:** Written comments must be received on or before December 13, 2006.

**ADDRESSES:** Comments may be mailed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Sandra Rennie, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–7367, e-mail address *rennie.sandra@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule, which is located in the rules section of this **Federal Register**.

Dated: October 23, 2006.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

[FR Doc. E6–19018 Filed 11–9–06; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

**[EPA–R06—RCRA–2006–0914; FRL–8241–4]**

### Louisiana: Final Authorization of State Hazardous Waste Management Program Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The of State Louisiana 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 the State of Louisiana. 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 to 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 then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

**DATES:** Send your written comments by December 13, 2006.

**ADDRESSES:** Send written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, (6PD–O), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Louisiana during normal business hours at the following locations: EPA Region 6,1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–6444; or Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70884–2178, phone number (225) 219–3559. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the immediate final rule which is located in the Rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Alima Patterson, (214) 665–8533.

**SUPPLEMENTARY INFORMATION:** For additional information, please see the immediate final rule published in the ''Rules and Regulations''section of this **Federal Register**.

Dated: September 26, 2006.

**Richard E. Greene,**

*Acting Regional Administrator, Region 6.*

[FR Doc. E6–19090 Filed 11–9–06; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**[I.D. 091106B]**

**RIN 0648–AU84**

### Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures

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

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** This action extends the comment period for an October 5, 2006, proposed rule regarding the first 2007 fishing season for Atlantic sharks to November 17, 2006. This extension is due to late dealer reports that significantly changed landings estimates of large and small coastal sharks during the first trimester of 2006. This action releases the revised landings estimates.

**DATES:** The deadline for written comments on the October 5, 2006 (71 FR 58778), proposed rule has been extended from November 13 to no later than 5 p.m. on November 17, 2006.

**ADDRESSES:** Written comments on the proposed rule may be submitted to Michael Clark, Highly Migratory Species Management Division via:

- *E-mail: SF1.091106B@noaa.gov.*
- *Mail:* 1315 East-West Highway, Silver Spring, MD 20910. Please mark on the outside of the envelope ''Comments on Proposed Rule for 2007 1st Trimester Season Lengths and Quotas''.
- *Fax:* 301–713–1917.
- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Include in the subject line the following identifier: ''I.D. 091106B''.

Copies of the associated draft Environmental Assessment (EA) and other relevant documents are available on the Highly Migratory Species Management Division's Web site at *http://www.nmfs.noaa.gov/sfa/hms* or by contacting Michael Clark (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Michael Clark or Karyl Brewster-Geisz by phone: 301–713–2347 or by fax: 301–713–1917.

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS recently finalized a Consolidated Highly Migratory Species Fishery Management Plan (HMS FMP) that consolidated and replaced previous FMPs for Atlantic Billfish and Atlantic Tunas, Swordfish, and Sharks (October 2, 2006; 71 FR 58058). The HMS FMP is implemented by regulations at 50 CFR part 635.

On October 5, 2006, NMFS published a proposed rule (71 FR 58778) that requested comments on the draft EA and scheduled three public hearings throughout October 2006 to receive comments from fishery participants and other members of the public regarding the first 2007 fishing season for Atlantic sharks. On October 20, 2006, NMFS was notified that the Southeast Fishery Science Center (SEFSC) had not received all of the dealer reports for the 2006 first trimester, and that some landings had not been accounted for in the proposed rule or in previously released landing updates. Based on late dealer reports that had the potential to change landings estimates of large and small coastal sharks in the Gulf of Mexico and South Atlantic during the first trimester of 2006, NMFS notified the public (71 FR 64213; November 1, 2006) that NMFS was receiving late landing reports and extended the comment period from November 1, 2006, to 5 p.m. on November 13, 2006.

Since October 20, NMFS has been working to ensure that revised estimates are accurate; however, some dealers still have not reported. Due to the additional landing reports received by SEFSC, total landings of LSC and small coastal sharks (SCS) in the GOM and South Atlantic have increased. Revised landings from reports received as of November 6, 2006, are summarized in Table 1. A side-by-side comparison of the landings published in the proposed rule (71 FR 58778; October 5, 2006) and the revised estimates received from NMFS Southeast Fisheries Science Center (SEFSC) on November 6, 2006 are presented in Table 2.

TABLE 1.—REVISED LANDING ESTIMATES FOR THE 2006 FIRST TRIMESTER SEASON FROM THE PELAGIC DEALER COMPLIANCE (PDC) AND THE AUTOMATED LANDINGS REPORTING SYSTEM (ALS)

| Species groups | Region | Season closure date | 2006 1st Season quota (mt dw) | Estimated landings (mt Dw) | Percent quota taken |
|---|---|---|---|---|---|
| | Gulf of Mexico | CLOSED April 15 | 222.8 | 336.6 | 151.1 |
| Large Coastal Sharks | South Atlantic | CLOSED March 15 | 141.3 | 393.1 | 278.2 |
| | North Atlantic | CLOSED April 30 | 5.3 | 0.2 | 3.8 |
| | Gulf of Mexico | | 14.8 | 78.0 | 527 |
| Small Coastal Sharks | South Atlantic | CLOSED April 30 | 284.6 | 44.5 | 15.6 |
| | North Atlantic | | 18.7 | 0.0 | 0 |
| Blue Sharks | | | 91.0 | 0.04 | 0 |
| Porbeagle Sharks | No Regional Quotas | CLOSED April 30 | 30.7 | 0.5 | 1.5 |
| Other Pelagics | | | 162.7 | 19.9 | 12.2 |

TABLE 2.—A COMPARISON OF LCS AND SCS LANDINGS PUBLISHED IN THE OCTOBER 5, 2006 PROPOSED RULE AND THE REVISED LANDINGS ESTIMATES RECEIVED NOVEMBER 6, 2006

| Species groups | Region | 2006 1st Season quota (mt dw) | Landings in proposed rule (mt dw) | Revised landings as of 11/6/06 (mt dw) | Under (+) and over (−) harvest in proposed rule (mt dw) | Revised under (+) and over (−) harvest as of 11/6/06 (mt dw) |
|---|---|---|---|---|---|---|
| Large Coastal Sharks (LCS) | Gulf of Mexico | 222.8 | 103.1 | 336.6 | 119.7 | −113.8 |
| | South Atlantic | 141.3 | 326.1 | 393.1 | −184.3 | −251.8 |
| | North Atlantic | 5.3 | 0.3 | 0.2 | 5.0 | 5.1 |
| Small Coastal Sharks (SCS) | Gulf of Mexico | 14.8 | 5.0 | 78.0 | 9.8 | −63.2 |
| | South Atlantic | 284.6 | 42.1 | 44.5 | 242.5 | 240.1 |
| | North Atlantic | 18.7 | 0.1 | 0.0 | 18.6 | 18.7 |

NMFS is currently considering options to address the overharvest of LCS and SCS in the GOM, and is reviewing options for the South Atlantic as outlined in the proposed rule (71 FR 58778). In order to provide opportunity for public constituents to review the revised landings and provide comment, NMFS is extending the public comment period on the proposed rule and draft EA to 5 p.m., November 17, 2006.

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

Dated: November 7, 2006.

**James Burgess,**

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

[FR Doc. 06–9176 Filed 11–7–06; 2:23 pm]

BILLING CODE 3510–22–P

# Notices

Federal Register

Vol. 71, No. 218

Monday, November 13, 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

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2006–0078]**

### Evaluating the Invasive Potential of Imported Plants; Electronic Public Discussion

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of electronic public discussion.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service (APHIS) is hosting an electronic public discussion on methods that can be used to evaluate the potential of imported plants to become invasive species if they are introduced into the United States. Any interested person can register for the electronic discussion, which will allow participants to upload files and interact with other participants and with APHIS staff.

**DATES:** The electronic public discussion will be held from November 27, 2006 to January 26, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ms. Polly Lehtonen, Senior Staff Officer, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–8758.

**SUPPLEMENTARY INFORMATION:**

## Background

Under the Plant Protection Act (7 U.S.C. 7701–7772 *et seq.*), *noxious weed* is defined as: ''Any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment.'' The Plant Protection Act authorizes the Secretary of Agriculture to undertake such actions as may be necessary to prevent the introduction and spread of plant pests and noxious weeds within the United States. The Secretary has delegated this responsibility to the Administrator of the Animal and Plant Health Inspection Service (APHIS).

The regulations in 7 CFR part 360, ''Noxious Weed Regulations,'' contain restrictions on the movement of noxious weed plants or plant products listed in that part into or through the United States and interstate. To add a plant to the list of noxious weeds in part 360, or to remove a plant from that list, APHIS conducts a pest risk analysis. One part of this analysis is an evaluation of the potential of the plant to become an invasive species. (The term *invasive species* is defined by Executive Order 13112 as a species that is: (1) Non-native (or alien) to the ecosystem under consideration and (2) whose introduction causes or is likely to cause economic or environmental harm or harm to human health. The first part of this definition includes all imported plants that are not present in the United States; the second part is consistent with the definition of *noxious weed* in the Plant Protection Act, as quoted above. Accordingly, we make a determination regarding a plant's potential for invasiveness when determining whether to add the plant to the noxious weed list in part 360.) If the pest risk analysis indicates that a change should be made to the regulations, we undertake rulemaking to do so.

Since it is impossible to determine definitively whether a plant that is not present in the United States will become invasive when introduced to the United States without actually introducing the plant, APHIS uses other types of scientific information to help make judgments about whether a plant, if imported, would be likely to be invasive. Several years ago, APHIS commissioned an evaluation of the state of scientific knowledge about biological invasions and the state of our ability to reliably predict the outcome of accidental or intentional introductions of nonindigenous species. The National Research Council established the Committee on the Scientific Basis for Predicting the Invasive Potential of Nonindigenous Plants and Plant Pests in the United States to complete this evaluation. The resulting study, published in 2002, concluded that the record of a plant's invasiveness in other geographical areas is currently the most reliable predictor of the plant's ability to establish itself and become invasive when introduced into the United States.[1]

The study further concluded that there are currently no known broad scientific principles or reliable procedures for evaluating the invasive potential of plants in geographic ranges where they are not present, but that a conceptual basis for understanding invasions exists, and this conceptual basis could be developed into principles for predicting invasiveness. The study recommended that the framework APHIS uses to evaluate imported plants for potential release as forage, crops, soil reclamation, and ornamental landscaping should be expanded to include evaluation of the hazards these species might pose. The study also recommended that controlled experimental field screening for potentially invasive species be pursued for species whose features are associated with establishment and rapid spread without cultivation and whose history of introduction into the United States is unknown.

To follow up on these recommendations, we are requesting an exchange of ideas and information about methods to evaluate plants for potential invasiveness. The information will be helpful for both the APHIS noxious weed program and the revision of the nursery stock quarantine regulations in 7 CFR part 319 (§§ 319.37 through 319.37–14). (The revision of the nursery stock regulations was discussed in general terms in an advance notice of proposed rulemaking published in the **Federal Register** on December 10, 2004 [69 FR 71736–71744, Docket No. 03–069–1].) As part of the revision of the nursery stock regulations, we anticipate publishing a proposed rule at some point following this electronic discussion that will solicit public comment on establishing a category of plants whose importation is not authorized pending pest risk analysis based on other scientific evidence that indicates invasive potential. Because we would be performing pest risk analyses to remove plants from that category and

[1] The study is available for purchase through the Internet at *http://www.nap.edu/catalog/10259.html.*

either allow their importation or add them to the list of prohibited noxious weeds, we would like to ensure that our pest risk analysis process for potentially invasive plants is able to evaluate the risk posed by these plants as thoroughly and rigorously as possible.

Members of the APHIS Weed Team will participate in the electronic discussion. We will share all data and opinions offered during the discussion with other groups that are interested in methods to predict invasiveness for both plants and animals, such as the National Invasive Species Council Pathways Work Team and the North American Plant Protection Organization Invasive Species Panel.

*Questions for Discussion*

We would like participants in the electronic discussion to specifically address the following six questions, although general comments on the issue of evaluating invasiveness will be accepted as well.

1. What criteria, other than whether the plant has a history of invasiveness elsewhere, are most useful to determine the invasiveness of a plant introduced into the United States for the first time?
2. When there is little or no existing scientific literature or other information describing the invasiveness of a plant species, how much should we extrapolate from information on congeners (other species within the same genus)?
3. What specific scientific experiments should be conducted to best evaluate a plant's invasive potential? Should these experiments be conducted in a foreign area, in the United States, or both?
4. How should the results of such experiments be interpreted? Specifically, what results should be interpreted as providing conclusive information for a regulatory decision?
5. If field trials are necessary to determine the invasive potential of a plant, under what conditions should the research be conducted to prevent the escape of the plant into the environment?
6. What models or techniques are being used by the nursery industry, weed scientists, seed companies, botanical gardens, and others to screen plants that have not yet been widely introduced into the United States for invasiveness? What species have been rejected by these evaluators as a result of the use of these evaluation methods?

**Accessing the Electronic Discussion**

The electronic public discussion will be held from November 27, 2006 to January 26, 2007. We are beginning the discussion 2 weeks after this notice is published in the **Federal Register** to give participants time to consider the questions and assemble any relevant information.

While anyone can access the discussion and read the comments, registration is required in order to participate in the discussion. You will be asked to register at the time you post your comment. The discussion will be accessible through a link on Plant Protection and Quarantine's Web page for the nursery stock revision, *http://www.aphis.usda.gov/ppq/Q37/revision.html*. Participants will be required to enter their name and e-mail address. Affiliation and mailing address are optional. Only the participant names will be publicly displayed; the other information will allow us to contact you to resolve technical difficulties or request additional information or clarification. When the discussion begins, there will be a link to access the discussion itself on the nursery stock revision Web page.

The discussion will be convened using IBM Domino software, which allows participants to upload and view files as well as make posts in the discussion. The IBM Domino software supports Microsoft Internet Explorer and other major Web browsers for both Windows and Macintosh systems. Technical support will be available during the discussion. There is no cost to participate in the discussion.

Because APHIS staff will review posts as they are submitted, there may be some delay between the submission of a post and its availability in the public discussion. Multiple APHIS staff members will be monitoring the discussion, and we will try to minimize any delays.

If you wish to submit comments or other information on the topics described in this notice, but you do not wish to be part of the electronic discussion, you may send your comments via postal mail or commercial delivery to the person listed under **FOR FURTHER INFORMATION CONTACT** at the beginning of this notice.

Done in Washington, DC, this 1st day of November 2006.

**W. Ron DeHaven,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E6–18768 Filed 11–9–06; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### Domestic Sugar Program—Final 2005-Crop and Initial 2006-Crop Cane Sugar and Sugar Beet Marketing Allotments and Company Allocations

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice sets forth the final 2005-crop and initial 2006-crop cane state allotments and company allocations to sugarcane and sugar beet processors. The 2005-crop year runs from October 1, 2005, through September 30, 2006 (fiscal year (FY) 2006). The 2006-crop (FY 2007) cane state allotments and company allocations are based on an 8.750 million short tons, raw value (STRV) overall allotment quantity (OAQ) of domestic sugar. These actions apply to all domestic sugar marketed for human consumption in the United States from October 1, 2006, through September 30, 2007. Although CCC already has announced all of the information in this notice, CCC is statutorily required to publish in the **Federal Register** determinations establishing, adjusting, or suspending sugar marketing allotments.

**ADDRESSES:** Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency, USDA, 1400 Independence Avenue, SW., STOP 0516, Washington, DC 20250–0516; telephone (202) 720–4146; FAX (202) 690–1480; e-mail: *barbara.fecso@wdc.usda.gov*.

**FOR FURTHER INFORMATION CONTACT:** Barbara Fecso at (202) 720–4146.

**SUPPLEMENTARY INFORMATION:**

**Final FY 2006 State Allotments and Company Allocations**

Section 359e(b) of the Agricultural Adjustment Act of 1938, as amended, (7 U.S.C. 1359ee(b) requires the Secretary to reassign allocation to imports if it is determined that processors will be unable to market their allocations and there is no CCC inventory. In a July 27, 2006 news release, CCC announced that the agency had determined that the domestic sugar supply would be unable to fill 246,000 STRV of the OAQ and, in accordance with the statute, reassigned this deficit to imports. Hence, state allotments and company allocations were adjusted downward to reflect each company's and each state's ability to market its allocation and allotment.

The final 2005-crop (FY 2006) beet and cane sugar marketing allotments

and allocations are listed in the following table:

FY 2006 OVERALL BEET/CANE ALLOTMENTS AND ALLOCATIONS

| Distribution | FY 2006 Allotments/ allocations as of 3/22/06 | Change due to reassignments | Final FY 2006 allotments/ allocations |
|---|---|---|---|
| Beet Sugar | 4,839,725 | −63,345 | 4,776,380 |
| Cane Sugar | 3,164,275 | −182,655 | 2,981,620 |
| WTO Raw Sugar Tariff Rate Quota (TRQ) [1] | 670,000 | 75,000 | 745,000 |
| Mexico TRQ Raw or Refined | 276,000 | 0 | 276,000 |
| Refined TRQ (global first-come, first-served) | 400,000 | 109,921 | 509,921 |
| FY 2006 Non Program Imports | 0 | 61,079 | 61,079 |
| Total OAQ | 9,350,000 | 0 | 9,350,000 |
| Beet Processors' Marketing Allocations: | | | |
| Amalgamated Sugar Co | 1,158,015 | −79,225 | 1,078,790 |
| American Crystal Sugar Co | 1,731,118 | 6,000 | 1,737,118 |
| Michigan Sugar Co | 467,030 | 3,984 | 471,014 |
| Minn-Dak Farmers Co-op | 279,237 | 4,085 | 283,322 |
| So. Minn Beet Sugar Co-op | 677,756 | 2,486 | 680,242 |
| Western Sugar Co | 473,047 | 462 | 473,509 |
| Wyoming Sugar Co | 53,521 | −1,136 | 52,385 |
| Total Beet Sugar | 4,839,725 | −63,345 | 4,776,380 |
| State Cane Sugar Allotments: | | | |
| Florida | 1,445,792 | −78,164 | 1,367,628 |
| Louisiana | 1,273,054 | −76,279 | 1,196,775 |
| Texas | 180,425 | −4,095 | 176,330 |
| Hawaii | 265,003 | −24,116 | 240,887 |
| Puerto Rico | 0 | 0 | 0 |
| Total Cane Sugar | 3,164,275 | −182,655 | 2,981,620 |
| Cane Processors' Marketing Allocations: | | | |
| Florida | | | |
| Florida Crystals | 507,121 | −11,388 | 495,733 |
| Growers Co-op. of FL | 265,129 | −3,913 | 261,216 |
| U.S. Sugar Corp | 673,542 | −62,863 | 610,679 |
| Total | 1,445,792 | −78,164 | 1,367,628 |
| Louisiana | | | |
| Alma Plantation | 131,302 | −3,141 | 128,161 |
| Cajun Sugar Co-op | 124,626 | −10,892 | 113,734 |
| Cora-Texas Mfg. Co | 153,001 | −13,707 | 139,294 |
| Lafourche Sugars Corp | 73,075 | −1,527 | 71,548 |
| Louisiana Sugarcane Co-op | 94,036 | −4,036 | 90,000 |
| Lula Westfield, LLC | 168,219 | −5,177 | 163,043 |
| M.A. Patout & Sons | 345,197 | −31,152 | 314,044 |
| St. Mary Sugar Co-op | 106,250 | −2,100 | 104,150 |
| So. Louisiana Sugars Co-op | 77,347 | −4,546 | 72,801 |
| Total | 1,273,054 | −76,279 | 1,196,775 |
| Texas | | | |
| Rio Grande Valley | 180,425 | −4,095 | 176,330 |
| Hawaii | | | |
| Gay & Robinson, Inc | 54,638 | −2 | 54,636 |
| Hawaiian Commercial & Sugar Company | 210,366 | −24,115 | 186,251 |
| Total | 265,003 | −24,116 | 240,887 |

[1] 7/27/06 is for early entry FY07 raw sugar TRQ.

**Initial FY 2007 State Allotments and Company Allocations**

Section 359b(b)(1) of the Agricultural Adjustment Act of 1938, as amended, (7 U.S.C. 1359bb(b)(1) requires the Secretary to establish, by the beginning of each crop year, an appropriate allotment for the marketing by processors of sugar processed from sugar beets and from domestically produced cane sugar at a level the Secretary estimates will result in no forfeitures of sugar to CCC under the loan program. When CCC announced the 8.750 million ton OAQ for FY 2007 in July 2006, it distributed 54.35 percent of the FY 2007 OAQ (4,755,625 STRV) to the beet sugar allotment. At that time, however, CCC determined that the cane sector would be unable to fill 375,000 STRV of its allotment and, hence, withheld this amount for reassignment to imports. Consequently, of the 45.65 percent of the OAQ statutorily allotted to the cane sector (3,994,375 STRV), only 3,619,375 STRV was allotted to cane states for allocation to sugarcane

processors. Cane state allotments and processor allocations were announced by CCC on September 28, 2006.

To establish beet processor allocations, CCC applies the beet sector's allotment to fixed company allocation shares. Likewise, cane state and cane processor allocations are calculated by applying fixed shares to the cane sugar allotment. Allocation amounts will change only if CCC determines that a processor cannot fill its sugar allocation for the year and reassigns the unused allocation to other processors or if a sugarcane grower successfully transfers allocation commensurate with his production history to another processor. On September 28, 2006, CCC transferred a portion of Alma Plantation L.L.C.'s allocation to Cora Texas Manufacturing Company based on growers' petitions to transfer allocation when Alma closed its Cinclare factory.

CCC is required to limit the amount of sugarcane acreage that may be harvested in Louisiana for sugar or seed whenever marketing allotments are in effect and the quantity of sugarcane estimated to be produced in Louisiana, plus a reasonable carryover, exceeds the marketing allotment allocation for Louisiana. This limitation is referred to as a ''proportionate share,'' and is applied to each farm's sugarcane acreage base to determine the quantity of sugarcane that may be harvested on that farm. Because production is expected to be inadequate to fill Louisiana's FY 2007 allotment, CCC has determined that there will be no proportionate share restrictions for the 2006 crop year.

In FY 2004, CCC determined that Puerto Rico's processors permanently terminated operations because no sugar had been processed for two complete years. Consequently, the allocation of 6,356 STRV was permanently reassigned to the mainland cane-producing states. Hawaii received none of Puerto Rico's reassignment because it is not expected to use all of its current cane sugar allotment. A request for an allocation as a new entrant would be required for any mills in Puerto Rico to market cane sugar in the future.

The established 2006-crop (FY 2007) beet and cane sugar marketing allotments are listed in the following table:

FY 2007 OVERALL BEET/CANE ALLOTMENTS AND ALLOCATIONS

| Distribution | Initial FY 2007 allotments/ allocations | Changes due to reassignments | Adjusted initial FY 2007 allotments/ allocations |
|---|---|---|---|
| Beet Sugar | 4,755,625 | 0 | 4,755,625 |
| Cane Sugar | 3,994,375 | −375,000 | 3,619,375 |
| Reassignment to Imports | 0 | 375,000 | 375,000 |
| Total OAQ | 8,750,000 | 0 | 8,750,000 |
| Beet Processors' Marketing Allocations: | | | |
| Amalgamated Sugar Co | 990,810 | 0 | 990,810 |
| American Crystal Sugar Co | 1,828,960 | 0 | 1,828,960 |
| Michigan Sugar Co | 477,920 | 0 | 477,920 |
| Minn-Dak Farmers Co-op | 296,690 | 0 | 296,690 |
| So. Minn Beet Sugar Co-op | 624,582 | 0 | 624,582 |
| Western Sugar Co | 473,221 | 0 | 473,221 |
| Wyoming Sugar Co | 63,441 | 0 | 63,441 |
| Total Beet Sugar | 4,755,625 | 0 | 4,755,625 |
| State Cane Sugar Allotments: | | | |
| Florida | 1,975,622 | −213,359 | 1,762,263 |
| Louisiana | 1,528,365 | −143,141 | 1,385,224 |
| Texas | 171,744 | 28,680 | 200,424 |
| Hawaii | 318,644 | −47,179 | 271,465 |
| Total Cane Sugar | 3,994,375 | −375,000 | 3,619,375 |
| Cane Processors' Marketing Allocations: | | | |
| Florida | | | |
| Florida Crystals | 813,415 | −128,606 | 684,809 |
| Growers Co-op. of FL | 355,385 | −45,052 | 310,334 |
| U.S. Sugar Corp | 806,821 | −39,701 | 767,120 |
| Total | 1,975,622 | −213,359 | 1,762,263 |
| Louisiana | | | |
| Alma Plantation | 127,988 | −7,199 | 120,789 |
| Cajun Sugar Co-op | 154,543 | −28,052 | 126,491 |
| Cora-Texas Mfg. Co | 159,455 | 14,258 | 173,712 |
| Lafourche Sugars Corp | 83,245 | 115 | 83,359 |
| Louisiana Sugarcane Co-op | 117,521 | −13,867 | 103,654 |
| Lula Westfield, LLC | 180,483 | 10,756 | 191,239 |
| M.A. Patout & Sons | 429,373 | −15,647 | 413,726 |
| St. Mary Sugar Co-op | 155,667 | −43,313 | 112,354 |
| So. Louisiana Sugars Co-op | 120,091 | −60,191 | 59,900 |
| Total | 1,528,365 | −143,141 | 1,385,224 |
| Texas | | | |
| Rio Grande Valley | 171,744 | 28,680 | 200,424 |
| Hawaii | | | |
| Gay & Robinson, Inc | 73,145 | −25,618 | 47,527 |
| Hawaiian Commercial & Sugar Company | 245,499 | −21,561 | 223,938 |

FY 2007 OVERALL BEET/CANE ALLOTMENTS AND ALLOCATIONS—Continued

| Distribution | Initial FY 2007 allotments/ allocations | Changes due to reassign- ments | Adjusted initial FY 2007 allotments/ allocations |
|---|---|---|---|
| Total | 318,644 | −47,179 | 271,465 |

Signed in Washington, DC, on November 2, 2006.

**Teresa C. Lasseter,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. E6–19077 Filed 11–9–06; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Extension of Certain Timber Sale Contracts; Finding of Substantial Overriding Public Interest

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of contract extensions.

**SUMMARY:** On November 2, 2006, the Deputy Under Secretary of Agriculture for Natural Resources and Environment determined there is substantial overriding public interest in extending certain National Forest System timber sale contracts for up to one year, subject to a maximum total contract length of 10 years. Pursuant to the November 2, 2006, finding, timber sale contracts awarded prior to January 1, 2006, are eligible for extension and deferral of periodic payment due dates for up to one year. Contracts that are in breach, have been or are currently eligible to be extended under market related contract term addition contract provisions, or salvage sale contracts that were sold with the objective of harvesting deteriorating timber are not eligible for extension pursuant to the November 2, 2006, finding. To receive an extension, purchasers must make a written request to the appropriate Contracting Officer. Purchasers also must agree to release the Forest Service from all claims and liability if a contract extended pursuant to the November 2, 2006, finding is suspended, modified or terminated in the future.

The intended effect of the substantial overriding public interest finding and contract extensions is to minimize contract defaults, mill closures, and company bankruptcies. The Government benefits if defaulted timber sale contracts, mill closures, and bankruptcies can be avoided by granting extensions. Having numerous, economically viable, timber sale purchasers increases competition for National Forest System timber sales, results in higher prices paid for such timber, and allows the Forest Service to provide a continuous supply of timber to the public in accordance with Forest Service authorizing legislation. See Act of June 4, 1897 (Ch. 2, 30 Stat. 11 as amended, 16 U.S.C. 475) (Organic Administration Act). In addition, by extending contracts and avoiding defaults, closures and bankruptcies, the Government avoids the difficult, lengthy, expensive, and sometimes impossible process of collecting default damages.

**DATES:** The determination was made on November 2, 2006, by the Deputy Under Secretary of Agriculture for Natural Resources and Environment.

**FOR FURTHER INFORMATION CONTACT:** Lathrop Smith, Forest Management Staff, (202) 205–0858 or Richard Fitzgerald, Forest Management Staff (202) 205–1753; 1400 Independence Ave., SW., Mailstop 1103, Washington, DC 20250–1103.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Forest Service sells timber and forest products from National Forest System lands to individuals or companies pursuant to the National Forest Management Act of 1976, 16 U.S.C. 472a (NFMA). Each sale is formalized by execution of a contract between the purchaser and the Forest Service. The contract sets forth the explicit terms and provisions of the sale, including such matters as the estimated volume of timber to be removed, the period for removal, price to be paid to the Government, road construction and logging requirements, and environmental protection measures to be taken. The average contract period is approximately 2–3 years, although a few contracts have terms of 5 or more years.

Rules at 36 CFR 223.52 (Market Related Contract Term Additions) permit contract extensions when the Chief of the Forest Service determines that adverse wood product market conditions have resulted in a drastic decline in wood product prices. Under market-related contract addition procedures, the Forest Service refers to the following three producer price indices maintained by the Bureau of Labor Statistics: Softwood Lumber #0811 and Hardwood Lumber #0812 in the Commodity Series, and Wood Chips #PCU32113321135 in the Industry Series.

The softwood and hardwood lumber indices indicate a major downturn in those markets began about September 2004 and was still on a downward trend as of September 2006 with the softwood lumber index decreasing by about 31% and the hardwood lumber index decreasing by about 14% during this time. While most purchasers holding contracts with those indices have received or are eligible to receive market related contract term additions, an anomoly in the wood products markets and indices used in contracts in the lake States area and some other parts of the country has left many purchasers without this remedy.

Section 472a(c) of NFMA provides that the Secretary of Agriculture shall not extend any timber sale contract period with an original term of two years or more, unless the purchaser has diligently performed in accordance with an approved plan of operations or the ''substantial overriding public interest'' justifies the extension. The authority to make this determination has been delegated to the Deputy Under Secretary of Agriculture for Natural Resources and Environment at 7 CFR 2.59.

Accordingly, based on a current study, the Deputy Under Secretary has made a finding that there is a substantial overriding public interest in extending certain sales for up to one year. This determination does not apply to contracts that were previously extended or that are currently eligible to be extended under market related contract term addition provisions, to salvage sale contracts that were sold with the objective of harvesting deteriorating timber, or to timber sale contracts that are in breach. In addition to extending contracts pursuant to the Deputy Under Secretary's finding, periodic payments will be deferred for up to one year on the extended sales. To receive an extension and periodic payment deferral, purchasers must make a

written request to the appropriate Contracting Officer. Purchasers must also agree to release the Forest Service from all claims and liability if a contract is suspended, modified or terminated, after the contract is extended pursuant to the Deputy Under Secretary's November 2, 2006 finding. The text of the finding, as signed by the Deputy Under Secretary of Agriculture for Natural Resources and Environment is set out at the end of this notice.

Dated: November 6, 2006.

**Frederick Norbury,**

*Associate Deputy Chief for NFS.*

**Determination of Substantial Overriding Public Interest for Extending Certain Timber Sale Contracts**

The National Forest Management Act of 1976 (16 U.S.C. 472a(c) provides that the Secretary of Agriculture shall not extend any timber sale contract period with an original term of two years or more unless he finds that the purchaser has diligently performed in accordance with an approved plan of operations or that the ''substantial overriding public interest'' justifies the extension.

As a result of drastic reductions in forest product prices, there is a substantial overriding public interest in extending certain timber sale contracts.

**Background**

On December 7, 1990, the Forest Service published a final rule (55 FR 50643) establishing procedures in 36 CFR 223.52 for extending contract termination dates in response to adverse conditions in the timber markets. These procedures, known as Market Related Contract Term Additions, authorize extensions of timber sale contracts up to one additional year when qualifying market conditions are met. When the market related contract term addition procedures were established, experience indicated that the type and magnitude of lumber market declines that would trigger market related contract term additions generally coincide with low numbers of housing starts and are usually indicative of substantial economic dislocation in the wood products industry. Such economic distress broadly affects community stability, the ability of industry to supply construction lumber and other products for public use, and threatens maintaining plant capacity necessary to meet future demands for wood products from domestic sources. The Department has determined that a drastic reduction in wood product prices can result in a substantial overriding public interest sufficient to justify a contract term extension for existing contracts, as authorized by the National Forest Management Act of 1976 (16 U.S.C. 472a(c)) and existing regulations at 36 CFR 223.115(b).

Following promulgation of the rule in 1990, the Forest Service began tracking four producer price indices provided by the Bureau of Labor Statistics as indicators of a drastic reduction in wood product prices. Those indices were the Southern Pine Dressed, Douglas-fir Dressed, Other Species Dressed, and Hardwood Lumber. Beginning in the first quarter of 1994 through the first quarter of 1996 government indices indicated a major downturn in the lumber markets throughout the country was occurring but only the Douglas-fir dressed lumber index, used in contracts in Washington and Oregon, dropped sufficiently to trigger market related contract term additions. Meanwhile, purchasers in other parts of the country were facing defaults, mill closures, and bankruptcies, but were not eligible for market related contract term additions. To avert these problems, the Chief of the Forest Service determined that it was in the substantial overriding public interest to extend for a period of up to one year certain contracts that had not received any market related contract term adjustments. The Forest Service also initiated a study of the market related contract term addition procedures and indices to determine why they did not appear to perform as expected. Findings in that study led the Forest Service to adopt four different producer price indices from the Bureau of Labor Statistics in May 1998; 1) Hardwood Lumber (SIC 24211), 2) Eastern Softwood Lumber (SIC 24213), 3) Western Softwood Lumber (SIC 24214), and 4) Wood Chips (SIC 24215). However, after December 2003, the Bureau of Labor Statistics discontinued publishing the Western Softwood Lumber index (SIC 24214), Eastern Softwood Lumber index (SIC 24213), and Hardwood Lumber index (SIC 24211). At the same time the Wood Chips index (SIC 24215) was renumbered as PCU32113321135. In January 2006, the Forest Service published a notice in the **Federal Register** (71 FR 3409) adopting the softwood lumber index 0811 and the hardwood lumber index 0812 to replace the 3 indices that were no longer supported by the Bureau of Labor Statistics. The Forest Service continued to rely upon the Wood Chips index, now numbered PCU32113321135, to gauge certain market conditions. The three indices the Forest Service adopted to gauge most market conditions, however, are not able to address market conditions for all forest products *e.g.* biomass. Additionally, because the indices are national in scope, they may fail to address drastic declines in local markets.

**Recent Market Conditions**

The softwood lumber index #0811 began declining after September 2004 and with adjustments for inflation has declined 47.9 points or 31% as of September 2006. There have been five consecutive quarters beginning with the third quarter 2005 through the third quarter 2006 where the quarterly declines have been large enough to trigger market related contract term additions. This is a substantially larger decline than the one in the period between 1994–1996 when the index declined about 38 points or 21%. The 1994–1996 period also was the last time there were 5 consecutive qualifying quarters for market related contract term additions.

The hardwood lumber index #0812 also began declining after September 2004, and with adjustments for inflation has declined 18.6 points or 14% as of September 2006. There were 3 consecutive quarters beginning with the third quarter 2005 through the first quarter 2006 where the quarterly declines have been large enough to trigger market related contract term additions equal to one calendar year plus one normal operating season. The index has continued to decline in the second and third quarters of 2006, but the decline has not been sufficient to trigger market related contract term additions. Consequently, if hardwood prices do not begin to recover soon, or if conditions for another market related contract term addition do not trigger, some hardwood purchasers may begin to face additional hardships as the market related contract term addition time they previously obtained expires.

Between September 2004 and January 2006, the wood chips index remained fairly static but has been on a steady rise since then. The last time the wood chips index had a qualifying quarter was the third quarter of 1997.

At this time, the market related contract term addition procedures on softwood lumber and hardwood lumber sales are generally functioning as expected. Additional contract time that has been made available, and granted to purchasers who requested it, has assisted purchasers by allowing more time to wait for markets to recover or to spread out harvesting of high priced sales. But as was the case in 1996, there are exceptions.

For example, in the lake states area, a combination of factors has contributed to a more drastic decline in forest product prices than is occurring in other parts of the country and/or the producer price indices are not triggering market related contract term adjustments. The predominant forest products produced in this area are wood chips used in pulping for paper and oriented strand board (OSB), hardwood lumber, and a limited amount of softwood lumber. The pulp and OSB sales use the wood chips index which has not had a qualifying quarter for market related contract term additions since 1997. National Forest System timber sales in the lake states area often contain a diverse mix of forest products which attracts strong competition leading to relatively high bid rates. Problems began in 2005, when wood chip prices and demand declined sharply in response largely to an increase in cheap imported chips.

Also, OSB is a building product with prices that tend to follow lumber market prices. While lumber market prices have declined significantly and the market related contract term addition policy has been triggered for contracts tied to the lumber indices, no such trigger has occurred for many of the sales in the lake states area. That is because most contracts in the lake states area are tied to the wood chips index, which has not declined, so those purchasers have not been eligible for market related contract term additions. Concurrently, lake states area pulp prices have been declining, but since national wood chip prices have been stable or increasing, those purchasers have not been eligible for market related contract term additions. Due to their location along the great lakes and Canadian border, competition from cheaper imported wood chips has also adversely affected purchasers in this area. As

a result of these factors, purchasers in the lake states area are now faced with high bid prices on their existing contracts, low product prices, and no market related contract term addition to provide additional time for markets to recover or to mix the higher priced timber with lower priced timber for other sources. The market related contract term addition procedures do not appear to be functioning as expected here.

In another example the sale of biomass material has been increasing in recent years with most of that material utilized for generating electricity in co-generation facilities. A reliable index for tracking this new product has not been found so most sales of biomass material also use the wood chips index. But, energy prices can differ substantially in different parts of the country and don't necessarily follow the wood chips index. Consequently, in areas where energy prices have drastically declined and purchasers are holding high price timber sale contracts, they are not currently eligible to receive a market related contract term addition because the wood chips index has not triggered.

**Determination of Substantial Overriding Public Interest**

The Government benefits if defaulted timber sale contracts, mill closures, and bankruptcies can be avoided by granting extensions. Having numerous, economically viable, timber sale purchasers increases competition for National Forest System timber sales, results in higher prices paid for such timber, and allows the Forest Service to provide a continuous supply of timber to the public in accordance with the Organic Administration Act. In addition, by extending contracts and avoiding defaults, closures and bankruptcies, the Government avoids the difficult, lengthy, expensive, and sometimes impossible, process of collecting default damages.

Therefore, pursuant to 16 U.S.C. 472a, and the authority delegated to me at 7 CFR 2.59, I have determined that it is in the substantial overriding public interest to extend for up to one year certain National Forest System timber sales that were awarded prior to January 1, 2006. This finding does not apply to contracts that have been or are currently eligible to be extended under market related contract term addition contract provisions, to salvage sale contracts that were sold with the objective of harvesting deteriorating timber, or to contracts that are in breach. Total contract length shall not exceed 10 years as a result of this extension. For those contracts extended pursuant to this finding, periodic payments due after the date of this determination will also be deferred for up to one year. To receive the extension and periodic payment deferral, purchasers must make written request and agree to release the Forest Service from all claims and liability if a contract extended pursuant to this finding is suspended, modified or terminated in the future.

Dated: November 2, 2006.

**David P. Tenny**

*Deputy Under Secretary of Agriculture for Natural Resources and Environment.*

[FR Doc. E6–19102 Filed 11–9–06; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### U.S. Forest Service Open Space Conservation Strategy and Implementation Plan

**AGENCY:** Forest Service, USDA.

**ACTION:** Request for public input.

**SUMMARY:** The Forest Service is inviting all interested members of the public to provide input into the development of the USDA Forest Service Open Space Conservation Strategy and Implementation Plan, which will help shape the agency's strategic role in a national effort to conserve open space. The Forest Service is interested in addressing the effects of the loss of open space on private forests; on the National Forests and Grasslands and surrounding landscape; and on forests in cities, suburbs, and towns. Input for the Strategy and Implementation Plan should focus on programs, research, partnerships, and/or policy recommendations that could be developed to conserve open space. See **SUPPLEMENTARY INFORMATION** section for more background on the loss of open space and the Strategy and Implementation Plan.

**DATES:** The Forest Service will review public input received no later than December 13, 2006.

**ADDRESSES:** Send written comments to Claire Harper, USDA Forest Service, Cooperative Forestry, Mail Stop Code 1123, 1400 Independence Avenue, SW., Washington, DC 20250–1123; via electronic mail to *openspace@fs.fed.us;* or via facsimile to (202) 205–1271. The agency cannot confirm receipt of comments. All comments, including names and addresses when provided, are placed in the record and are available for public inspection. The public may inspect comments during regular business hours at the office of the Cooperative Forestry Staff, 4th Floor SE., Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to (202) 205–1389 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** For general information about the Open Space Conservation Strategy and Implementation Plan and the loss of open space, contact Claire Harper, USDA Forest Service, Cooperative Forestry, by telephone at (202) 205–1389 or by electronic mail at *openspace@fs.fed.us.* For a summary of the Forest Service's current research, programs, and resources available to facilitate open space conservation, please review the Forest Service's publication entitled ''Cooperating Across Boundaries: Partnerships to Conserve Open Space in Rural America.'' Electronic copies of this publication are available at *http://www.fs.fed.us/projects/four-threats/documents/cooperatingacrossboundaries.pdf,* and hardcopies are available by contacting Claire Harper at *openspace@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In 2003, Forest Service Chief Dale Bosworth identified the loss of open space as one of four great threats facing our nation's forests and grasslands. Loss of open space is an issue that affects the sustainability of both the National Forests and Grasslands and private forests. Open space—including public and private land, wilderness and working land—provides a multitude of public benefits and ecosystem services we all need and enjoy. Three interrelated trends of conversion, fragmentation, and parcelization are jeopardizing the long term health and function of forests, limiting management options, and reducing opportunities for public enjoyment and use. To address the loss of open space threat, the Forest Service is building a national strategy to identify how the agency plans to focus its efforts on the issue. This strategy will provide actions and policy recommendations to conserve open space, with an emphasis on partnerships and collaborative approaches.

**II. Open Space Conservation Strategy and Implementation Plan**

The Forest Service recognizes that it is not the only contributor to open space conservation; it is only one among many. The Forest Service also acknowledges that the agency's role in open space conservation is not to regulate development or land use, but is to provide expertise, resources, information, and programs. To help prioritize and focus the agency's efforts, the Forest Service plans to develop and refine an Open Space Conservation Strategy and Implementation Plan to address the loss of open space.

Input for the Strategy and Implementation Plan should focus on programs, research, partnerships and/or policy recommendations that could be

developed to conserve open space. Specifically, input regarding the following three questions is most useful:

1. How can the Forest Service protect land from conversion to other uses;

2. How can the Forest Service assist private landowners and communities in maintaining and managing their land as sustainable forests and grasslands; and

3. How can the Forest Service mitigate the impacts of existing and new developments.

By receiving input from people with diverse interests and perspectives, the agency hopes to attain an array of viewpoints and ideas regarding the Open Space Conservation Strategy and Implementation Plan. Feedback from a range of interested individuals will assist the agency in developing a well-informed, focused, and effective strategy to address the loss of open space threat.

Dated: November 2, 2006.

**Dale N. Bosworth,**

*Chief, Forest Service.*

[FR Doc. E6–19060 Filed 11–9–06; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–428–815]**

### Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation of Order In Part: Certain Corrosion–Resistant Carbon Steel Flat Products from Germany

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On October 13, 2006, the U.S. Department of Commerce (''the Department'') published a notice of preliminary results of changed circumstances reviews with the intent to revoke, in part, the antidumping duty order on certain corrosion–resistant carbon steel flat products (''corrosion–resistant steel'') from Germany, as described below. *See Preliminary Results of Antidumping Duty Changed Circumstances Reviews And Notice of Intent to Revoke Order in Part: Certain Corrosion–Resistant Carbon Steel Flat Products from Germany*, 71 FR 60473 (October 13, 2006) (*Preliminary Results*). In our *Preliminary Results*, the Department invited interested parties to comment on the preliminary determination to exclude certain corrosion–resistant carbon steel flat products from Germany (''product in question''), as described below, from the scope of the order. The Department received no comments.

Absent any comments, the Department concludes that producers accounting for substantially all of the production of the domestic like product to which this order pertains lack interest in the relief provided by this order with respect to the product in question because the domestic parties: (1) Made affirmative statements of no interest in the continuation of the order with respect to the product in question; and (2) did not comment on the *Preliminary Results*, in which the Department stated its intent to revoke the order with respect to that merchandise. Therefore, the Department concludes that it is appropriate to revoke this order, in part, with respect to unliquidated entries of the product in question that are not subject to the final results of an administrative review.

**EFFECTIVE DATE:** November 13, 2006.

**FOR FURTHER INFORMATION CONTACT:** Judy Lao or Richard Weible, 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- 7924 or (202) 482–1103, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Department published the antidumping duty order on corrosion–resistant steel from Germany on August 19, 1993. *See Notice of Antidumping Duty Order: Corrosion–Resistant Carbon Steel Flat Products from Germany*, 58 FR 44170 (August 19, 1993). *See also Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews and Revocation of Orders in Part: Certain Corrosion–Resistant Carbon Steel Flat Products from Germany*, 64 FR 51292 (September 22, 1999), and *Final Results of Changed Circumstances Antidumping and Countervailing Duty Reviews and Revocation of Orders in Part: Certain Corrosion–Resistant Carbon Steel Flat Products from Canada and Germany*, 71 FR 14498 (March 22, 2006).

On August 17, 2006, ThyssenKrupp Steel North America, Inc. (''ThyssenKrupp''), a U.S. importer of the subject merchandise, requested a changed circumstances review to exclude from the antidumping duty order on corrosion–resistant steel from Germany imports meeting the following description: electrolytically zinc coated flat steel products, with a coating mass between 35 and 72 grams per meter squared on each side; with a thickness range of 0.67 mm or more but not more than 2.95 mm and width 817 mm or more but not over 1830 mm; having the following chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.25, manganese not over 0.9, phosphorous not over 0.025, sulfur not over 0.012, chromium not over 0.1, titanium not over 0.005 and niobium not over 0.05; with a minimum yield strength of 310 Mpa and a minimum tensile strength of 390 Mpa; additionally coated on one or both sides with an organic coating containing not less than 30% and not more than 60% zinc and free of hexavalent chrome. See ThyssenKrupp letter to the Department dated August 17, 2006.[1] In addition, Mittal Steel USA (''Mittal Steel''), a major domestic corrosion–resistant steel producer, submitted a letter to the Department expressing a lack of interest in continuing to have the product in question subject to this antidumping duty order.[2] *See* Mittal Steel letter to the Department dated August 18, 2006.

In response to the request made by the ''interested party'' within the meaning of section 771(9) of the Tariff Act of 1930, as amended (''the Act''), ThyssenKrupp, and the expressed lack of interest from Mittal Steel, the Department published a notice of initiation of a changed circumstances review of the antidumping duty order on corrosion–resistant steel from Germany on September 12, 2006. *See Initiation of Antidumping Duty Changed Circumstances Review: Certain Corrosion–Resistant Carbon Steel Flat Products from Germany*, 71 FR 53653 (September 12, 2006) (*Initiation Notice*). On September 27, 2006, ThyssenKrupp stated that the effective date for the exclusion should be August 1, 2005. In the *Initiation Notice*, the Department indicated that interested parties could submit comments for consideration in the Department's preliminary results no later than 15 days after publication of the initiation of this review. The Department did not receive comments from interested parties. Absent any comments, the Department

[1] DaimlerChrylser Corporation (''DaimlerChrysler''), a domestic customer of corrosion-resistant steel, also submitted letters to the Department pre-dating ThyssenKrupp's request, indicating that it had contacted United States Steel Corporation, Mittal Steel, AK Steel, and Nucor Corporation, (domestic interested parties) and determined they are not interested in maintaining the antidumping duty order with respect to the product in question. *See* Letters to the Department from DaimlerChrysler dated June 22, 2006, and July 18, 2006, respectively.

[2] On September 26, 2006, Mittal Steel submitted a letter to the Department clarifying minor discrepancies in its August 18, 2006, submission regarding the product specifications of the product in question it is no longer interested in having covered by the antidumping duty order on corrosion-resistant steel from Germany.

preliminarily concluded that producers accounting for substantially all of the production of the domestic like product to which these orders pertain lacked interest in the relief provided by these orders with respect to the product in question. *See Preliminary Results*, 71 FR 60473 (October 13, 2006). The Department invited interested parties to comment on its preliminary determination to revoke the order, in part. The Department did not receive comments from any interested parties.

**Scope of the Order**

The products covered by this order are corrosion–resistant carbon steel flat products from Germany. This scope includes 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 millimeters, 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 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) 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, 7217.90.5090. Included in this order are flat–rolled products of non–rectangular 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 this 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 this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat–rolled products, which are three–layered corrosion–resistant carbon steel flat–rolled products less than 4.75 millimeters 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. Also excluded from this order are deep–drawing carbon steel strip, roll–clad on both sides with aluminum (AlSi) foils in accordance with St3 LG as to EN 10139/10140. The merchandise's chemical composition encompasses a corrosion–resistant material of U St 23 (continuous casting) in which carbon is less than 0.08; manganese is less than 0.30; phosphorous is less than 0.20; sulfur is less than 0.015; aluminum is less than 0.01; and the cladding material is a minimum of 99% aluminum with silicon/copper/iron of less than 1%. The products are in strips with thicknesses of 0.07mm to 4.0mm (inclusive) and widths of 5mm to 800mm (inclusive). The thickness ratio of aluminum on either side of steel may range from 3%/94%/3% to 10%/80%/10%. Also excluded from this order is corrosion–resistant steel meeting the following description: certain flat–rolled wear plate ranging from 30 inches to 50 inches in width, from 45 inches to 110 inches in length and from 0.187 inch to 0.875 inch in total thickness, having a layer on one side composed principally of a combination of boron carbides, chromium carbides, nickel carbides, silicon carbides, manganese carbides, niobium carbides, iron carbides, tungsten carbides, vanadium carbides, titanium carbides and/or molybdenum carbides fused to a non–alloy flat–rolled steel substrate. The carbides are in the form of $M_xC_x$ where ''M'' stands for the metal and ''x'' for the atomic ratio. An example of a common carbide would be ($Cr_7C_3$). The carbide layer is a visually distinct layer ranging in thickness from 0.062 inch to 0.312 inch with hardness at the surface of the carbide layer in excess of 55 HRC.

As a result of this current changed circumstances review, also excluded from the scope of this order is certain corrosion–resistant carbon steel from Germany, meeting the following description: electrolytically zinc coated flat steel products, with a coating mass between 35 and 72 grams per meter squared on each side; with a thickness range of 0.67 mm or more but not more than 2.95 mm and width 817 mm or more but not over 1830 mm; having the following chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.25, manganese not over 0.9, phosphorous not over 0.025, sulfur not over 0.012, chromium not over 0.1, titanium not over 0.005 and niobium not over 0.05; with a minimum yield strength of 310 Mpa and a minimum tensile strength of 390 Mpa; additionally coated on one or both sides with an organic coating containing not less than 30 percent and not more than 60 percent zinc and free of hexavalent chrome.

The HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

**Final Result of Review and Revocation of Antidumping Duty Order, In Part**

Pursuant to sections 751(d)(1) and 782(h)(2) of the Act, the Department may revoke an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review.

In the instant review, based on the information provided by ThyssenKrupp and Mittal Steel, and the lack of comments from domestic interested parties, the Department preliminarily found that the continued relief provided by the order with respect to the product in question from Germany is no longer of interest to the domestic industry. We did not receive any comments on our *Preliminary Results*. Therefore, the Department is revoking the order on corrosion–resistant steel from Germany with regard to the products that meet the specifications detailed above.

We will instruct U.S. Customs and Border Protection (CBP) to liquidate without regard to antidumping duties, and to refund any estimated antidumping duties collected on all unliquidated entries of the product in question that are not covered by the final results of an administrative review or automatic liquidation. The most recent period for which the Department has completed an administrative review, or ordered automatic liquidation, is August 1, 2004, through July 31, 2005. Any prior entries are subject to either the final results of review or automatic liquidation. Therefore, we will instruct

CBP to liquidate, without regard to antidumping duties, shipments of corrosion–resistant steel meeting the specifications of the product in question entered, or withdrawn from warehouse, for consumption on or after August 1, 2005. We will also instruct CBP to pay interest on such refunds in accordance with section 778 of the Act and 19 CFR 351.222(g)(4).

This changed circumstance review, partial revocation of antidumping duty order, and notice are in accordance with sections 751(b) and (d), 782(h) and 777(i)(1) of the Act and section 351.216(e) and 351.222(g)(3)(vii) of the Department's regulations.

Dated: November 6, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6–19109 Filed 11–9–06; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–863]**

### Honey from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review and New Shipper Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** November 13, 2006.

**FOR FURTHER INFORMATION CONTACT:** Helen Kramer or Judy Lao, 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: 202–482–0405 and 202–482–7924, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On January 31, 2006, the Department of Commerce (''the Department'') published the initiation of its new shipper antidumping duty reviews of honey from the People's Republic of China (''PRC'') for four companies, covering the period of December 1, 2004, through November 30, 2005. *See Honey from the People's Republic of China: Notice of Initiation of New Shipper Antidumping Duty Reviews*, 71 FR 5051 (January 31, 2006). On February 1, 2006, the Department published the initiation of the administrative review of the antidumping duty order on honey from the PRC covering the period December 1, 2004, through November 30, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Review and Request for Revocation in Part*, 71 FR 5241 (February 1, 2006). On July 3, 2006, the Department extended the preliminary results for the new shipper review by 120 days. *See Honey from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the New Shipper Review*, 71 FR 37904 (July 3, 2006). On July 12, 2006, Tianjin Eulia Honey Co., Ltd., one of the new shipper companies in this proceeding, withdrew its request for a new shipper review. The Department rescinded the review for Tianjin Eulia Honey Co., Ltd. on July 31, 2006. *See Honey from the People's Republic of China: Notice of Rescission of Antidumping Duty New Shipper Review*, 71 FR 43110 (July 31, 2006). On August 16, 2006, the Department extended the preliminary results for the administrative review by 80 days. *See Honey from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 71 FR 47170 (August 16, 2006). The preliminary results for the new shipper reviews and the administrative review are currently due no later than November 21, 2006.

On October 25, 2006, the Department received a letter from counsel to Inner Mongolia Altin Bee–Keeping Co., Ltd., Dongtai Peak Honey Industry Co., Ltd, and Qinhuangdao Municipal Dafeng Industrial Co., Ltd. agreeing to waive the new shipper time limits in accordance with 19 CFR § 351.214(j)(3). Therefore, in accordance with 19 CFR § 351.214(j)(3), on October 25, 2006, the Department acknowledged respondents' waiver of the new shipper review time limits and aligned the new shipper reviews with the administrative review. *See* Department's Memo to All Interested Parties dated October 25, 2006, in which the Department acknowledged that all three remaining new shipper companies waived the new shipper time limits, and the Department aligned the current new shipper reviews with the current administrative review.

#### Extension of Time Limit for Preliminary Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. *See* section 751(a)(3)(A) of the Act.

Completion of the preliminary results for the administrative review within the 245-day period is not practicable. The administrative review and new shipper review cover six companies involving complex issues regarding surrogate values. The Department is also required to gather and analyze a significant amount of information pertaining to each company's sales and production processes. Additionally, the Department only recently received information on appropriate surrogate values from both respondents and petitioners. *See* Submission from Petitioners re: Surrogate Values for the Factors of Production in the 8th New Shipper Administrative Review of the Antidumping Duty Order for Honey from the PRC, dated September 22, 2006; *see also* Submission from Respondents regarding Surrogate Values, dated September 20, 2006; *see also* Rebuttal Comments from Petitioners and Respondents on Proposed Surrogate Value Data, dated October 10, 2006, and October 12, 2006, respectively. The Department requires further time to review the data contained in these submissions for consideration in the preliminary results of these new shipper and administrative reviews. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the preliminary results of this review by 30 days, until December 21, 2006.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: November 3, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E6–19113 Filed 11–9–06; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–507–601]**

### Certain In–shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On July 7, 2006, the Department of Commerce (the

Department) published the preliminary results in the countervailing duty (CVD) administrative review of certain in–shell roasted pistachios from Iran. The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Based on information received since the preliminary results and our analysis of the comments received, the Department has not revised the net subsidy rate for Tehran Negah Nima Trading Company, Inc., trading as Nima Trading Company (Nima), the respondent company in this proceeding. The final net subsidy rate for the reviewed company is listed below in the section entitled ''Final Results of Review.''

**EFFECTIVE DATE:** November 13, 2006.

**FOR FURTHER INFORMATION CONTACT:** Darla Brown, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

**SUPPLEMENTARY INFORMATION:**

## Background

On July 7, 2006, the Department published in the **Federal Register** the preliminary results in the CVD review of certain in–shell roasted pistachios from Iran. *See Certain In–shell Roasted Pistachios from the Islamic Republic of Iran: Preliminary Results of Countervailing Duty Administrative Review*, 71 FR 38622 (July 7, 2006) (*Preliminary Results*). We invited interested parties to comment on these results. Since the preliminary results, we received case briefs from petitioner[1] and from a domestic interested party[2] on August 7, 2006. Neither Nima nor the Government of Iran (GOI) submitted a case or rebuttal brief.

In accordance with 19 CFR 351.213(b), this administrative review covers only those producers or exporters for which a review was specifically requested. Accordingly, this administrative review covers Nima for the period of review (POR) January 1, 2004, through December 31, 2004.

## Scope of the Order

The product covered by this order is all roasted in–shell pistachio nuts, whether roasted in Iran or elsewhere, from which the hull has been removed, leaving the inner hard shells and the edible meat, as currently classifiable in the *Harmonized Tariff Schedule of the United States (HTSUS)* under item number 0802.50.20.00. The written description of the scope of this proceeding is dispositive.

## Analysis of Comments Received

For a discussion of the programs and the issues raised in the briefs by parties to this review, *see* the ''Issues and Decision Memorandum'' from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, concerning the ''Final Results of Countervailing Duty Administrative Review: Certain In–shell Roasted Pistachios from the Islamic Republic of Iran'' (Decision Memorandum) dated November 6, 2006, which is hereby adopted by this notice. A listing of the issues that parties raised and to which we have responded, included in the Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of the issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit (CRU), room B–099 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memorandum are identical in content.

## Use of Facts Available

The Department has concluded that the GOI and Nima did not act to the best of their abilities in providing responses to the Department, in accordance with sections 776(a) and 776(b) of the Act. Specifically, neither the GOI nor Nima submitted questionnaire responses to the Department. By failing to respond to our questionnaire, Nima and the GOI have failed to provide information regarding subsidy programs in Iran, and regarding Nima's sales, in the manner explicitly requested by the Department. Therefore, we must resort to the facts otherwise available pursuant to section 776(a) of the Act. Furthermore, in selecting from among the facts available, the Department has determined that an adverse inference is warranted, pursuant to section 776(b) of the Act because, despite the Department's efforts, Nima and the GOI did not respond to our questionnaire and requests for information.

In the instant case, the Department is relying on information from *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Roasted In–Shell Pistachios from Iran*, 51 FR 35679 (October 7, 1986) (*Roasted Pistachios*); *Certain In–Shell Pistachios and Certain Roasted In–Shell Pistachios from the Islamic Republic of Iran: Final Results of New Shipper Countervailing Duty Reviews*, 68 FR 4997 (January 31, 2003) (*Pistachios New Shipper Reviews*); and *Certain In–shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review*, 71 FR 27682 (May 12, 2006) (*2003 Roasted Pistachios*).

If the Department relies on secondary information (*e.g.*, data from a petition) as facts available, section 776(c) of the Act provides that the Department shall, ''to the extent practicable,'' corroborate such information using independent sources reasonably at its disposal.[3] The SAA further provides that to corroborate secondary information means that the Department will satisfy itself that the secondary information to be used has probative value. *See* also 19 CFR 351.308(d) (describing the corroboration of secondary information).

Thus, in those instances in which it determines to apply adverse facts available, the Department, in order to satisfy itself that such information has probative value, will examine, to the extent practicable, the reliability and relevance of the information used. With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company–specific benefits resulting from countervailable subsidy programs. The only source for such information normally is administrative determinations. In the instant case, no evidence has been presented or obtained which contradicts the reliability of the evidence relied upon in previous segments of this proceeding.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render benefit data not relevant. Where circumstances indicate that the information is not appropriate as adverse facts available, the Department will not use it. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996). In the instant case, no evidence has been presented or

[1] The California Pistachio Commission (CPC) and its members.

[2] Cal Pure Pistachios, Inc. (Cal Pure).

[3] The Statement of Administrative Action accompanying the URAA clarifies that information from the petition is ''secondary information.'' *See* Statement of Administrative Action, URAA, H. Doc. No. 316, Vol. 1, 103d Cong. (1994) (SAA) at 870.

obtained which contradicts the relevance of the benefit data relied upon in previous segments of this proceeding. Thus, in the instant case, the Department finds that the information used has been corroborated to the extent practicable.

For further discussion, *see* the ''Use of Facts Available'' section of the Decision Memorandum.

**Final Results of Review**

In accordance with sections 777A(e)(1) and 751(a)(1)(A) of the Act and 19 CFR 351.221(b)(5), we calculated an *ad valorem* subsidy rate for Nima, the only producer/exporter subject to this review, for the POR, calendar year 2004.

| Producer/Exporter | Net Subsidy Rate |
|---|---|
| Tehran Negah Nima Trading Company, Inc., trading as Nima Trading Company (Nima) | 66.50 percent *ad valorem* |

As Nima is the exporter but not the producer of subject merchandise, the Department's final results of review apply only to subject merchandise exported by Nima and produced by any company which produces the subject merchandise. *See* 19 CFR 351.107(b) (providing that the Department may establish a combination rate for each combination of exporter and its supplying producer).

Therefore, we will issue the following cash deposit requirements, within 15 days of publication of the final results of the instant review, for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication: (1) for merchandise exported by Nima, the cash deposit rate will be 66.50 percent *ad valorem*, *i.e.*, the rate calculated in the final results of the instant administrative review; (2) if the exporter is not a firm covered in this review, a prior review, or the original CVD investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; and (3) if neither the exporter nor the producer is a firm covered in this review, a prior review, or the original investigation, the cash deposit rate will continue to be 317.89 percent *ad valorem*, the ''All Others'' rate from the final determination in the original investigation. We will also issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results of review.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with sections 751(a)(1), 751(a)(3) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: November 6, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

**Appendix I - Issues and Decision Memorandum**

I. Methodology and Background Information

Use of Facts Available≤

II. Analysis of Programs

*Programs Determined to Be Countervailable*

1. Provision of Fertilizer and Machinery
2. Provision of Credit
3. Tax Exemptions
4. Provision of Water and Irrigation Equipment
5. Technical Support
6. Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Export Goods
7. Program to Improve Quality of Exports of Dried Fruit
8. Iranian Export Guarantee Fund
9. GOI Grants and Loans to Pistachio Farmers
10. Crop Insurance for Pistachios

III. Total Ad Valorem Rate

IV. Analysis of Comments

Comment 1: Adverse Facts Available Rate

Comment 2: Additional Subsidy Programs

[FR Doc. E6–19108 Filed 11–9–06; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Notice of Scope Rulings

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** November 13, 2006.

**SUMMARY:** The Department of Commerce (the Department) hereby publishes a list of scope rulings completed between July 1, 2006, and September 30, 2006. In conjunction with this list, the Department is also publishing a list of requests for scope rulings and anticircumvention determinations pending as of September 30, 2006. We intend to publish future lists after the close of the next calendar quarter.

**FOR FURTHER INFORMATION CONTACT:** Alice Gibbons, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0498.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department's regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings on a quarterly basis. *See* 19 CFR 351.225(o). Our most recent ''Notice of Scope Rulings'' was published on July 28, 2006. *See* 71 FR 42807. The instant notice covers all scope rulings and anticircumvention determinations completed by Import Administration between July 1, 2006, and September 30, 2006, inclusive. It also lists any scope or anticircumvention inquiries pending as of September 30, 2006, as well as scope rulings inadvertently omitted from prior published lists. As described below, subsequent lists will follow after the close of each calendar quarter.

**Scope Rulings Completed Between July 1, 2006 and September 30, 2006:**

People's Republic of China

*A–570–502: Iron Construction Castings from the People's Republic of China*

Requestor: Unisource International, Inc.; its Polycast Series 700 Frame and Grate are not within the scope of the antidumping duty order; August 8, 2006.

*A–570–504: Petroleum Wax Candles from the People's Republic of China*

Requestor: Atico International, Inc.; its ''Christmas Stocking Tealight,'' ''Halloween Novelty Ghost,'' ''Halloween Novelty JOL,'' and ''Halloween Novelty Frankenstein'' candles are within the scope of the antidumping duty order; its ''Halloween Novelty Pumpkin,'' ''Halloween Bloody Skull,'' ''Halloween Novelty Tombstone,'' ''Halloween Witch Shoe,'' and ''Santas Boot'' candles are not within the scope of the antidumping duty order; July 6, 2006.

*A–570–504: Petroleum Wax Candles from the People's Republic of China*

Requestor: Freight Expediters; its ''Small Artichoke'' and ''Large Artichoke,'' ''Small Pinecone'' and ''Large Pinecone,'' ''Cabbage'' and ''Radishes'' candles are not within the scope of the antidumping duty order; July 21, 2006.

*A–570–504: Petroleum Wax Candles from the People's Republic of China*

Requestor: Kohl's Department Stores; its ''Santa Head'' candle, style no. L50050, is within the scope of the antidumping duty order; August 28, 2006.

*A–570–504: Petroleum Wax Candles from the People's Republic of China*

Requestor: Kohl's Department Stores; its ''Berry Ball Candle,'' style no. X5478, is within the scope of the antidumping duty order; September 5, 2006.

*A–570–803: Heavy Forged Hand Tools, With or Without Handles, from the People's Republic of China*

Requestor: Central Purchasing Co.; its gooseneck, claw and wrecking bars are not within the scope of the antidumping duty order; July 27, 2006.

*A–570–890: Wooden Bedroom Furniture from the People's Republic of China*

Requestor: Dorel Asia SrL; its infant (baby) changing tables with drawers or doors are within the scope of the antidumping duty order; its infant (baby) changing tables with no drawers or doors and with the flat top surface surrounded by a permanent guard rail, and its toddler beds are not within the scope of the antidumping duty order; August 11, 2006.

*A–570–890: Wooden Bedroom Furniture from the People's Republic of China*

Requestor: Drexel Heritage; its bathroom vanity is within the scope of the antidumping duty order; September 5, 2006.

**Anticircumvention Determinations Completed Between July 1, 2006 and September 30, 2006:**

People's Republic of China

*A–570–504: Petroleum Wax Candles from the People's Republic of China*

Requestor: National Candles Association; candles composed of petroleum wax and over fifty percent or more palm and/or other vegetable oil–based waxes are later–developed merchandise circumventing the antidumping duty order; September 29, 2006.

**Scope Inquiries Terminated Between July 1, 2006 and September 30, 2006:**

People's Republic of China

*A–570–832: Pure Magnesium from the People's Republic of China*

Requestor: U.S. Magnesium LLC; whether alloy magnesium produced in France using pure magnesium from the PRC is within the scope of the antidumping duty order; terminated August 31, 2006.

*A–570–896: Magnesium Metal from the People's Republic of China*

Requestor: U.S. Magnesium LLC; whether alloy magnesium produced in France using pure magnesium from the PRC is within the scope of the antidumping duty order; terminated August 31, 2006.

**Scope Inquiries Pending as of September 30, 2006:**

Italy

*A–475–703: Granular Polytetrafluoroethylene Resin from Italy*

Requestor: Petitioner, E.I. DuPont de Nemours & Company (DuPont); whether imports of Polymist® feedstock produced by the respondent, Solvay Solexis, Inc. and Solvay Solexis S.p.A (collectively, Solvay) are within the scope of the antidumping duty order; requested August 18, 2006; initiated October 2, 2006.

Japan

*A–588–804: Ball Bearings and Parts Thereof from Japan*

Requestor: Petitioner, Koyo Corporation of U.S.A. (Koyo); whether certain x–ray spindle units from Japan are within the scope of the antidumping duty order; requested July 9, 2006; initiated July 24, 2006.

People's Republic of China

*A–570–502: Iron Construction Castings from the People's Republic of China*

Requestor: A.Y. McDonald Manufacturing Company; whether its cast iron bases and upper bodies for meter boxes are within the scope of the antidumping duty order; requested July 7, 2006.

*A–570–504: Petroleum Wax Candles from the People's Republic of China*

Requestor: Avon Products, Inc.; whether its ''Cupcake Candle,'' product profile number 1041846, is within the scope of the antidumping duty order; requested August 16, 2006.

*A–570–832: Pure Magnesium from the People's Republic of China*

Requestor: U.S. Magnesium LLC; whether pure magnesium from the PRC processed in France into pure magnesium is within the scope of the antidumping duty order; preliminary ruling August 31, 2006.

*A–570–832: Pure Magnesium from the People's Republic of China*

Requestor: U.S. Magnesium LLC; whether alloy magnesium processed in Canada from pure magnesium ingots from the PRC is within the scope of the antidumping duty order; preliminary ruling August 31, 2006.

*A–570–846: Brake Rotors from the People's Republic of China*

Requestor: Federal–Mogul Corporation; whether its brake rotors that include an Original Equipment Manufacturer (''OEM'') logo in the casting and/or are certified by an OEM are within the scope of the antidumping duty order; requested August 14, 2006.

*A–570–864: Pure Magnesium in Granular Form from the People's Republic of China*

Requestor: ESM Group Inc.; whether pure magnesium ingots from the United States, atomized in the PRC, and returned to the United States are within the scope of the antidumping duty order; requested April 11, 2006.

*A–570–878: Saccharin from the People's Republic of China*

Requestor: PMC Specialties Group, Inc.; whether acid (insoluble) saccharin from the PRC converted in Israel into sodium saccharin, calcium saccharin or any other form of saccharin covered by the antidumping duty order on saccharin from the PRC remains within the scope of the antidumping duty order; preliminary ruling April 10, 2006.

*A–570–882: Refined Brown Aluminum Oxide from the People's Republic of China*

Requestor: 3M Company; whether certain semi–friable and heat–treated, specialty aluminum oxides are within the scope of the antidumping duty order; requested September 19, 2006.

*A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China*

Requestor: Consolidated Packaging LLP; whether 23 plastic bags it imports are within the scope of the antidumping duty order; requested April 19, 2006; initiated June 5, 2006.

*A–570–890: Wooden Bedroom Furniture from the People's Republic of China*

Requestor: American Signature, Inc.; whether its mirrored chest, leather bed, and microfiber bed are within the scope of the antidumping duty order; requested June 2, 2006.

*A–570–890: Wooden Bedroom Furniture from the People's Republic of China*

Requestor: Toys 'R Us, Inc.; whether its toy boxes are within the scope of the antidumping duty order; requested September 26, 2006.

*A–570–890: Wooden Bedroom Furniture from the People's Republic of China*

Requestor: Tuohy Furniture Corporation; whether its seventeen products that include storage towers (*i.e.*, bathroom, housekeeping, and closet), headboards, wainscoting, wood panels, a TV stand, bedside tables, and coffee tables, are within the scope of the antidumping duty order; requested April 5, 2006.

*A–570–896: Magnesium Metal from the People's Republic of China*

Requestor: U.S. Magnesium LLC; whether alloy magnesium processed in Canada from pure magnesium ingots from the PRC is within the scope of the antidumping duty order; preliminary ruling August 31, 2006.

Russia

*A–821–819: Magnesium Metal from Russia*

Requestor: US Magnesium LLC; whether magnesium metal further processed in Canada and France is within the scope of the antidumping duty order; requested July 19, 2005; initiated September 2, 2005.

**Anticircumvention Inquiries Terminated Between July 1, 2006 and September 30, 2006:**

*A–570–504: Petroleum Wax Candles from the People's Republic of China*

Requestor: National Candles Association; whether candles composed of petroleum wax and over fifty percent or more palm and/or other vegetable oil–based waxes and have been subject to minor alterations are circumventing the antidumping duty order; terminated September 29, 2006.

**Anticircumvention Rulings Pending as of September 30, 2006:**

People's Republic of China

*A–570–504: Petroleum Wax Candles from the People's Republic of China*

Requestor: National Candle Association; whether candles assembled in the United States from molded or carved articles of wax (wax forms) from the PRC are circumventing the antidumping duty order; requested December 14, 2005; initiated May 11, 2006.

*A–570–868: Folding Metal Tables and Chairs from the People's Republic of China*

Requestor: Meco Corporation; whether the common leg table (a folding metal table affixed with cross bars that enable the legs to fold in pairs) produced in the PRC is a minor alteration that is circumventing the antidumping duty order; initiated June 1, 2006.

*A–570–894: Certain Tissue Paper Products from the People's Republic of China*

Requestor: Seaman Paper Company; whether imports of tissue paper from Vietnam made out of jumbo rolls of tissue paper from the PRC are circumventing the antidumping duty order; initiated September 5, 2006.

**Scope Rulings Inadvertently Omitted from Prior Published Lists:**

None.

Interested parties are invited to comment on the completeness of this list of pending scope and anticircumvention inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Import Administration, International Trade Administration, 14th Street and Constitution Avenue, NW, Room 1870, Washington, DC 20230.

This notice is published in accordance with 19 CFR 351.225(o).

Dated: November 6, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E6–19111 Filed 11–9–06; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 110606E]**

### Caribbean Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

**DATES:** The meetings will be held on December 5–6, 2006. The Council will convene on Tuesday, December 5, 2006, from 9 a.m. to 5 p.m., and the Administrative Committee will meet from 5:15 p.m. to 6 p.m., on that same day. The Council will reconvene on Wednesday, December 6, 2006, from 9 a.m. to 5 p.m., approximately.

**ADDRESSES:** The meetings will be held at Marriott Frenchman's Reef Hotel, 5 Estate Bakkeroe, St. Thomas, U.S.V.I.

**FOR FURTHER INFORMATION CONTACT:** Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926.

**SUPPLEMENTARY INFORMATION:** The Council will hold its 123rd regular public meeting to discuss the items contained in the following agenda:

**December 5, 2006, 9 a.m. - 5 p.m.**

Call to Order
Adoption of Agenda
Consideration of 122nd Council Meeting Verbatim Transcription
Executive Director's Report
New Data and Analysis U.S.V.I. Fishery - David Olsen
Update Caribbean Spiny Lobster Minimum Size
Highly Migratory Species - Jackie Wilson
  HMS Subcommittee
  Effective Outreach and Education Program
St. Croix EEZ Working Group Meeting Report - Virdin Brown

**December 5, 2006, 5:15 p.m. - 6 p.m.**

Administrative Committee Meeting
AP/SSC/HAP Membership
  Budget 2006, 2007
  Coral Reef Research - Five year plan
  COLA Reduction
  Contract between Caribbean Fishery Management Council (CFMC) and Rosenstiel School of Marine and Atmospheric Science University of Miami
  Other Business

**December 6, 2006, 9 a.m. - 5 p.m.**

Workshop on Derelict Fishing Gear in the Caribbean - Cynthia K. Van Holle
Enforcement Reports
  Puerto Rico
  U.S. Virgin Islands
  NOAA
  U.S. Coast Guard
Administrative Committee Recommendations (December 5, 2006 meeting)
Meetings Attended by Council Members and Staff
Other Business
Next Council Meeting

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

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

**Special Accommodations**

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: November 7, 2006.

**Tracey L. Thompson,**

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

[FR Doc. E6–19068 Filed 11–9–06; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF EDUCATION

### National Advisory Committee on Institutional Quality and Integrity, (National Advisory Committee); Notice of Meeting Changes

**AGENCY:** National Advisory Committee on Institutional Quality and Integrity, Department of Education.

**SUMMARY:** This notice advises interested parties of changes concerning the December 2006 meeting of the National Advisory Committee and amends information provided in the original meeting notice published in the July 26, 2006 **Federal Register** (71 FR 42366).

**FOR FURTHER INFORMATION CONTACT:** Ms. Francesca Paris-Albertson, the Executive Director of the National Advisory Committee on Institutional Quality and Integrity, U.S. Department of Education, room 7110, MS 7592, 1990 K St., NW., Washington, DC 20006, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: *Francesca.Paris-Albertson@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The changes to the agenda for the December 2006 meeting of the National Advisory Committee, to be held at the Madison, 1177 Fifteenth Street, NW., Washington, DC 20005:

(1) There will be a two-hour discussion among the NACIQI members regarding the report from the Secretary's Commission on the Future of Higher Education. The discussion is scheduled for Monday, December 4, 2006 from 8:30 a.m.–10:30 a.m.

(2) Western Association of Schools and Colleges, Accrediting Commission for Schools, which was originally scheduled for review during the National Advisory Committee's December 2006 meeting, withdrew their request for an expansion of scope. Their request for an expansion of scope included the accreditation and preaccreditation of not-for-profit postsecondary non-degree-granting institutions in Alaska, Idaho, Montana, Nevada, Oregon, Utah, and Washington.

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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.*

**Authority:** 5 U.S.C. Appendix 2.

**James F. Manning,**

*Acting Assistant Secretary for Postsecondary Education.*

[FR Doc. E6–18652 Filed 11–9–06; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Memorandum of Understanding Between the United States Fish and Wildlife Service, Department of the Interior, and the Department of Energy Regarding Implementation of Executive Order 13186, ''Responsibilities of Federal Agencies to Protect Migratory Birds''

**AGENCIES:** Department of Energy.

**ACTION:** Notice of availability of Memorandum of Understanding.

**SUMMARY:** The Department of Energy (DOE) and the Department of the Interior (DOI), United States Fish and Wildlife Service (FWS) have entered into a Memorandum of Understanding (MOU), effective August 3, 2006. The purpose of the MOU is to address how both Parties may cooperatively handle migratory bird protection and conservation in accordance with the requirements of the Migratory Bird Treaty Act (MBTA) and Executive Order (EO) 13186.

**FOR FURTHER INFORMATION CONTACT:** John Stirling, U.S. Department of Energy, 1000 Independence Avenue, SW. (Room 3G–092), Washington, DC 20585, 202–586–2417.

**SUPPLEMENTARY INFORMATION:** The MOU addresses how DOE and DOI may cooperatively handle migratory bird protection and conservation and ensure that DOE operations are consistent with the requirements of the Migratory Bird Treaty Act (MBTA) and Executive Order (EO) 13186, ''Responsibilities of Federal Agencies to Protect Migratory Birds.'' EO 13186 specifically directs Federal agencies whose actions have, or are likely to have, a measurable negative impact on migratory bird populations, to incorporate migratory bird conservation measures into their activities. The MOU serves to strengthen migratory bird protection and conservation through enhanced collaboration between DOE and FWS, and fulfills DOE's obligation under EO 13186.

The MOU identifies specific areas in which cooperation between DOE and FWS will substantially contribute to the conservation and management of migratory birds and their habitats. The MOU establishes protocols to provide the necessary guidance for DOE to incorporate migratory bird protection and conservation more fully into it's programs in accordance with EO requirements.

The complete text of this MOU is available for view on the following Department of Energy Web site: *http://www.eh.doe.gov/oepa/data.*

Issued at Washington, DC, October 30, 2006.

**Andrew C. Lawrence,**

*Director, Office of Nuclear Safety and Environment, Office of Health, Safety and Security, U.S. Department of Energy.*

[FR Doc. 06–9185 Filed 11–9–06; 8:45 am]

BILLING CODE 6450–01–M

## FEDERAL MEDIATION AND CONCILIATION SERVICE

### Labor Management Cooperation Act of 1978 (Pub. L. 95–524)

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Notice Regarding Labor Management Cooperation Program for Fiscal Year 2007.

**SUMMARY:** The Federal Mediation and Conciliation Service (FMCS) regrets to inform the public that there are no appropriated funds available for the Labor Management Cooperation Program for Fiscal Year 2007. However, there is limited amount of funds still remaining for FY2006. We will continue to accept grant proposals and will award grants subject to funds availability.

**ADDRESSES:** Michael J. Bartlett, Federal Register Liaison, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427, telephone number (202) 606–3737 or e-mail address at *mbartlett@fmcs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Linda Stubbs, Grants Management Specialist, Federal Mediation and Conciliation Service, 2100 K Street, NW, Washington, DC 20427, telephone number (202) 606–8181 or e-mail address at *lstubbs@fmcs.gov.*

Dated: November 6, 2006.

**Fran Leonard,**

*Director, Budget and Finance, Federal Mediation and Conciliation Service.*

[FR Doc. E6–19082 Filed 11–9–06; 8:45 am]

BILLING CODE 6732–01–P

## FEDERAL RESERVE SYSTEM

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

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

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 27, 2006.

**A. Federal Reserve Bank of St. Louis** (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

*1. Ed Teefey*, Mount Sterling, Illinois, to acquire additional voting shares of Mount Sterling Bancorp, Inc, Mount Sterling, Illinois, and thereby indirectly acquire additional voting shares of Farmers State Bank & Trust Company, Mount Sterling, Illinois.

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

*1. E. Kent Christian,* Kiester, Minnesota, individually and as part of a group acting in concert with the Edward T. Christian Revocable Trust, Albert Lea, Minnesota, co-trustees E. Kent Christian and Edna Christian, Albert Lea, Minnesota, independent trustee Fred Freidrichsen, Glenville, Minnesota, and Edna Christian, individually, to acquire voting shares of Kiester Investments, Inc, Kiester, Minnesota, and thereby indirectly acquire voting shares of First State Bank Kiester, Kiester, Minnesota.

Board of Governors of the Federal Reserve System, November 7, 2006.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E6–19093 Filed 11–9–06; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

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

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

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

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 7, 2006.

**A. Federal Reserve Bank of Atlanta** (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

*1. Business First Bancshares, Inc.*, Baton Rouge, Louisiana; to become a bank holding company by acquiring 100 percent of the outstanding voting shares of Business First Bank, Baton Rouge, Louisiana.

*2. FNBC Financial Corporation*, Crestview, Florida; to become a bank holding company by acquiring 100 percent of the outstanding voting shares of First National Bank of Crestview, Crestview, Florida.

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

*1. Capitol Bancorp, Ltd., Capitol Development Bancorp Limited VI, and Capitol Bancorp Colorado Ltd II*, all in Lansing, Michigan, to acquire 51 percent of the voting shares of Larimer Commerce Bank (in organization), Fort Collins, Colorado.

In connection with this application, Capitol Bancorp Colorado Ltd II, Lansing, Michigan, has applied to become a bank holding company by acquiring Larimer Commerce Bank, Fort Collins, Colorado.

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

*1. Pacific Premier Bancorp*, Costa Mesa, California; to become a bank holding company by acquiring 100

percent of the voting shares of Pacific Premier Bank, Costa Mesa, California.

Board of Governors of the Federal Reserve System, November 7, 2006.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E6–19092 Filed 11–9–06; 8:45 am]

**BILLING CODE 6210–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institute of Environmental Health Sciences; National Toxicology Program; NTP Interagency Center for the Evaluation of Alternative Toxicological Methods; Development of a NICEATM/ICCVAM 5-Year Plan To Research, Develop, Translate, and Validate New and Revised Non-animal and Other Alternative Assays for Integration of Relevant and Reliable Methods Into Federal Agency Testing Programs: Request for Public Comments

**AGENCY:** National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH)m HHS.

**ACTION:** Request for comments.

**SUMMARY:** The NIEHS and the National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) request public comments that can be considered by the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) and agency program offices in development of a NICEATM/ICCVAM 5-year plan that addresses: (1) Research, development, translation, and validation of new and revised non-animal and other alternatives assays for integration of relevant and reliable methods into federal agency testing programs and (2) identification of areas of high priority for new and revised non-animal and alternative assays for the replacement, reduction, and refinement (less pain and distress) of animal tests.

**DATES:** Submit comments on or before December 31, 2006.

**ADDRESSES:** Comments should preferably be submitted electronically at the NICEATM/ICCVAM 5-Year Plan Web site: *http://iccvam.niehs.nih.gov/docs/5yearplan.htm.* Comments can also be submitted by e-mail to *5yearplan@niehs.nih.gov.* Written comments may also be sent by mail or fax to Dr. William S. Stokes, NICEATM Director, NIH/NIEHS, P.O. Box 12233, MD EC–17, Research Triangle Park, NC, 27709, (phone) 919–541–2384, (fax) 919–541–0947. Courier address: NICEATM, 79 T.W. Alexander Drive, Building 4401, Room 3128, Research Triangle Park, NC 27709.

**SUPPLEMENTARY INFORMATION:**

### Background

Congress established ICCVAM to promote development, validation, and regulatory acceptance of new or revised alternative toxicological test methods that protect human and animal health and the environment while reducing, refining, or replacing animal tests and ensuring human safety and product effectiveness (42 U.S.C. 285l–3). Congress requests of NIEHS that NICEATM and ICCVAM in partnership with relevant federal agencies develop a 5-year plan that addresses (1) research, development, translation, and validation of new and revised non-animal and other alternative assays for integration into federal agency testing programs and (2) identification of areas of high priority for new and revised non-animal and alternative assays for replacement, reduction, and refinement (less pain and distress) of animal tests. At this time, the NIEHS and NICEATM seek public comments that can be considered by the ICCVAM and agency program offices in development of the plan. The Scientific Advisory Committee on Alternative Toxicological Methods (SACATM) meeting at the NIEHS on November 30 will also provide an additional opportunity for public input (*http://ntp.niehs.nih.gov/go/7441*).

### Request for Comments

The NIEHS and NICEATM invite public comments for consideration by ICCVAM and agency program offices in development of the NICEATM/ICCVAM 5-year plan. With regard to refining, reducing, and replacing animal use, ICCVAM has previously identified and ranked the types of regulatory safety tests that it considers should have the highest priority for the development and validation of alternative test methods.

1. Acute eye irritation and corrosion
2. Biologics/vaccines
3. Acute skin toxicity (including irritation/corrosion, sensitization, absorption)
4. Acute systemic toxicity (oral/dermal/inhalation)
5. Chronic toxicity/carcinogenicity
6. Reproductive/developmental toxicity
7. Endocrine disruptors
8. Neurotoxicity
9. Immunotoxicity

The NIEHS and NICEATM seek public input on the following questions. One of the elements that might be considered in answering questions 2–4 is the priority areas listed above.

1. Do you have comments on the priority areas for the development and validation of alternative test methods listed above?
2. Considering available science and technology, what development, translation, and validation activities are most likely to have the greatest impacts within the next five years on refining, reducing, or replacing animal use?
3. What research and development activities hold the greatest promise in the long-term for refining, reducing, or replacing animal use?
4. What are appropriate measures for evaluating progress in enhancing the development and use of alternative test methods?

Individuals submitting comments are asked to include appropriate contact information (name, affiliation, mailing address, phone, fax, email and sponsoring organization, if applicable). All comments received by December 31, 2006, will be posted on the ICCVAM–NICEATM Web site (*http://iccvam.niehs.nih.gov/docs/5yearplan.htm*) and identified by the individual's name and affiliation and/or sponsoring organization, if applicable.

### Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from 15 federal regulatory and research agencies that use, generate, or disseminate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability and promotes scientific validation and regulatory acceptance of toxicological test methods that more accurately assess safety and hazards of chemicals and products and that refine, reduce, and replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285l–3, available at *http://iccvam.niehs.nih.gov/about/PL106545.htm*) establishes ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of Federal agencies. SACATM is a federally chartered advisory committee that provides advice to NICEATM, ICCVAM, and NIEHS on ICCVAM and NICEATM activities. Additional information about ICCVAM and NICEATM can be found at the following Website: *http://iccvam.niehs.nih.gov.*

Information about SACATM is available at *http://ntp.niehs.nih.gov/go/167.*

Dated: November 2, 2006.

**Samuel H. Wilson,**

*Deputy Director, National Institute of Environmental Health Sciences and National Toxicology Program.*

[FR Doc. E6–19094 Filed 11–9–06; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: NIOSH Education and Research Center, Program Announcement Number (PAR) 06–485

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): NIOSH Education and Research Center, Program Announcement Number (PAR) 06–485.

*Time and Date:* 8 a.m.–5 p.m., March 13, 2007 (Closed).

*Place:* Embassy Suites, 1900 Diagonal Rd. Alexandria, VA 22314, 703.684.5900.

*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.

*Purpose:* The work groups convening at specific sites listed below advise and make recommendations to the Disease, Disability, and Injury Prevention and Control SEP: NIOSH Education and Research Center, PAR 06–485. Specifically, the SEP makes recommendations regarding policies, strategies, and funding.

TIMES, DATES, AND PLACES OF THE WORK GROUP MEETINGS

| | | |
|---|---|---|
| 8 a.m.–5 p.m. .... | November 13, 2006 (Closed) ..... | Women's Faculty Club on the University of California Berkeley campus 510–642–4175. |
| 8 a.m.–5 p.m. .... | November 28, 2006 (Closed) ..... | University of Alabama at Birmingham, Administration Building Penthouse, 701 20th Street South, 14th floor, Conference Room 1, 205–934–0771. |
| 8 a.m.–5 p.m. .... | December 11, 2006 (Closed) ..... | Bloomberg School of Public Health, 615 N. Wolfe St, Baltimore, MD 21205. |
| 8 a.m.–5 p.m. .... | December 14, 2006 (Closed) ..... | College of Public Health, 13201 Bruce B. Downs Blvd, Tampa, FL 33612. |
| 8 a.m.–5 p.m. .... | January 9, 2007 (Closed) ..... | Fitzsimons Campus, Nighthorse Campbell Building, Room 304, Denver, CO. |
| 8 a.m.–5 p.m. .... | January 16, 2007 (Closed) ..... | Coffman Memorial Union, 300 Washington Ave. SE., Minneapolis, MN 55455. |
| 8 a.m.–5 p.m. .... | February 13, 2007 (Closed) ..... | University Park Marriott, 480 Wakara Way, Salt Lake City, UT 84108 801–584–3312. |

*Matters to Be Discussed:* The SEP meeting will include the review, discussion, and evaluation of research grant applications in response to ''NIOSH Education and Research Center,'' PAR 06–485.

*For Further Information Contact:* Dr. M. Chris Langub, Designated Federal Officer, 1600 Clifton Road NE, MS E74, Atlanta, GA, 30333, telephone 404.498.2543.

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: November 1, 2006.

**Alvin Hall,**

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

[FR Doc. E6–19100 Filed 11–9–06; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### National Center for Environmental Health/Agency for Toxic Substances and Disease Registry; Meetings

The Health Department Subcommittee of the Board of Scientific Counselors (BSC), Centers for Disease Control and Prevention (CDC), National Center for Environmental Health (NCEH)/Agency for Toxic Substances and Disease Registry (ATSDR): Teleconference 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, NCEH/ATSDR announces the following subcommittee teleconference meeting:

*Name:* Health Department Subcommittee (HDS), BSC, NCEH/ATSDR.

*Time and Date:* 12:30 p.m.–2 p.m., November 28, 2006.

*Place:* Century Center, 1825 Century Boulevard, Atlanta, Georgia 30345. To participate please dial 877/315–6535 and enter conference code 383520.

*Status:* Open to the public, teleconference access limited only by availability of telephone ports.

*Purpose:* Under the charge of the BSC, NCEH/ATSDR, the Health Department Subcommittee will provide the Board with advice and recommendations on local and state health department issues and concerns that pertain to the mandates and mission of NCEH/ATSDR.

*Matters To Be Discussed:* The meeting agenda will include a review of agenda and approval of minutes; CDC follow-up report on workforce recommendations; membership discussion; bridging NCEH/ATSDR activities including surveillance; public comment; and the next steps for the Health Department Subcommittee.

Items are subject to change as priorities dictate.

*Supplementary Information:* This teleconference meeting is scheduled to begin at 12:30 p.m. Eastern Standard Time. The Public Comment period is from 2:00 p.m.–2:10 p.m.

*For Further Information Contact:* Individuals interested in attending the meeting, please contactShirley D. Little, Committee Management Specialist, NCEH/ATSDR, 1600 Clifton Road, Mail Stop E–28, Atlanta, GA 30303; telephone 404/498–0003, fax 404/498–0059; E-mail: *slittle@cdc.gov.*

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 National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

Dated: November 6, 2006.

**Alvin Hall,**

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

[FR Doc. E6–19088 Filed 11–9–06; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### National Institute for Occupational Safety and Health (NIOSH); Advisory Board on Radiation and Worker Health

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

*Name:* Subcommittee for Dose Reconstruction and Site Profile Reviews, Advisory Board on Radiation and Worker Health, National Institute for Occupational Safety and Health.

*Time and Date:* 10 a.m.–4 p.m., November 16, 2006.

*Place:* Holiday Inn Cincinnati Airport, 1717 Airport Exchange Blvd., Erlanger, Kentucky, 41018. Phone 859.371.2233, Fax 859.371.5002.

*Conference Call Access:* 866–643–6504. Participant Pass Code 9448550.

*Status:* Open to the public, but without a public comment period.

*Background:* The Advisory Board on Radiation and Worker Health was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers on to the Special Exposure Cohort.

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC.

*Purpose:* The Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary, HHS, on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

*Matters to be Discussed:* Individual Dose Reconstruction Reviews and planning for future meetings and activities.

The agenda is subject to change as priorities dictate. In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

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

*For Further Information Contact:* Dr. Lewis V. Wade, Executive Secretary, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513.533.6825, fax 513.533.6826.

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: November 2, 2006.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. E6–19080 Filed 11–9–06; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### Notice of Hearing: Reconsideration of Disapproval of Colorado State Plan Amendment 05–006

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice of hearing.

**SUMMARY:** This notice announces an administrative hearing to be held on December 29, 2006, at the Colorado State Bank Building, 1600 Broadway, Suite 700, Keystone Conference Room, Denver, CO 80202–4967, to reconsider CMS' decision to disapprove Colorado State plan amendment 05–006.

*Closing Date:* Requests to participate in the hearing as a party must be received by the presiding officer by November 28, 2006.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scully-Hayes, Presiding Officer, CMS, Lord Baltimore Drive, Mail Stop LB–23–20, Baltimore, Maryland 21244, Telephone: (410) 786–2055.

**SUPPLEMENTARY INFORMATION:** This notice announces an administrative hearing to reconsider CMS' decision to disapprove Colorado State plan amendment (SPA) 05–006 which was submitted on July 26, 2005. This SPA was disapproved on July 13, 2006.

In SPA 05–006, Colorado proposed to modify the reimbursement methodology in the State plan for covered Medicaid Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services provided in schools. Specifically, this amendment specified cost elements used to determine reimbursement rates for school-based services and targeted case management.

The amendment was disapproved because it did not comport with the requirements of sections 1902(a)(2), 1902(a)(4), 1902(a)(23), 1902(a)(30)(A), 1902(a)(10)(B), and 1903(a)(1) of the Social Security Act (the Act).

The issues to be decided in the hearing are:

- Whether Colorado has established that the indirect cost elements specified in Colorado SPA 05–006 would not duplicate direct cost elements also specified, to ensure that the payment rate is consistent with efficiency and economy as required by section 1902(a)(30)(A) of the Act.
- Whether Colorado has shown that certified public expenditures that will be used as the basis for claims under SPA 05–006 will be documented through auditable methods for determining or documenting actual and non-duplicative Medicaid expenditures incurred for school-based health services by a governmental entity, so that the claims will be consistent with sections 1902(a)(2), 1902(a)(4) and 1903(a)(1) of the Act.
- Whether the State has assured that the payment methodology specified under SPA 05–006, when read together with the State plan provisions authorizing the covered services that are the subject of SPA 05–006, would allow beneficiaries the ability to receive services from any willing and qualified provider within the State, consistent with the requirements of section 1902(a)(23) of the Act.
- Whether the State has established that the covered EPSDT services that are the subject of SPA 05–006 would be available in comparable amount, duration, and scope to the EPSDT services available to all eligible Medicaid beneficiaries, including those who do not attend schools paid under SPA 05–006, consistent with the

requirements of section 1902(a)(10)(B) of the Act.

Section 1116 of the Act and Federal regulations at 42 CFR part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained in Federal regulations at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained in Federal regulations at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Colorado announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Lisa M. Esgar, *Senior Director,*
Operations and Finance Office,
Department of Health Care Policy and Financing,
1570 Grant Street,
Denver, CO 80203–1818.

Dear Ms. Esgar: I am responding to your request for reconsideration of the decision to disapprove the Colorado State plan amendment (SPA) 05–006, which was submitted on July 26, 2005, and disapproved on July 13, 2006.

In SPA 05–006, Colorado was proposed to modify the reimbursement methodology in the State plan for covered Medicaid Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services provided in schools. Specifically, this amendment specified cost elements used to determine reimbursement rates for school-based services and targeted case management.

The amendment was disapproved because it did not comport with the requirements of sections 1902(a)(2), 1902(a)(4), 1902(a)(23), 1902(a)(30)(A), 1902(a)(10)(B), and 1903(a)(1) of the Social Security Act (the Act).

The issues to be decided in the hearing are:

- Whether Colorado has established that the indirect cost elements specified in Colorado SPA 05–006 would not duplicate direct cost elements also specified, to ensure that the payment rate is consistent with efficiency and economy as required by section 1902(a)(30)(A) of the Act.
- Whether Colorado has shown that certified public expenditures that will be used as the basis for claims under SPA 05–006 will be documented through auditable methods for determining or documenting actual and non-duplicative Medicaid expenditures incurred for school-based health services by a governmental entity, so that the claims will be consistent with section 1902(a)(2), 1902(a)(4) and 1903(a)(1) of the Act.
- Whether the State has assured that the payment methodology specified under SPA 05–006, when read together with the State plan provisions authorizing the covered services that are the subject of SPA 05–006, would allow beneficiaries the ability to receive services from any willing and qualified provider within the State, consistent with the requirements of section 1902(a)(23) of the Act.
- Whether the State has established that the covered EPSDT services that are the subject of SPA 05–006 would be available in a comparable amount, duration and scope to the EPSDT services available to all eligible Medicaid beneficiaries, including those who do not attend schools paid under SPA 05–006, consistent with the requirements of section 1902(a)(10)(B) of the Act.

I am scheduling a hearing on your request for reconsideration to be held on December 29, 2006, at the Colorado State Bank Building, 1600 Broadway, Suite 700, Keystone Conference Room, Denver, CO, 80202–4967, to reconsider the decision to disapprove SPA 05–006. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by Federal regulations at 42 CFR part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer at (410) 786–2055. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing.

Sincerely, Leslie V. Norwalk, Esq., Acting Administrator.

Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance Program)

Dated: November 6, 2006.

**Leslie V. Norwalk,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. E6–19069 Filed 11–9–06; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (44 U.S.C. 3506(c)(2)(A)), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

*Comments are invited on:* (a) The proposed collection of information is necessary for the proper performance of the functions of the agency; including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposed Project: Assessment of the Bioterrorism Training and Curriculum Development Program Performance—NEW**

The goal of the Bioterrorism Training and Curriculum Development Program (BTCDP) is the development of a competent healthcare workforce with the knowledge, skills, and abilities to: (1) Recognize indications of a terrorist event; (2) meet the acute care needs of patients, including pediatric and other vulnerable populations, in a safe and appropriate manner; (3) participate in a local, regional, statewide, and national response, and (4) rapidly and effectively alert the public health system of such an event at the community, state, and national levels. Response issues include other forms of terrorism (*e.g.*, the use of chemical, explosive, and incendiary agents, acute radiation exposure in a nuclear explosion), natural disasters, and catastrophic events.

HRSA will collect data relevant to the preparedness training of healthcare providers from existing BTCDP

awardees to evaluate and report performance and outcome information. This information will be used by the U.S. Department of Health and Human Services (HHS) to evaluate the effectiveness and outcomes of the BTCDP. HRSA will use standard data collection forms to record the number of healthcare providers trained by profession and by course category, qualitative information on progress being achieved on approved objectives within the cooperative agreement, and performance outcomes of healthcare providers participating in training. The data collection forms do not duplicate other data collection efforts.

The BTCDP is the only Federal program solely committed to the preparedness training of healthcare providers. As such, BTCDP awardees share curriculum, accomplishments, and lessons learned through an established network on a regular basis, a network vital to the development of a prepared healthcare workforce. Awardees stand uniquely prepared to respond to Congressional demand for efficient and effective training within the fiscal and time constraints of this program. Collecting data from awardees regarding their performance is the first step in meeting this demand.

The estimated annual burden is as follows:

| Submission type | Number of respondents | Responses per respondent | Total number of responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Performance and Outcome Data | 32 | 1 | 32 | 16 | 512 |

Send comments to Susan G. Queen, PhD, HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 3, 2006.

**Cheryl R. Dammons,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. E6–19087 Filed 11–9–06; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**A Simian Immunodeficiency Virus Expressing HIV–1 Reverse Transcriptase for the Study of Antiviral Drug Resistance in Macaques**

*Description of Technology:* Antiviral drug-resistance is the primary source for the decreased efficacy of currently available human immunodeficiency virus-1 (HIV–1) therapies. The available material provides a model system in which to test new antiviral treatment efficacy as well as the development of multi-drug-resistance to HIV–1 reverse transcriptase inhibitors, which is a widespread obstacle of existing antiretroviral therapies. This invention describes a simian immunodeficiency virus (SIV) that expresses HIV–1 reverse transcriptase. The available virus infects and replicates in macaques and has demonstrated use in the study of drug-resistance in an animal model. This technology represents an advantage over traditional SIVs, which are not susceptible to FDA-approved antiretroviral drugs and as a result cannot be used to study HIV drug-resistance in animals. Thus, the current research tool provides a novel resource for advancing the study of drug-resistance to antiretroviral therapy and has the potential to contribute to the development of innovative therapeutic agents that are successful against drug-resistant HIV strains.

*Application:* Research and development of novel therapeutics for the treatment of drug-resistant HIV.

*Development Status:* Biological Material is sufficient for use as a research tool.

*Inventors:* Vineet N. KewalRamani and Zandrea Ambrose (NCI).

*Related Publication:* Z Ambrose, V Boltz, S Palmer, JM Coffin, SH Hughes, VN KewalRamani. *In vitro* characterization of a simian immunodeficiency virus-human immunodeficiency virus (HIV) chimera expressing HIV type 1 reverse transcriptase to study antiviral resistance in pigtail macaques. J Virol. 2004 Dec;78(24):13553–13561.

*Patent Status:* HHS Reference No. E–315–2006/0—Biological Material.

*Licensing Status:* Available for non-exclusive licensing under a Biological Materials License Agreement.

*Licensing Contact:* Sally Hu, PhD; 301/435–5606; *HuS@mail.nih.gov.*

*Collaborative Research Opportunity:* The National Cancer Institute's HIV Drug Resistance Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize animal models in which to evaluate anti-HIV–1 therapy. Please contact Betty Tong, PhD at 301–594–4263 or *tongb@mail.nih.gov* for more information.

**Anti-H5N1 Influenza Activity of the Antiviral Protein Cyanovirin**

*Description of Technology:* Influenza A viral subtype H5N1 causes avian influenza and is currently the subject of increasing international attention. Usually, avian influenza infection is limited to birds and pigs; however H5N1 has the unique capacity to bring about severe illness and death in humans. H5N1 is highly contagious, fast spreading and rapidly evolving and therefore has the potential to cause a worldwide health epidemic.

The available technology embodies methods of using a cyanovirin-N (CV–N) peptide, protein, or nucleic acid in the prevention and/or treatment of infection. Methods, which utilize CV–N in the treatment of certain influenza strains, have previously been demonstrated. However, the novel use of CV–N to treat the H5N1 strain is

unique and development of prophylactics and/or therapeutics against the virus represents a significant contribution to agriculture and public health sectors throughout the world.

*Application:* Novel therapeutics for the treatment and prevention of avian influenza.

*Development Status:* In vitro and early-stage animal studies have been performed.

*Inventors:* Barry R. O'Keefe and *James B. McMahon* (NCI).

*Patent Status:* U.S. Provisional Application No. 60/838,712 filed 18 Aug 2006 (HHS Reference No. E–198–2006/0–US–01).

*Licensing Status:* Available for non-exclusive or exclusive licensing.

*Licensing Contact:* Sally Hu, PhD; 301/435–5606; *HuS@mail.nih.gov.*

*Collaborative Research Opportunity:* The NCI Molecular Targets Development Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize cyanovirin-N for use against H5N1 influenza. Please contact Betty Tong, PhD at 301–594–4263 or *tongb@mail.nih.gov* for more information.

**Methods for Treating Drug-Resistant HIV–1 Infection**

*Description of Technology:* Drug-resistance is a critical factor contributing to the loss of clinical benefit of currently available human immunodeficiency virus-1 (HIV–1) therapies. Accordingly, combination therapies have evolved to address the rapidly evolving virus. However, there has been great concern regarding the growing resistance of HIV–1 strains to current therapies as multi-drug resistance to protease inhibitors is becoming more common. The current technology embodies a breakthrough against this immense obstacle of existing HIV–1 treatments.

Compositions and methods of inhibiting the protease of multi-drug resistant retroviruses such as HIV–1 are available for non-exclusive licensing and commercial development. The antiviral activity of the compound described by the current invention has been established against multi-protease inhibitor-resistant HIV–1 variants and demonstrated effective in patients with widespread resistance to currently available protease inhibitors. In addition, commercial development of this composition has resulted in the production of a novel drug that has recently been granted accelerated approval by the U.S. Food and Drug Administration (FDA) for the treatment of HIV–1 in patients who are non-responsive to existing antiretroviral therapies.

The available composition retains the unique ability to inhibit drug resistant mutants due to its distinctive points of interaction with the enzyme: the agent tightly binds to the part of the protease substrate binding site, which the virus cannot easily change. Other ''conventional'' protease inhibitors bind to other parts of the protease substrate binding site, which the virus can relatively easily change, rendering these drugs ineffective after repeated use. Therefore, the current technology represents a highly effective method of targeting drug resistant HIV–1 strains.

*Applications:* (1) Novel therapeutics for the treatment of drug-resistant HIV; (2) Safe and effective methods for administration of anti-HIV/AIDS drugs.

*Development Status:* Clinical trials have been performed with Prezista™ (darunavir), a drug resulting from development of the present technology, which has received accelerated approval from the FDA.

*Inventors:* John W. Erickson (SAIC/NCI), Sergei V. Gulnik (SAIC/NCI), Hiroaki C. Mitsuya (NCI), and Arun K. Ghosh.

*Related Publications:*

1. K Yoshimura, R Kato, MF Kavlick, A Nguyen, V Maroun, K Maeda, KA Hussain, AK Ghosh, SV Gulnik, JW Erickson, H Mitsuya. A potent human immunodeficiency virus type 1 protease Inhibitor, UIC–94003 (TMC 126), and selection of a novel (A28S) mutation in the protease active site. J Virol. 2002 Feb;76(3):1349–1358.

2. Y Koh, K Maeda, H Ogata, G Bilcer, T Devasamudram, JF Kincaid, P Boross, Y-F Wang, Y Tie, P Volarath, L Gaddis, JM Louis, RW Harrison, IT Weber, AK Ghosh, H Mitsuya. Novel bis tetrahydrofuranyl-urethane-containing nonpeptidic protease inhibitor (PI) UIC–94017 (TMC114) potent against multi-PI-resistant human immunodeficiency virus in vitro. Antimicrob Agents Chemother. 2003 Oct;47(10):3123–3129.

3. AK Ghosh, PR Sridhar, S Leshchenko, AK Hussain, J Li, AY Kovalevsky, DE Walters, JE Wedekind, V Grum-Tokars, D Das, H Mitsuya. Structure-based design of novel HIV–1 protease inhibitors to combat drug resistance. J Med Chem. 2006 Aug 24; 49(17):5252–5261.

4. AK Ghosh, P Ramu Sridhar, N Kumaragurubaran, Y Koh, IT Weber, H Mitsuya. Bis-tetrahydrofuran: a privileged ligand for darunavir and a new generation of HIV protease inhibitors that combat drug resistance. ChemMedChem. 2006 Sep;1(9):939–950.

*Patent Status:* U.S. Patent Application No. 09/720,276 filed 07 Mar 2001 (HHS Reference No. E–200–1998/0–US–02); European Patent Application No. 99931861.1 filed 23 Jun 1999 (HHS Reference No. E–200–1998/0–EP 08).

*Licensing Status:* Available for non-exclusive licensing.

*Licensing Contact:* Sally Hu, PhD; 301/435–5606; *HuS@mail.nih.gov.*

Dated: November 3, 2006.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. E6–19050 Filed 11–9–06; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, National Institutes of Health, 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 Advisory Committee to the Director, NIH.

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:* Advisory Committee to the Director, NIH.

*Date:* December 1, 2006.

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

*Agenda:* Among the topics proposed for discussion are: (1) NIH Director's Report; (2) NIH Director's Council of Public Representatives Liaison Report; (3) Institute Director's Report; and (4) Work Group on Outside Awards for NIH Employees.

*Place:* National Institutes of Health, Building 31, C Wing, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Shelly Pollard, ACD Coordinator, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 5B64, Bethesda, MD 20892. (301) 496–0959.

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.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a

government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/about/director/acd.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: November 3, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–9150 Filed 11–19–06; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Research Support Services.

*Date:* November 17, 2006.

*Time:* 8:30 a.m. to 1 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* Holly Patton, PhD, Scientific Review Administrator, Review Branch/Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Two Rockledge Center, 6701 Rockledge Drive Room 7188, Bethesda, MD 20892, (301) 435–0280, *pattonh@nhibi.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.

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. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 2, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–9155 Filed 11–9–06; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; 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 section 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Economic Analysis of Urinary Incontinence Treatment.

*Date:* November 29, 2006.

*Time:* 4:30 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Boulevard, Bethesda, MD 20982 (Telephone Conference Call).

*Contact Person:* Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–8898. *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 3, 2006

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–9151 Filed 11–9–06; 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 meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; ZEB1 OSR–A(J2) Training Meeting.

*Date:* December 11, 2006.

*Time:* 1 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Suite 200, small conference room, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* David George, PhD, Director, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 920, Bethesda, MD 20892, 301–496–8633, *georged1@mail.nih.gov.*

Dated: November 2, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–9153 Filed 11–9–06; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

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

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

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Intestinal Inflammation.

*Date:* November 30, 2006.

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

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Carol J. Goter-Robinson, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra,niddk.nih.gov*.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Grant Application Review.

*Date:* December 1, 2006.

*Time:* 4 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 751, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7798, *muston@extra,niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, endocrinology and Metabolic Research, 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 3, 2006.

**Anna Snouffer,**

*Acting Director, Officer of Federal Advisory Committee Policy.*

[FR Doc. 06–9154 Filed 11–9–06; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed 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 grant applications and 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 constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Aids Institutional Tracking Grants.

*Date:* November 20, 2006.

*Time:* 3 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

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

*Contact Person:* Agu Pert, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9608, Bethesda, MD 20892–9608. 301–443–0811. *apert@mail.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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 6, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–9169 Filed 11–9–06; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; 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 grant applications and 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 constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel, Animal Models for Learning Disability.

*Date:* November 20, 2006.

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

*Agenda:* To review and evaluate grant applications.

*Place:* The Hotel Lombardy, 2019 Pennsylvania Avenue, NW., Washington, DC 20006.

*Contact Person:* Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892. (301) 496–1485. *changn@mail.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.

(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: November 6, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–9170 Filed 11–9–06; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, National Institutes of Health; 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 Recombinant DNA 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:* Recombinant DNA Advisory Committee.

*Date:* December 5–6, 2006.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* The Recombinant DNA Advisory Committee will review and discuss selected human gene transfer protocols as well as related data management activities.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Floor 6C, Room 10, Bethesda, MD 20892.

*Contact Person:* Laurie Lewallen, Advisory Committee Coordinator, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892–7985, 301–496–9838, *lewallla@od.nih.gov.*

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.

Information is also available on the Institute's/Center home page: *http://www4.od.nih.gov/oba/,* where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: November 6, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–9172 Filed 11–9–06; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 17, 2006, 2 p.m. to November 17, 2006, 3 p.m., Wyndham Washington, DC, 1400 M Street, NW., Washington, DC, 20005 which was published in the **Federal Register** on October 25, 2006, 71 FR 62481–62482.

The meeting will be held at The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037. The meeting date and time remain the same. The meeting is closed to the public.

Dated: November 2, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–9152 Filed 11–9–06; 8:45 am]

**BILLING CODE 4140–01–M**

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## 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 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:* Center for Scientific Review Special Emphasis Panel, Proteomics of Calcium Channels.

*Date:* November 9, 2006.

*Time:* 10 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

*Contact Person:* Geoffrey G. Schofield, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.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:* Center for Scientific Review Special Emphasis Panel, Skeletal Biology.

*Date:* November 15, 2006.

*Time:* 4 p.m. to 5:30 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:* Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.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:* Center for Scientific Review Special Emphasis Panel, Neurotechnology and Neuroengineering.

*Date:* November 16, 2006.

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

*Agenda:* To review and evaluate grant applications.

*Place:* Jurys Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

*Contact Person:* Robert C. Elliott, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, (301) 435–3009, *elliotro@csr.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:* Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Muscle and Exercise Physiology Study Section.

*Date:* November 16–17, 2006.

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

*Agenda:* To review and evaluate grant applications.

*Place:* The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

*Contact Person:* Richard J. Bartlett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, 301–435–6809, *bartletr@csr.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:* Center for Scientific Review Special Emphasis Panel, AIDS Clinical Studies and Epidemiology.

*Date:* November 17, 2006.

*Time:* 11 a.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:* Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.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:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Musculoskeletal Rehabilitation.

*Date:* November 21, 2006.

*Time:* 10 a.m. to 11:30 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:* Daniel F. McDonald, PhD, Scientific Review Administrator, Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Musculoskeletal Tissue Engineering.

*Date:* November 21, 2006.

*Time:* 4:30 p.m. to 6 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:* Daniel F. McDonald, PhD, Scientific Review Administrator, Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Fogarty International Brain Disorders Meeting.

*Date:* November 27–28, 2006.

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

*Agenda:* To review and evaluate grant applications.

*Place:* Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

*Contact Person:* Dan D. Gerendasy, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892, (301) 594–6830, *gerendad@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflicts in Biological Chemistry and Macromolecular Biophysics.

*Date:* November 27, 2006.

*Time:* 3 p.m. to 4:30 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:* Donald L. Schneider, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727, *schneidd@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, AIDS Epidemiology and Clinical Studies.

*Date:* November 28, 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:* Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Opportunistic Malignancies in AIDS.

*Date:* November 29, 2006.

*Time:* 10 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:* Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ACTS Member Conflicts Special Emphasis Panel.

*Date:* November 30, 2006.

*Time:* 8:30 a.m. to 10 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* William F. Bolger Center, Dolce International, 9600 Newbridge Drive, Potomac, MD 20854.

*Contact Person:* Richard J. Bartlett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–6809, *bartletr@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ACTS SBIR/STTR Special Emphasis Panel.

*Date:* November 30, 2006.

*Time:* 10:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* William F. Bolger Center, Dolce International, 9600 Newbridge Drive, Potomac, MD 20854.

*Contact Person:* Richard J. Bartlett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–6809, *bartletr@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, 93.846–93.892, 93.893, National Institutes of Health, HHS)

Dated: November 2, 2006.

**Anna Snuffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–9156 Filed 11–9–06; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of 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 Institutes of Health Peer Review 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 Institutes of Health Peer Review Advisory Committee.

*Date:* December 4, 2006.

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

*Agenda:* Provide technical and scientific advice to the Director, National Institutes of Health (NIH), the Deputy Director for Extramural Research, NIH and the Director, Center for Scientific Review (CSR), on matters relating broadly to review procedures and policies for the evaluation of scientific and technical merit of applications for grants and awards.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Rooms E1–E2, Bethesda, MD 20892.

*Contact Person:* Cheryl A. Kitt, PhD, Executive Secretary, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3030, MSC 7776, Bethesda, MD 20892, 301–435–1112, *kittc@csr.nih.gov.*

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.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(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: November 6, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–9171 Filed 11–9–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Exclusive License: Field of Use: Treatment of Inflammatory Diseases Using Ghrelin

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the invention embodied in:

U.S. Provisional Patent application, S/N 60/569,819 filed May 11, 2004, entitled ''Methods for Inhibiting Proinflammatory Cytokine Expression Using Ghrelin,'' converted to PCT on May 11, 2005 (E–016–2004/0–PCT–02), (Inventors: Vishwa D. Dixit, Dennis D. Taub, Eric Schaffer, and Dzung Nguyen) (NIA), to Sapphire Therapeutics, Inc. (Hereafter Sapphire), having a place of business in Bridgewater of NJ. The patent rights in these inventions have been assigned to the United States of America.

**DATES:** Only written comments and/or application for a license, which are received by the NIH Office of Technology Transfer on or before January 12, 2007 will be considered.

**ADDRESSES:** Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Sally Hu, PhD, M.B.A., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; e-mail: *hus@od.nih.gov;* telephone: (301) 435–5606; facsimile: (301) 402–0220.

**SUPPLEMENTARY INFORMATION:** The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

E–016–2004/0–US–01 provides methods for treating inflammation by inhibiting pro-inflammatory cytokine expression using Ghrelin, or a fragment thereof. Inflammation could be caused by a variety of viral, bacterial, fungal, or parasitic infections. The invention also provides methods for treating loss of appetite, and sepsis. Ghrelin, a naturally occurring peptide hormone was shown to be the ligand for growth hormone secretagogue receptor (GHS–R ), and is mainly produced by the epithelial cells in the stomach. Ghrelin exerts many important actions in the body, including stimulation of growth hormone secretion, induction of appetite, and regulation of energy expenditure. Ghrelin directly controls human growth hormone and insulin growth factor expression by human immune cells. The inventors showed that Ghrelin exerts anti-inflammatory effects by inhibiting the secretion of acute and chronic cytokines, including IL–1, IL–6, TNF–$\alpha$, IFN–$\gamma$, IL–12, chemokines, and CSF *in vitro* and in *in vivo* mouse models of sepsis and inflammation. This invention can be useful for treatment of various inflammatory disorders, including inflammatory bowel disease, Crohn's disease, rheumatoid arthritis, multiple sclerosis, atherosclerosis, endotoxemia, and graft-versus-host disease. It can also be used as a treatment for loss of appetite and sepsis.

The field of use may be limited to the use of Ghrelin as a novel drug to treat a range of inflammatory diseases.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 30, 2006.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. E6–19051 Filed 11–9–06; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

### Notice of Intent To Prepare a Draft Environmental Impact Statement for Department of Homeland Security, Customs and Border Protection, Office of Border Patrol, Laredo Sector, Laredo North and South Station's Road Improvement and Non-Native Vegetation Removal Project

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

**SUMMARY:** The U.S. Army Corps of Engineers on behalf of the U.S. Customs and Border Protection (CBP) will prepare a Draft Environmental Impact Statement pursuant to the National Environmental Policy Act of 1969 (NEPA) for the construction and improvement of existing patrol roads and the removal of non-native (giant cane, *Arundo donax*) vegetation along 111 miles of the Rio Grande (Proposed Action) in Webb County, Texas. The U.S. Customs and Border Protection is the decision-making agency for this project. This EIS is being prepared in support of the proposal by the Office of Border Patrol's (OBP) Laredo North and Laredo South Stations for controlling and deterring the influx of illegal immigration and contraband into the United States. Due to the increased violent activity in Nuevo Laredo, Mexico and increase in drug trafficking in Webb County, the Secretary of Homeland Security has mandated this effort as the top priority of the OBP's Laredo Sector.

The Laredo Sector has a need to secure the border by obtaining an unobstructed line of sight to the Rio Grande and a continuous patrol road. These actions are intended to gain and maintain control of the border to further prevent the influx of illegal aliens and drugs into the United States.

Prior NEPA documents, developed to address those project portions which have been previously constructed or proposed to be constructed, will be incorporated into the DEIS by reference. Direct project impacts of the remaining portions of the project, as well as cumulative impacts of the comprehensive project, will also be addressed. Pursuant to the Council on Environmental Quality's regulations, a scoping process will be conducted. As part of this process, a public workshop/open house will be held to identify issues of concern for analysis during the NEPA process.

**DATES:** The meeting dates are:

1. December 5, 2006, 5 p.m. to 8 p.m., Carrizo Springs, TX.
2. December 6, 2006, 5 p.m. to 8 p.m., Laredo, TX.

**ADDRESSES:** The meeting locations are:

1. Carrizo Springs—Carrizo Springs Intermediate School, 300 N. 7th Street, Carrizo Springs, TX 78834.
2. Laredo—Holiday Inn—Civic Center, 800 Garden Street, Laredo, TX 78040.

**FOR FURTHER INFORMATION CONTACT:** Glenn Bixler, DHS Engineering Construction and Support Office, U.S. Army Corps of Engineers, 819 Taylor St., Room 3A14, Fort Worth, Texas 76102. Phone: (817) 886–1713 and Fax: (817) 886–6499.

**SUPPLEMENTARY INFORMATION:**

*Alternatives.* Alternatives to be covered by the DEIS will include various alignments and configurations within the narrow geographic scope dictated by the international border (typically 300 feet from the United States bank of the Rio Grande). Other reasonable alternatives (to include the required ''No Action'' alternative) identified will also be fully examined.

*Scoping Process.* During the preparation of the EIS, there will be numerous opportunities for public involvement, including scoping and review. Two open house public scoping meetings are scheduled (see **DATES**). The purpose of the meetings is to inform the public of the proposed action and identify issues and concerns regarding this project. Appropriate displays and exhibits will be provided to inform meeting participants of potential alternatives and actions. Representatives from the CBP, OBP, U.S. Army Corps of Engineers, and private contractors will be present to provide the public with information and address questions. The meetings will be conducted in an informal format. No formal presentation will be conducted during the meeting. Oral and written comments will be accepted at the public scoping meetings or by mail until February 20, 2006.

*DEIS Preparation.* Public notice will be given in the **Federal Register** concerning the availability of the DEIS for public review and comments.

**Mark A. Gable,**

*T.I. Program Manager (NM/TX)/ Environmental Program Manager, Dallas Facility Division, Customs and Border Protection.*

[FR Doc. 06–9163 Filed 11–9–06; 8:45 am]

**BILLING CODE 3710–20–P**

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Extension of an Existing Information Collection, Comment Request

**ACTION:** 60-Day Notice of Information Collection Under Review; Employment Eligibility Verification; Form I–9; OMB Control No. 1615–0047.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 12, 2007.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0047 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–9. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form was developed to facilitate compliance with section 274A of the Immigration and Nationality Act, which prohibits the knowing employment of unauthorized aliens. The information collected is used by employers or by recruiters for enforcement of provisions of immigration laws that are designed to control the employment of unauthorized aliens.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* This figure was derived by multiplying the number of respondents (78,000,000) × frequency of response (1) × hour per response (9 minutes or 0.15 hours). The annual record keeping burden is added to the total annual reporting burden which is based on 20,000,000 record keepers at (3 minutes or .05 hours) per filing.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 12,700,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue,

Suite 3008, Washington, DC 20529, (202) 272–8377.

Dated: November 6, 2006.

**Stephen Tarragon,**

*Deputy Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. E6–19048 Filed 11–9–06; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5037–N–84]**

### Notice of Submission of Proposed Information Collection to OMB; Section 8 Management Assessment Program (SEMAP) Certification

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The requested information is used to assess a Public Housing Authority's (PHA's) management capabilities and performance in administering a housing choice voucher program. Assessment ratings are used as tool in addressing any potential deficiencies.

**DATES:** *Comments Due Date:* December 13, 2006.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0215) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Section 8 Management Assessment Program (SEMAP) Certification.

*OMB Approval Number:* 2577–0215.

*Form Numbers:* HUD–52648.

*Description of the Need for the Information and Its Proposed Use:* The requested information is used to assess a Public Housing Authority's (PHA's) management capabilities and performance in administering a housing choice voucher program. Assessment ratings are used as tool in addressing any potential deficiencies.

*Frequency of Submission:* Annually, Biennually.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 2437 | 1 | | 13.61 | | 33,184 |

*Total Estimated Burden Hours:* 33,184.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 6, 2006.

**Lillian L. Deitzer,**

*Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.*

[FR Doc. E6–19054 Filed 11–9–06; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4950–FA–21]**

### Announcement of Funding Awards for the Service Coordinators in Multifamily Housing, Fiscal Year 2005

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice of funding awards.

**SUMMARY:** In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Super Notice of Funding Availability (SuperNOFA) for the Service Coordinators in Multifamily Housing program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

**FOR FURTHER INFORMATION CONTACT:** Mr. Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, 451 7th Street, SW., Washington, DC 20410–8000; telephone (202) 708–3000 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at (800) 877–8339. For general information on this and other HUD programs, visit the HUD Web site at *http://www.hud.gov.*

**SUPPLEMENTARY INFORMATION:** The Service Coordinators in Multifamily Housing program is authorized by Section 808 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990), as amended by sections 671, 674, 676, and 677 of the Housing and Community Development Act of 1992

(Pub. L. 102–550, approved October 28, 1992), and section 851 of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569, approved December 27, 2000). The competition was announced in the SuperNOFA published in the **Federal Register** on March 21, 2005 (70 FR 14167). Applications were reviewed and selected for funding on the basis of selection criteria contained in that notice.

The Catalog of Federal Domestic Assistance number for this program is 14.191.

The Service Coordinators in Multifamily Housing program allows multifamily housing owners to assist elderly individuals and nonelderly people with disabilities living in HUD assisted housing and in the surrounding area to obtain needed supportive services from the community, to enable them to continue living as independently as possible in their homes.

A total of $15,433,482 was awarded to 92 owners, serving 96 projects with 13,557 units nationwide. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix A of this document.

Dated: November 6, 2006.

**Frank L. Davis,**

*General Deputy, Assistant Secretary for Housing.*

APPENDIX A—FUNDING AWARDS FOR FY2005 SERVICE COORDINATORS

| Recipient | Address | City | State | Zip | Project name | Amount (dollars) |
|---|---|---|---|---|---|---|
| The Wishcamper GroupLLC. | 707 Sable Oaks Drive | South Portland | ME | 04106 | Kensington Heights | 312,930.00 |
| Alpha Terrace Redevelopment Corporation. | 6105 Etzel Ave | St. Louis | MO | 63133 | Alpha Terrace Apartments. | 152,914.00 |
| Alpha-Massillon Housing Corp. | 695 Dunbar Dr | Akron | OH | 44311 | Alpha Massillon | 46,943.00 |
| Bankhead Ii, Limited Partnership. | 900 S Gay St Ste 1600 | Knoxville | TN | 37902 | BANKHEAD TOWERS | 342,620.00 |
| Baptist Service Corp | Caring Housing Ministries. | Alhambra | CA | 91803 | Vista Tower | 311,983.00 |
| Baskervill Outreach, Inc | 257 Baskervill Ave | Pawleys Island | SC | 29585 | St. Elizabeth Place | 81,238.00 |
| Burritt House, LLC | 7 Thomas Drive | Cumberland Foreside | ME | 04110 | Burritt House | 83,700.00 |
| Capitol Towers Inc | 470 Broad St | Hartford | CT | 06106 | Capitol Towers | 44,979.00 |
| Carpenter Preservation Lmtd Div Housing Assn LP. | 707 Sable Oaks Dr | South Portland | ME | 04106 | Carpenter Place Apts | 316,938.00 |
| Casa De Los Amigos | 123 S Catalina Ave | Redondo Beach | CA | 90277 | Casa De Los Amigos | 234,865.00 |
| Dandridge Towers, Ltd | 900 S Gay St | Knoxville | TN | 37902 | Dandridge Towers | 173,744.00 |
| Deaconess Senior Citizen Housing Corp. | 16300 Dix-Toledo Hwy | Southgate | MI | 48195 | Deaconess Tower | 208,156.00 |
| Dempsey Macon Associates Ltd. | 24 Farnsworth St | Boston | MA | 02210 | Dempsey Apartments | 129,168.00 |
| Duluth Leased Housing Associates I, LP. | c/o Dominium Management. | Minneapolis | MN | 55447 | Pennel Park Commons | 82,671.00 |
| Episcopal House of Reading. | 50 N 9th St | Reading | PA | 19601 | Episcopal House of Reading. | 133,839.00 |
| Evangelical Lutheran Good Samaritan Society. | 4800 West 57th St | Sioux Falls | SD | 57108 | Samaritan Village I | 140,887.92 |
| Fifth Street High Rise, Inc. | 850 W Muhammad Ali Blvd. | Louisville | KY | 40203 | J O Blanton House | 146,634.00 |
| Franklin Elderly Housing Associates. | 7 Thomas Drive | Cumberland Foreside | ME | 04110 | Franklin Arbors | 63,822.00 |
| Franklin Square School Associates Limited Partners. | P.O. Box 1089 | Greenville | SC | 29601 | Franklin Square School 100. | 112,752.44 |
| Grace Episcopal Church Jamaica Snr Ctz Hdfc. | c/o Wynolia W. Pulliam | Hollis | NY | 11423 | Grace Houses | 106,725.00 |
| Grand Forks Homes, Inc | c/o Grand Forks Housing Authority. | Grand Forks | ND | 58203 | Oak Manor | 80,396.00 |
| Grand View Tower LLC | 7730 Forsyth Blvd | Saint Louis | MO | 63105 | Grandview Tower Apartments. | 143,833.00 |
| Heritage Square, Ltd | 55 Beattie Place, 3rd Floor. | Greenville | SC | 29602 | Heritage Square | 104,557.61 |
| Jeffrey Place, Limited | 1430 Collins Rd NW | Lancaster | OH | 43130 | Jeffrey Place | 110,466.00 |
| Jewish Community Housing For The Elderly Ii, Inc. | 30 Wallingford Rd | Brighton | MA | 02135 | Leventhal House | 229,394.42 |
| John Sale Manor, Limited Partnership. | 1170 Terminal Tower | Cleveland | OH | 44113 | John Sale Manor | 176,068.00 |
| Judson Terrace Homes | 3000 Augusta St | San Luis Obispo | CA | 93401 | Judson Terrace Homes | 54,794.00 |
| Kc Shalom Housing Limited. | 443 Congress Street | Portland | ME | 04101 | Plaza Apartments I | 156,629.00 |
| Kenwin Venture | 350 W. Hubbard | Chicago | IL | 60610 | Pines Of Edgewater | 185,405.00 |

APPENDIX A—FUNDING AWARDS FOR FY2005 SERVICE COORDINATORS—Continued

| Recipient | Address | City | State | Zip | Project name | Amount (dollars) |
|---|---|---|---|---|---|---|
| Knudson Housing Partners, Xxiii Ltd. | 29 S Main St | Council Bluffs | LA | 51503 | St. Regis Apartments | 91,823.00 |
| Kv LP (King Village) | 7 Thomas Drive | Cumberland Foreside | ME | 04110 | King Village | 86,592.00 |
| Liberty Terrace Associates, L.P. | One Harry Street | Cranston | RI | 02907 | Liberty Terrace | 152,221.00 |
| Locust House Associates | 55 Beattie Place | Greenville | SC | 29601 | Locust House | 191,928.46 |
| Luther Manor of Scott County. | 3118 Devils Glen Road | Bettendorf | LA | 52722 | Luther Manor | 106,313.00 |
| Luther Towers, Inc | 3118 Devils Glen Rd | Bettendorf | LA | 52722 | Luther Towers | 106,263.00 |
| Lvsl Limited Partnership | 415 Congress St Ste 204. | Portland | ME | 04101 | Lake Village Apartments | 60,707.28 |
| Marian Housing Center Inc. | 26w171 Roosevelt Road | Wheaton | IL | 60189 | Marian Housing Center | 141,329.69 |
| Moss Gardens, Ltd | PO Box 1089 | Greenville | SC | 29602 | Moss Gardens | 161,147.80 |
| Musselshell County Housing Authority. | 902 3rd Street East | Roundup | MT | 59072 | Homes On The Range | 69,806.13 |
| Nat'l Church Residences of Lopatcong, NJ. | 211 Red School Ln | Phillipsburg | NJ | 08865 | Clymer Village | 114,207.00 |
| Nef Properties Inc | 1420 Kennsington Road | Oakbrook | IL | 60523 | Village Meadow Apartments. | 103,695.72 |
| New Haven Jewish Federation Housing Corp. | 18 Tower Ln | New Haven | CT | 06519 | Tower East | 226,735.00 |
| New Havenjewish Comm. Council Hsn. Corp. | 18 Tower Ln | New Haven | CT | 06519 | Tower One | 226,735.00 |
| Ocala Place, Ltd | Aimco Compliance | Greenville | SC | 29601 | Waters Towers Apts | 460,263.00 |
| Oceanport Associates | 377 Oak Street | Garden City | NY | 11530 | Oceanport Senior Citizens Housing. | 165,129.00 |
| Oxford-Kirkwood Associates. | 55 Beattie Place, Floor 3 | Greenville | SC | 29601 | Kirkwood House | 202,079.22 |
| Patten Towers, L.P. Ii | 3756 Broadway St | Kansas City | MO | 64111 | Patten Towers | 78,611.00 |
| Paul G. Stewart Apts, Assoc. Phase Ii. | 400 E 41st St | Chicago | IL | 60653 | Paul G. Stewart Center | 218,705.00 |
| Paul G. Stewart Apts. Assoc. Phase I. | 400 E 41st St | Chicago | IL | 60653 | Paul G. Stewart Center | 218,705.00 |
| Paul G. Stewart Apts. Assoc. Phase Iii. | 400 E 41st St | Chicago | IL | 60653 | Paul G. Stewart Apts Iii | 218,705.00 |
| Pavilion Preservation, L.P. | 55 Beattie Place 3rd Floor. | Greenville | SC | 29601 | The Pavilion | 194,610.00 |
| Pheasant Acres Apartments, Inc. | 3100 W 4th St | Sioux City | LA | 51103 | Pheasant Acres Apartments. | 172,597.36 |
| Philipsburg Elderly Housing. | 7 Thomas Drive | Cumberland Foreside | ME | 04110 | Phillipsburg Tower | 118,529.00 |
| Phoenix Place Ldha LP | 351 Wide Track East | Pontiac | MI | 48342 | Phoenix Place | 217,103.00 |
| Phyllis Wheatley Homes, Inc. | 521 Vanderhorst Dr | Nashville | TN | 37207 | Phyllis Wheatley Apts | 158,953.00 |
| Pine Bluff Village Associates. | 55 Beattie Place | Greenville | SC | 29602 | Pine Bluff Village | 196,784.96 |
| Pineview Preservation Limited. | 707 Sable Oaks Drive | South Portland | ME | 04106 | Pineview Apartments | 311,188.00 |
| Presbyterian Ret. Fac. Corp. Dba Rocky Mountain Manor. | 140 N Cheyenne St | Powell | WY | 82435 | Rocky Mountain Manor | 125,938.00 |
| Prospect Towers of Clearwater Inc. | 801 Chestnut Street | Clearwater | FL | 33756 | Prospect Towers | 162,797.93 |
| Redland Senior Housing, Inc. | c/o Abhow, 6120 Stoneridge Mall Rd. | Pleasanton | CA | 94588 | Casa De La Vista | 96,072.00 |
| Riverview Apts, Inc | 52 Garetta St | Pittsburgh | PA | 15217 | Riverview Phase Ii | 140,563.00 |
| Riverview Towers Apartments, Inc. | 5025 Swetland Ct | Richmond Heights | OH | 44143 | St. James Gardens | 185,170.00 |
| Rocktree Apartments Associates, LP. | 1420 Kensington Road | Oakbrook | IL | 60523 | Rocktree Apartments | 102,365.27 |
| Rolhff's Memorial Manor, Inc., A Ca Corp. | 2400 Fair Dr | Napa | CA | 94558 | Rohlff's Memorial Manor | 260,214.00 |
| Rural Housing Action Corp. | 400 East Avenue | Rochester | NY | 14607 | Crossroads Apartments | 281,891.00 |
| South Mall Towers Albany, LP. | 41 Yorkshire Ln | Delmar | NY | 12054 | Somaltow Housing Co., Inc. | 139,287.00 |
| St. George Tower Ltd | 42250 Hayes | Clinton Twp | MI | 48038 | St. George Tower | 208,106.00 |
| St. John Baptist Church Hsng & Dev Corp. | 526 Hartridge St | Savannah | GA | 31401 | St. John's Villa Apartments. | 111,009.45 |

APPENDIX A—FUNDING AWARDS FOR FY2005 SERVICE COORDINATORS—Continued

| Recipient | Address | City | State | Zip | Project name | Amount (dollars) |
|---|---|---|---|---|---|---|
| St. Simeon Second Mile Corporation. | 24 Beechwood Ave | Poughkeepsie | NY | 12601 | St. Simeon Apartments | 74,745.00 |
| Starrett City Associates | 1279 Delmar Loop | Brooklyn | NY | 11239 | Starrett City | 177,409.00 |
| Stillwater Housing Associates. | 2355 Polaris Lane North | Plymouth | MN | 55447 | Rivertown Commons | 85,193.00 |
| Stovall Development Corporation c/o Hdsi. | 3460 S Broadway | Los Angeles | CA | 90007 | Fairmount Terrace I | 452,754.00 |
| Swartzberg House LLC | 3101 W Touhy Ave | Chicago | IL | 60645 | Swartzberg House | 182,994.00 |
| Sy Landmark Towers Investors, LP. | 3770 Broadway St | Kansas City | MO | 64111 | Landmark Towers | 156,666.00 |
| Sy Old Oak Tree Investors LP. | 3770 Broadway St | Kansas City | MO | 64111 | Olde Oak Tree Apartments. | 156,846.00 |
| Telacu Housing | 5400 E Olympic Blvd | Los Angeles | CA | 90022 | Telacu Terrace | 91,178.00 |
| Telacu Manor, Inc | 5400 E Olympic Blvd | Los Angeles | CA | 90022 | Telacu Manor | 91,178.00 |
| Telecu Senior Court, Inc | 5400 E Olympic Blvd | Los Angeles | CA | 90022 | Telacu Senior Court | 91,178.00 |
| Trevecca Towers, Inc | 60 Lester Ave | Nashville | TN | 37210 | Trevecca Towers I | 654,876.00 |
| Ukrainian Village Inc | 26377 Ryan Road | Warren | MI | 48091 | Ukrainian Village | 208,106.00 |
| United Church Residences of Canal Winchester, Inc. | 170 E Center St | Marion | OH | 43302 | Canal Village | 109,287.00 |
| United Church Residences of Kenton, Ohio, Inc. | 170 E Center St | Marion | OH | 43302 | Hardincrest | 82,061.00 |
| United Church Residences of Marion, Ohio, Inc. | 170 E Center St | Marion | OH | 43302 | Brownstone Terrace | 106,954.00 |
| United Methodist Homes of CT., Inc. | 580 Long Hill Ave | Shelton | CT | 06484 | Wesley Heights | 244,208.00 |
| Village Oaks-Oxford Associates. | 55 Beattie Place, 3rd Floor. | Greenville | SC | 29602 | Village Oaks | 197,906.46 |
| Wade D. Mertz Elderly Housing. | 7 Thomas Drive | Cumberland Foreside | ME | 04110 | Wade D. Mertz Towers | 72,547.00 |
| Welles Country Village, Ltd. | 2664–2 State Street | Hamden | CT | 06517 | Welles Country Village | 262,660.00 |
| Wesley Woods Center of Emory University, Inc. | 1817 Clifton Rd, NE | Atlanta | GA | 30329 | St. John's Towers | 145,132.00 |
| West Side Federation For Senior Housing. | 2345 Broadway | New York | NY | 10024 | Marseilles Apartments | 194,531.00 |
| Winter Garden Preservation, L.P. | 55 Beattie Place | Greenville | SC | 29602 | Winter Garden | 172,676.04 |
| Wisconsin Housing Preservation Corporation. | 111 E. Wisconsin Ave | Milwaukee | WI | 53201 | Riverview Heights | 184,005.00 |

[FR Doc. E6–19057 Filed 11–9–06; 8:45 am]
BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

**DATES:** Written data, comments or requests must be received by December 13, 2006.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358–2104.

**SUPPLEMENTARY INFORMATION:**

### Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Albert G. Johnson, Bloomfield Hills, MI, PRT–138562

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Robert S. Bass, Myrtle Beach, SC, PRT–137561

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd

maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Kenneth R. Sardegna, Falls Church, VA, PRT–138211

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: James C. Bunn, Mount Gilead, NC, PRT–135894

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

**Marine Mammals**

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Philip S. Majerus, Fond Du Lac, WI, PRT–137715

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beauford Sea polar bear population in Canada for personal, noncommercial use.

Dated: October 20, 2006.

**Monica Farris,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. E6–19072 Filed 11–9–06; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Issuance of Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permits for endangered species and marine mammals.

**SUMMARY:** The following permits were issued.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358–2104.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) The application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

| Permit No. | Applicant | Receipt of application **Federal Register** notice | Permit issuance date |
|---|---|---|---|
| 122178 | Feld Entertainment, Inc | 71 FR 48938; August 22, 2006 | October 12, 2006. |

MARINE MAMMALS

| Permit No. | Applicant | Receipt of application **Federal Register** notice | Permit issuance date |
|---|---|---|---|
| 127902 | Buckley V. Chappell | 71 FR 53464; September 11, 2006 | October 17, 2006. |

Dated: October 20, 2006.

**Monica Farris,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. E6–19074 Filed 11–9–06; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Availability of a Final Environmental Impact Statement for the Orange County Southern Subregion Natural Community Conservation Plan/Habitat Conservation Plan, Orange County, CA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of the final Environmental Impact Statement (EIS) prepared pursuant to the National Environmental Policy Act (NEPA) for the Orange County Southern Subregion Natural Community Conservation Plan/Habitat Conservation Plan (Plan), for public review and comment. The Fish and Wildlife Service (Service) is considering the proposed action of issuing three 75-year incidental take permits, pursuant to section 10(a)(1)(B) of the Federal Endangered Species Act of 1973, as amended (ESA), for 32 species in response to receipt of applications from the County of Orange (County), Rancho Mission Viejo, LLC (RMV) and Santa

Margarita Water District (SMWD) (Applicants). The proposed permits would authorize take of individual members of animal species listed under the ESA. The permits are needed because take of species could occur during proposed urban development activities and associated infrastructure on Rancho Mission Viejo, expansion of the Prima Deshecha Landfill, the extension of Avenida La Pata, maintenance and operation of Santa Margarita Water District facilities, and reserve management activities within an approximately 132,000-acre Plan Area in southern Orange County, California.

The Orange County Southern Subregion Habitat Conservation Plan also serves as a proposed Natural Community Conservation Plan under the State of California's Natural Community Conservation Planning Act (NCCPA). The EIS analyzes the impacts of the Plan/NCCP and a Master Streambed Alteration Agreement which involves action by the County of Orange and the California Department of Fish and Game. For that reason, the EIS also serves as an Environmental Impact Report (EIR) to satisfy requirements of the California Environmental Quality Act (CEQA) in addition to those of the National Environmental Policy Act (NEPA). Comments regarding the Final EIS/EIR may be submitted to the Service pursuant to NEPA during a 30-day waiting period [See **DATES**].

**DATES:** Written comments should be received on or before December 13, 2006.

**ADDRESSES:** Comments should be sent to Mr. Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92011. You may also submit comments by facsimile to 760–918–0638.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen Goebel, Assistant Field Supervisor, 6010 Hidden Valley Road, Carlsbad, California 92011, 760–431–9440.

**SUPPLEMENTARY INFORMATION:**

## Availability of Documents

Copies of the Plan and Appendices A–X, the Map Book, the Implementation Agreement, and the Final EIS/EIR are available for public review, by appointment, during regular business hours, at the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Copies are also available for viewing in select local southern Orange County public libraries (listed below), the Orange County Resources and Development Management Department, and at the following Web site: *http://www.ocplanning.net*.

1. Dana Point Library—Reference Desk, 33841 Niguel Road, Laguna Niguel, California 92629;
2. Laguna Hills Library—Reference Desk, 25555 Alicia Parkway, Laguna Hills, California 92653;
3. Laguna Niguel Library—Reference Desk, 30341 Crown Valley Parkway, Laguna Niguel, California 92677;
4. Mission Viejo Library—Reference Desk, 100 Civic Center, Mission Viejo, California 92691;
5. Rancho Santa Margarita Library—Reference Desk, 30902 La Promesa, Rancho Santa Margarita, California 92688;
6. San Clemente Library—Reference Desk, 242 Avenida Del Mar, San Clemente, California 92672;
7. San Juan Capistrano Library—Reference Desk, 31495 El Camino Real, San Juan Capistrano, California 92675; and
8. Orange County Resources & Development Management Department—Tim Neely, 300 North Flower Street, Santa Ana, California 92702.

## Background Information

Section 9 of the Federal ESA of 1973, as amended, and Federal regulations prohibit the take of fish and wildlife species listed as endangered or threatened (16 U.S.C. 1538). The term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532). Harm includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3). Under limited circumstances, the Service may issue permits to authorize incidental take of listed fish or wildlife; *i.e.*, take that is incidental to, and not the purpose of, otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32(b) and 17.22(b), respectively.

Although take of listed plant species is not prohibited under the Federal ESA and therefore cannot be authorized under an incidental take permit, plant species are proposed to be included on the permits in recognition of the conservation benefits provided to them under the Plan. All species included on an incidental take permit would receive assurances under the Service's ''No Surprises'' regulation (50 CFR 17.22(b)(5) and 17.32(b)(5)).

The Service has received applications for incidental take permits supported, in part, by the Plan. The applications were prepared and submitted by the three Applicants to satisfy the application requirements for a section 10(a)(1)(B) permit under the Federal ESA, of 1973, as amended, a section 2835 permit under the California Natural Community Conservation Planning Act of 1991 (NCCPA), and a streambed alteration agreement under section 1600 *et seq.* of the California Fish and Game Code. Thus, the Plan constitutes a Habitat Conservation Plan pursuant to the Federal ESA, and a Natural Community Conservation Plan pursuant to the NCCPA, and also addresses the proposed master streambed alteration agreement pursuant to the California Department of Fish and Game Code.

The Applicants seek 75-year incidental take permits authorizing take incidental to covered activities within a proposed 132,000-acre Plan Area, located entirely in southern Orange County, California. The Plan is one of two large, multiple-jurisdiction habitat planning efforts in Orange County, each of which constitutes a ''subregional'' plan under the NCCPA.

The applicants have requested permits for 32 species, seven of which are currently listed as threatened or endangered under the Federal ESA. Of these 32 species, the Applicants request incidental take permits for 25 animal species and assurances for seven plant species, all of which are collectively referred to as ''Covered Species'' by the Plan. Of the seven plant species, one is listed as threatened [Thread-leaved Brodiaea (*Brodiaea filifolia*)] and six are unlisted [California Scrub Oak (*Quercus berberidifolia*), Chaparral Beargrass (*Nolina cismontana*), Coast Live Oak (*Quercus agrifolia*), Coulter's Saltbush (*Atriplex coulteri*), Many-stemmed Dudleya (*Dudleya multicaulis*), and Southern Tarplant (*Centromadia parryi* var. *australis*)]]). In addition, two invertebrate species, both listed as endangered [Riverside Fairy Shrimp (*Streptocephalus woottoni*) and San Diego Fairy Shrimp (*Branchinecta sandiegonensis*)] are covered; two unlisted fish species, [Arroyo Chub (*Gila orcutti*) and Partially-armored Threespine Stickleback (*Gasterosteus aculeatus microcephalus*)]]); two amphibian species, one listed as endangered [Arroyo Toad (*Bufo californicus*)] and one unlisted [Western Spadefoot Toad (*Spea hammondii*)]]); seven unlisted reptile species [California Glossy Snake (*Arizona elegans occidentalis*), Coast Patch-nosed Snake (*Salvadora hexalepis virgultea*), Northern Red-diamond Rattlesnake

(*Crotalus ruber ruber*), Orange-throated Whiptail (*Aspidoscelis hyperythra*), Red Coachwhip (*Masticophis flagellum piceus*), San Diego ''Coast'' Horned Lizard (*Phrynosoma coronatum*), and Southwestern Pond Turtle (*Emys* [=*Clemmys*] *marmorata pallida*)]); and 12 bird species, two listed as endangered [Least Bell's Vireo (*Vireo bellii pusillus*) and Southwestern Willow Flycatcher (*Empidonax traillii extimus*)], one listed as threatened [Coastal California Gnatcatcher (*Polioptila californica californica*)], and nine unlisted [Burrowing Owl (*Athene cunicularia*), Coastal Cactus Wren (*Campylorhynchus brunneicapillus couesi*), Cooper's Hawk (*Accipiter cooperii*), Grasshopper Sparrow (*Ammodramus savannarum*), Long-eared Owl (*Asio otus*), Tricolored Blackbird (*Agelaius tricolor*), White-tailed Kite (*Elanus leucurus*), Yellow-breasted Chat (*Icteria virens*), and Yellow Warbler (*Dendroica petechia*)] are also included as Covered Species. If the proposed Plan is approved and the permits issued, the take authorizations for listed covered animal species would be effective upon permit issuance. For currently unlisted covered animal species, the take authorizations would become effective concurrent with listing, should the species be listed under the ESA during the permit term. The take permits would authorize take incidental to the Covered Activities identified in the Plan.

Proposed Covered Activities include residential and commercial development and associated infrastructure on RMV, maintenance of existing RMV ranch facilities, and grazing on portions of the Habitat Reserve; SMWD projects both within and outside of RMV within the Plan area; and the County's expansion of the Prima Deshecha Landfill, and extention and improvements to Avenida La Pata. The Plan provides for the inclusion of additional individual land owners within Coto de Caza who choose to fulfill specific mitigation measures. Individual projects would typically require separate environmental review under CEQA, and in some cases, NEPA.

As described in the Draft EIS/EIR, the Plan would provide for the creation of a Habitat Reserve encompassing approximately 20,868 acres of habitat permanently protected and managed to benefit the Covered Species, in addition to approximately 11,950 acres of existing County Wilderness Parkland, the 4,000-acre Audubon Starr Ranch, and approximately 7,000 acres of existing conservation elsewhere in the Southern Subregion of Orange County outside of the Cleveland National Forest that also provide habitat for the Covered Species. Orange County will manage an additional 531 acres for the benefit of Covered Species on the Prima Deshecha Landfill. As a major part of the Habitat Reserve, approximately 16,536 acres (73 percent) of RMV land would be preserved through a Phased Dedication Program linked to phased development on RMV lands. When completed, the Habitat Reserve will include large habitat blocks for Covered Species that provide for essential ecological processes and biological corridors and linkages to provide for the conservation of the proposed Covered Species.

In order to comply with the requirements of the Federal ESA, California ESA, and the California NCCPA, the Plan addresses a number of required elements, including: Species and habitat goals and objectives; evaluation of the effects of Covered Activities on Covered Species, including indirect and cumulative effects; a conservation strategy; a monitoring and adaptive management program; descriptions of potential changed circumstances and remedial measures; identification of funding sources; and an assessment of alternatives to take of listed species. A monitoring and reporting plan would gauge the Plan's success based on achievement of biological goals and objectives and would ensure that conservation keeps pace with development. The Plan includes a management program, including adaptive management, which allows for changes in the conservation program if the biological species objectives are not met or new information becomes available to improve the efficacy of the Plan's conservation strategy.

On July 14, 2006, the Service published a notice in the **Federal Register** (71 FR 40145) announcing receipt of an application for incidental take permits from the Applicants. The draft EIS/EIR analyzed the potential environmental impacts that may result from the Federal action of authorizing incidental take anticipated to occur with implementation of the Plan and identified various alternatives. We received a total of 21 comment letters on the draft EIS/EIR. In several cases, interested parties submitted separate but identical letters on both the EIS and EIR. A response to each comment received in all of these letters has been included in the final EIS/EIR.

## Alternatives

After an initial screening of proposed alternatives, the draft EIS/EIR considered four alternatives in detail in addition to the preferred project described above (Alternative B–12) including: an expanded conservation alternative (B–8); an alternative formulated by Orange County during the County zoning process (B–10M); a ''no-take/no-streambed alteration'' alternative (A–5); and a no-project alternative (A–4).

Under Alternative B–8, approximately 19,130 acres (84 percent) of RMV land would be designated as permanent open space. Potential development would be located on about 3,680 acres (16 percent) of RMV lands. Acquisition and management of open space would be provided for through dedications and public and non-profit organization funding of acquisitions and management. A voluntary sale by RMV for purpose of open space acquisition likely would be required for substantial areas. County housing needs would be met to a far lesser extent than any of the other alternatives.

Under Alternative B–10M, approximately 15,132 acres (66 percent) of RMV land would be designated as permanent open space. Potential development would be located on about 6,279 acres (27 percent, including orchards and the Planning Area 4 reservoir) of RMV land. This alternative would not require acquisition of reserve land on RMV. Compared with Alternative B–12, this alternative would result in more development in the San Mateo watershed.

The ''no project'' and ''no take'' programmatic alternatives are expected to conserve less habitat than Alternative B–12 and in an unknown configuration through a project by project approach. Management for remaining open space in these alternatives is unspecified.

## National Environmental Policy Act

Proposed permit issuance triggers the need for compliance with NEPA. As stated above, because other Orange County and State-related actions are covered in the Plan, there is also a need for compliance with CEQA. Accordingly, a joint NEPA/CEQA document has been prepared. The Service is the lead agency responsible for compliance under NEPA, and Orange County is the Lead Agency with the responsibility for compliance with CEQA. As NEPA lead agency, the Service is providing notice of the availability of the Final EIS/EIR and is making available for public review the responses to comments on the Draft EIS/EIR.

## Public Review

The Service invites the public to review the Final Plan, Final EIS/EIR, and Final Implementing Agreement

during a 30-day waiting period [See **DATES**]. Any comments received, including names and addresses, will become part of the administrative record and may be made available to the public. Our practice is to make comments, including names, home addresses, home phone numbers, and email addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or homes addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organization or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

The Service will evaluate the application, associated documents, and comments submitted to them to prepare a Record of Decision. Permit decisions will be made no sooner than 30 days after the publication of the Final EIS/EIR and completion of the Record of Decision.

This notice is provided pursuant to section 10(a) of the Federal ESA and regulations for implementing NEPA, as amended (40 CFR 1506.6). We provide this notice in order to allow the public, agencies, and/or other organizations to review these documents.

Dated: October 26, 2006.

**Ken McDermond,**

*Deputy Manager, California/Nevada Operations Office, Sacramento, California.*

[FR Doc. E6–18971 Filed 11–9–06; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–150–07–1010–AL]**

### Notice of Public Meetings, Southwest Colorado Resource Advisory Council Meetings

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice of public meetings.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Southwest Colorado Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The Southwest Colorado RAC meetings will be held January 19, 2007; April 20, 2007; July 20, 2007; September 21, 2007; and November 16, 2007.

**ADDRESSES:** The Southwest Colorado RAC meetings will be held January 19, 2007, at the Canyons of the Ancients National Monument Anasazi Heritage Center, located at 27501 Highway 184, Dolores, CO; April 20, 2007, at the Holiday Inn Express, located at 1391 S. Townsend Avenue, in Montrose, CO; July 20, 2007, at The Grand Lodge, 6 Emmons Loop, Mt. Crested Butte, CO; September 21, 2007, at the Ouray County 4–H Event Center, 22739 Highway 550, in Ridgway, CO; and November 16, 2007, at the Devils Thumb Golf Club, 9900 Devils Thumb Road, in Delta, CO.

The Southwest Colorado RAC meetings will begin at 9 a.m. and adjourn at approximately 4 p.m. Public comment periods regarding matters on the agenda will be at 2:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Barbara Sharrow, BLM Uncompahgre field manager, 2505 S. Townsend Avenue, Montrose, CO; telephone 970–240–5300; or Melodie Lloyd, Public Affairs Specialist, 2815 H Road, Grand Junction, CO, telephone 970–244–3097.

**SUPPLEMENTARY INFORMATION:** The Southwest Colorado RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues in Colorado.

Topics of discussion for all Southwest Colorado RAC meetings may include field manager and working group reports, recreation, fire management, land use planning, invasive species management, energy and minerals management, travel management, wilderness, land exchange proposals, cultural resource management, and other issues as appropriate.

These meetings are open to the public. The public may present written comments to the RACs. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Dated: November 6, 2006.

**Barbara Sharrow,**

*Uncompahgre Field Manager, Designated Federal Officer, Southwest Colorado RAC.*

[FR Doc. E6–19091 Filed 11–9–06; 8:45 am]

**BILLING CODE 4310–JA–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WO–260–09–1060–00–24 1A]**

### Wild Horse and Burro Advisory Board; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Announcement of meeting.

**SUMMARY:** The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

**DATES:** The Advisory Board will meet Monday, December 11, 2006 from 8 a.m. to 5 p.m., local time. This will be a 1-day meeting.

**ADDRESSES:** The Advisory Board will meet at the Imperial Palace Hotel & Casino, 3535 Las Vegas, Blvd. South, Las Vegas, Nevada 89109. The Imperial Palace's phone number is (702) 731–3311.

Written comments pertaining to the Advisory Board meeting should be sent to: Bureau of Land Management, National Wild Horse and Burro Program, WO–260, Attention: Ramona DeLorme, 1340 Financial Boulevard, Reno, Nevada 89502–7147. Submit written comments pertaining to the Advisory Board meeting no later than close of business, December 6, 2006. See **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

**FOR FURTHER INFORMATION CONTACT:** Ramona DeLorme, Wild Horse and Burro Administrative Assistant, (775) 861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach Ms. DeLorme at any time by calling the Federal Information Relay Service at 1 (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

#### I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief of the Forest Service, on matters pertaining to management and protection of wild, free-roaming horses

and burros on the Nation's public lands. The tentative agenda for the meeting is:

*Monday, December 11, 2006*
*(8 a.m.–5 p.m.)*

8 a.m. Call to Order and Introductions
8:15 a.m. Old Business:
Approval of July 2006 Minutes
Update Pending Litigation
8:45 a.m. Program Updates:
Gathers
Adoptions
Facilities
Forest Service Update
Break (9:30 a.m.–9:45 a.m.)
9:45 a.m. Program Updates (continued):
Program Accomplishments
BLM Response to Advisory Board Recommendations
Lunch (11:45 a.m.–1 p.m.)
1 p.m. New Business
Break (2:45 p.m.–3 p.m.)
3 p.m. Public Comments
4 p.m. Board Recommendations
4:45 p.m. Recap/Summary/Next Meeting/Date/Site
5 p.m. Adjourn

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as an interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** 2 weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal Advisory Committee Management Regulations [41 CFR 101–6.1015(b),] require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

## II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on December 11, 2006, at the appropriate point in the agenda. This opportunity is anticipated to occur at 3 p.m., local time. Persons wishing to make statements should register with the BLM by noon on December 11, 2006 at the meeting location. Depending on the number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to 3 minutes in length. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments if feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. However, if you do not want the BLM to release your name and address in response to a FOIA request, you must state this prominently at the beginning of your comment. The BLM will honor your request to the extent allowed by law. The BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

*Electronic Access and Filing Address*

Speakers may transmit comments electronically via the Internet to: *Ramona_DeLorme@blm.gov.* Please include the identifier ''WH&B'' in the subject of your message and your name and address in the body of your message.

Dated: November 7, 2006.

**Ed Shepard,**

*Assistant Director, Renewable Resources and Planning.*

[FR Doc. E6–19099 Filed 11–9–06; 8:45 am]

BILLING CODE 4310–84–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Central Valley Project Improvement Act, Criteria for Developing Refuge Water Management Plans

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice.

**SUMMARY:** The ''Criteria for Developing Refuge Water Management Plans'' (Refuge Criteria), as applied in the following areas, are now available for public comment.

- North Grassland State Wildlife Area, China Island
- North Grassland State Wildlife Area, Salt Slough
- Merced National Wildlife Refuge
- Los Banos State Wildlife Area
- Mendota State Wildlife Area
- San Luis National Wildlife Refuge
- Sacramento National Wildlife Refuge
- Delevan National Wildlife Refuge
- Colusa National Wildlife Refuge
- Kern National Wildlife Refuge
- Volta State Wildlife Area
- Pixley National Wildlife Refuge

The Refuge Criteria provides a common methodology, or standard, for efficient use of water by Federal Wildlife Refuges, State Wildlife Management Areas and Resource Conservation Districts that receive water under provisions of the Central Valley Project Improvement Act (CVPIA). They document the process and format by which Refuge Water Management Plans (Plans) should be prepared and submitted to Reclamation as part of the Refuge/District Water Supply Contracts and Memorandum of Agreements. The Refuge Criteria refers to Refuges, Wildlife Areas and Resource Conservation Districts as Refuges. Those Refuges that entered into water supply contracts with Reclamation, as a result of the CVPIA and subsequent Department of the Interior administrative review processes, are required to prepare Plans using the Refuge Criteria.

**DATES:** All public comments must be received by December 13, 2006.

**ADDRESSES:** Please mail comments to Ms. Laurie Sharp, Bureau of Reclamation, 2800 Cottage Way, MP–410, Sacramento, California 95825, 916–978–5232, or e-mail at *lsharp@mp.usbr.gov.*

**FOR FURTHER INFORMATION CONTACT:** To be placed on a mailing list for any subsequent information or to obtain a copy of any water management plans, please contact Ms. Sharp at the e-mail address or telephone number above.

**SUPPLEMENTARY INFORMATION:** In response to the Central Valley Project Improvement Act of 1992 and a 1995 Department of the Interior administrative review process, the Interagency Coordinated Program for Wetland and Water Use Planning (ICP) was formed. The ICP was comprised of representatives from the Bureau of Reclamation, the U.S. Fish and Wildlife Service, the California Department of Fish and Game, and the Grassland Water District/Grassland Resource Conservation District. The ICP developed the 1998 Task Force Report, which outlines past, present, and future wetland planning and management issues and a methodology for Refuge Criteria. To continue the work of the now disbanded ICP, an Interagency Refuge Water Management Team (IRWMT) was formed to continue working on wetland issues such as water delivery, including additional work on wetland Refuge Criteria. The IRWMT is comprised of representatives from the Bureau of Reclamation, the U.S. Fish and Wildlife Service, the California Department of Fish and Game, and the Grassland Water District/Grassland Resource Conservation District. The IRWMT used the 1998 Task Force Report and Reclamation's 1999 Conservation and Efficiency Criteria as the foundation for developing the water management planning requirements or criteria included in these Refuge Criteria. The Refuge Criteria also incorporated comments, ideas, and suggestions from Refuge/District managers, biologists, water conservation specialists, engineers, the CALFED Bay-Delta Program, and other Central Valley stakeholders.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety. Public comments for the Refuge Criteria are now being accepted.

Dated: October 31, 2006.

**Richard M. Stevenson,**

*Acting Regional Resources Manager, Mid-Pacific Region.*

[FR Doc. E6–19083 Filed 11–9–06; 8:45 am]

**BILLING CODE 4310–MN–P**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–587]**

### In the Matter of Certain Connecting Devices (''Quick Clamps'') for Use With Modular Compressed Air Conditioning Units, Including Filters, Regulators, and Lubricators (''FRL's'') That Are Part of Larger Pneumatic Systems and the FRL Units They Connect; Notice of Investigation

**AGENCY:** 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 October 6, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Norgren, Inc. of Littleton, Colorado. An amended complaint was filed on October 25, 2006 and a supplement thereto was filed on November 1, 2006. The complaint, as amended and supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain connecting devices, known as ''quick clamps,'' for compressed air conditioning units, which include filters, regulators, and lubricators, known collectively as ''FRL's,'' which together are used in larger pneumatic systems, by reason of infringement of certain claims of U.S. Patent No. 5,372,392. 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 exclusion order and a permanent cease and desist order.

**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:** Christopher G. Paulraj, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–3052.

**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 (2006).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on November 6, 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 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 devices for modular compressed air conditioning units and the FRL units they connect by reason of infringement of one or more of claims 1–9, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Norgren, Inc., 5400 South Delaware St., Littleton, CO 80120.

(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:

SMC Corporation, 16–4, Shimbashi 1 chome, Minato-ku, Tokyo, Japan.

SMC Corporation of America, 3011 North Franklin Road, Indianapolis, IN 46226.

AIRTAC, No. 1 Siming Road (east) High-Tech, Garden Zone of Fenghua, Ningbo, China.

MFD Pnuematics, 4110 North Knox Avenue, Chicago, IL 60641.

(c) The Commission investigative attorney, party to this investigation, is

Christopher G. Paulraj, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Sidney Harris 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 respondents.

By order of the Commission.
Issued: November 6, 2006.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6–19070 Filed 11–9–06; 8:45 am]

**BILLING CODE 7020–02–P**

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## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–588]**

### In the Matter of Certain Digital Multimeters, and Products With Multimeter Functionality; Notice of Investigation

**AGENCY:** 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 October 6, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Fluke Corporation of Everett, Washington. Letters supplementing the complaint were filed on October 27 and October 30, 2006. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital multimeters, and products with multimeter functionality by reason of infringement of U.S. Trademark Registration No. 2,796,480 and also by reason of infringement of trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States. The complaint further alleges that there exists an industry in the United States with respect to the asserted intellectual property rights.

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 and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2574.

**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 (2006).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on November 6, 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)(C) 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 digital multimeters, or products with multimeter functionality, by reason of infringement of U.S. Trademark Registration No. 2,796,480, 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 digital multimeters, or products with multimeter functionality, by reason of infringement of 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—Fluke Corporation, 6920 Seaway Boulevard, Everett, Washington 98203.

(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:

Altadox, Inc., 309 E Las Flores Avenue, Arcadia, CA 91006.
Circuit Specialists, Inc., 220 S Country Club Drive #2, Mesa, AZ 85210.
Digitek Instruments Co., Ltd., Room 1905, Nan Fung Centre, 264–298, Castle Peak Road, Tsuen Wan, N.T., Hong Kong.
Electronic Specialties, Inc., 2449 Piece Drive, Spring Grove, IL 60081.
Electronix Express, A Division of R.S.R. Electronics, Inc., 365 Blair Road, Avenel, New Jersey 07001.
Elenco Electronics, Inc., 150 W. Carpenter Avenue, Wheeling, IL 60090.
HandsOnTools, 1001–A E Harmony Rd, Suite 332, Fort Collins, CO 80525.
Harbor Freight Tools, 3491 Mission Oaks Blvd., Camarillo, CA 93011.
Jameco Electronics, 1355 Shoreway Road, Belmont, CA 94002.
Kaito Electronics, Inc., 5185 Cliffwood Drive, Montclair, CA 91763.
Parts Express, 725 Pleasant Valley Drive, Springboro, Ohio 45066.
Precision Mastech Enterprises Co., Room 1708–9, Hewlett Centre, 54 Hoi, Yuen Road, Kwun Tong, Kowloon, Hong Kong.

Shenzhen Everbest Machinery, Industry Co., Ltd., Room 302, No. 5, Kefa Road, Science Industry Park, Shenzhen, China.
ShenZhen Hongda Electronic Co., Ltd., East. 6/F, 14 Bagua-4 Road, Futian District, Shenzhen, China.
Shenzhen Victor Hi-Tech Co., Ltd., 3/F, Building 412, Bagua 4th Road, Futian District, Shenzhen City, Guangdong Province, China, 518029.
Sinometer Instruments Co. Ltd., Ginza International Building, 1056, Shennan Avenue, Shenzhen, China.
TechBuys, LLC, 1813 Yeager Avenue, La Verne, CA 91750.
Velleman Inc., 7354 Tower Street, Fort Worth, TX 76118.

(c) The Commission investigative attorney, party to this investigation, is Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–R, Washington, DC 20436; and

(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 respondent, 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.

By order of the Commission.

Issued: November 6, 2006.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6–19073 Filed 11–9–06; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–556]**

### In the Matter of Certain High-Brightness Light Emitting Diodes and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint

**AGENCY:** International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') of the presiding administrative law judge (''ALJ'') granting complainant's motion to amend the complaint in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential 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 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.* 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 December 8, 2005, based on a complaint filed by Lumileds Lighting U.S., LLC (''Lumileds'') of San Jose, California. 70 FR 73026. The complaint, as amended and supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. **1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain high-brightness light emitting diodes (''LEDs'') and products containing same by reason of infringement of claims 1 and 6 of U.S. Patent No. 5,008,718; claims 1–3, 8–9, 16, 18, and 23–28 of U.S. Patent No. 5,376,580; and claims 12–16 of U.S. Patent No. 5,502,316. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named Epistar Corporation (''Epistar'') of Hsinchu, Taiwan, and United Epitaxy Company (''UEC'') of Hsinchu, Taiwan as respondents.

On April 28, 2006, Lumileds moved to amend the complaint to: (1) Remove UEC as a named respondent, (2) change the complainant's full name from Lumileds Lighting U.S., LLC to Philips Lumileds Lighting Company LLC, and (3) identify additional Epistar LEDs alleged to infringe one or more patents-in-suit. The remaining respondent did not oppose the motion.

On October 23, 2006, the ALJ issued the subject ID granting Lumileds' motion, and further ordering that the Notice of Investigation be amended to identify the actual parties in the above-captioned investigation. No party petitioned for review of the ID pursuant to 19 CFR 210.43(a), and the Commission found no basis for ordering a review on its own initiative pursuant to 19 CFR 210.44. The Commission has determined not to review this ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.14 and 210.42(c)) of the Commission's Rules of Practice and Procedure, 19 CFR 210.14, 210.42(c)).

By order of the Commission.

Issued: November 6, 2006.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6–19071 Filed 11–9–06; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree, under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended (''CERCLA'')

Pursuant to 29 CFR 50.7, notice is hereby given that on October 31, 2006, a proposed consent decree in *United States* v. *Bill D. Stallings and Stallings Salvage, Inc.,* Civil action No. 3:05CV247–H, was lodged with the United States District Court for the Western District of North Carolina.

This Consent decree will resolve claims asserted by the United States in a complaint previously filed against defendants Bill D. Stallings and Stallings Salvage, Inc., for past costs incurred by EPA at the Stallings Salvage Site in Monroe, North Carolina. A

complaint was filed on May 31, 2005, alleging that defendant Bill D. Stallings is liable as a past owner of the Site at the time of disposal pursuant to CERCLA Section 107(a)(2), and that defendant Stallings Salvage, Inc. is liable as an operator at the Site at the time of disposal, also pursuant to CERCLA 107(a)(2).

The Defendants agree to pay to the EPA Hazardous Substance Superfund the principal sum of $150,000 plus accrued interest, to be made in five installments. The first payment, in the amount of $10,000, is due within 30 days of entry of the Consent Decree. There will be three subsequent annual payments of $39,750.00 each, and a fourth and final annual payment consisting of the remaining principal owed, plus accrued interest. The final payment should be in roughly the same amount as the previous payments, depending on the actual interest rates each year. The Consent Decree provides that the annual payments will be funded through an escrow account to be established by the Defendants.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, 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. *Bill D. Stallings and Stallings Salvage, Inc.,* D.J. Ref. #90–11–3–08007/1.

The consent decree may be examined at the Office of the United States Attorney for the Western District of North Carolina, 227 West Trade St., Suite 1650, Charlotte, NC 28202, and at U.S. EPA Region 4, Office of Regional Counsel, 61 Forsyth Street, Atlanta, GA 30303. 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/Consent_Decrees.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Henry Friedman,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 06–9167 Filed 11–9–06; 8:45 am]

**BILLING CODE 4410–15–M**

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act

The United States Department of Justice gives notice that on October 26, 2006, a proposed consent decree was lodged in *United States* v. *Bunge North America Inc.*, et al., Civil Action No. 2:06–cv–02209–MPM–DGB, in the United States District Court for the Central District of Illinois.

The consent decree resolves claims against Bunge North America, Inc. and its wholly owned subsidiaries Bunge North America (East), L.L.C., Bunge North America (OPD West), Inc., and Bunge Milling, Inc. under Section 113 of the Clean Air Act, 42 U.S.C. 7413. The United States' complaint alleges that at some or all of the twelve plants subject to the proposed consent decree, one of the Defendants violated Clean Air Act requirements related to: Part C of Title I, 42 U.S.C. 7470–7492, Prevention of Significant Deterioration; Title V, 42 U.S.C. 7661–7661f, Permits; certain New Source Performance Standards, 42 U.S.C. 7411, 40 CFR Part 60; the state implementation plans (''SIPs'') for the eight states in which the plants are located; and SIP permitting programs for construction and operation of new and modified stationary sources of air pollution.

The plants subject to the consent decree include eleven soybean processing plants and one corn dry mill. The soybean processing plants are located in: Danville, Illinois; Cairo, Illinois; Morristown, Indiana; Decatur, Indiana; Delphos, Ohio; Marion, Ohio; Council Bluffs, Iowa; Emporia, Kansas; Destrehan, Louisiana; Marks, Mississippi; and Decatur, Alabama. The corn dry mill is located in Danville, Illinois. All eight states where the plants are located have filed motions to intervene as plaintiffs in the case and are participating in the settlement.

The proposed consent decree would require Defendants to reduce emissions of volatile organic compounds from the plants by complying with interim limits, and setting and complying with final limits, on each plant's solvent loss ratio (SLR). Under the terms of the consent decree, the final solvent loss ratio for each of the eleven soybean plants may not exceed 0.2 gallon of solvent lost per ton of oilseeds processed (gal/ton) or the plant's existing permit limit, whichever is lower, and the final capacity-weighted average SLR for the eleven soybean plants may not exceed 0.175 gal/ton. The consent decree would limit the SLR ratio for the corn dry mill plant to a maximum of 0.70 gal/ton based on content of hazardous air pollutants.

The consent decree would also require Defendants to undertake specified additional pollution control projects at various plants, to reduce emissions of sulfur dioxide, nitrogen oxides, and particulate matter. Defendants would also be required to pay a civil penalty of $625,000, which would be divided among the federal government and the eight states, and to spend at least $1.25 million performing state supplemental environmental projects to achieve additional environmental benefits, including at least one project in each of the eight states.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, 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. *Bunge North America, Inc.*, DOJ Ref. # 90–5–2–1–07950.

The Consent Decree may be examined at the Office of the United States Attorney, Central District of Illinois, 201 South Vine Street, Suite 226, Urbana, Illinois 61802, and at the offices of the United States Environmental Protection Agency in Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202, and Region 7, 901 N. 5th Street, Kansas City, Kansas 66101. 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/Consent_Decrees.html.*

A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood. *tonia.fleetwood@usdoj.gov*, Fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree library,

please enclose a check payable to the U.S. Treasury in the amount of $48.25 (for reproduction costs of 25 cents per page for the consent decree and ten attachments).

**William D. Brighton,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 06–9166 Filed 11–9–06; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Proposed Second Agreement Regarding Alleged Non-Compliance with Consent Decree in United States v. Cummins Engine Company, Inc.

Notice is hereby given of a proposed Second Agreement Regarding Alleged Non-Compliance with Consent Decree (''Agreement'') in the case of *United States* v. *Cummins Engine Company, Inc.,* Civil Action No. 98__02546, in the United States District Court for the District of Columbia.

The Agreement resolves matters involving Cummins' alleged failure to comply with a 1999 Consent Decrees settling claims under Title II of the Clean Air Act, 42 U.S.C. 7521 *et seq.* (the ''Act''), regarding the alleged use of illegal emission-control ''defeat devices'' on Cummins' 1998 and prior heavy-duty diesel engines (''HDDEs''). The United States contends that Cummins violated several provisions of the Consent Decree's Section IX (Additional Injunctive Relief/Offset Projects). Specifically, the United States contends that Cummins: Used in its Averaging, Banking and Trading (''AB&T'') program credits from 192 model year 2003 and 130 model year 2004 compressed natural gas engines that were subsidized as part of a Consent Decree Offset Project, leading to the improper generation of 243.5 megagrams (Mg) of $No_X$ + NMHC and 13.9 Mg of PM urban bus credits; and failed to timely complete work on, or to timely submit an adequate completion report for, several work plans for offset projects approved by EPA under the Consent Decree.

The Agreement provides that these violations will be resolved by Cummins' retiring of all the credits improperly generated plus a premium and Cummins' payment of a pe3nalty of $2,170,000 to the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Cummins Engine Company, Inc.,* D.J. Ref. 90–5–2–1–2136A, Second Agreement.

During the public comment period, the Agreement may be examined on the following Department of Justice Web site, *http://www.uddoj.gov/enrd/Consent_Decrees.html.* A copy of the Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 of by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Decree from the Consent Decree Library, please enclose a check in the amount of $2.75 (25 cents per page reproduction cost for 11 pages) payable to the U.S. Treasury.

**Karen Dworkin,**

*Assistant Chief, Environmental Enforcement Section.*

[FR Doc. 06–9165 Filed 11–9–06; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to Clean Water Act

Notice is hereby given that on October 31, 2006, a proposed consent decree in *United States, et al.* v. *Greater Lawrence Sanitary District,* Civil Action No. 06–11975–PBS, was lodged with the United States District Court for the District of Massachusetts.

The proposed consent decree will settle the United States' and Commonwealth of Massachusetts' claims for violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the Massachusetts Clean Waters Act, Mass. Gen. Laws c. 21, §§ 26, *et seq.*, related to the failure by the Greater Lawrence Sanitary District (GLSD) to comply with its wastewater treatment discharge permit at its combined sewer overflow outfalls. Pursuant to the proposed consent decree, GLSD will pay $254,000 as civil penalty for such violations and institute necessary improvements at its wastewater treatment plant at an estimated cost of $18 million.

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 of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States, et al.* v. *Greater Lawrence Sanitary District,* Civil Action No. 06–11975–PBS, D.J. Ref. 90–5–1–1–08171.

The proposed consent decree may also be examined at the Office of the United States Attorney, District of Massachusetts, John Moakley Courthouse, 1 Courthouse Way, Room 9200, Boston, MA, at U.S. EPA Region 1, One Congress Street, Boston, MA. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/ConsentDecrees.html.* A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy of the proposed consent decree (without attachments), please so note and enclose a check in the amount of $8.00 (25 cents per page reproduction cost) payable to the U.S. Treasury, or if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Ronald Gluck,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 06–9168 Filed 11–9–06; 8:45 am]

**BILLING CODE 4410–15–M**

## OFFICE OF NATIONAL DRUG CONTROL POLICY

### Paperwork Reduction Act; Proposed Collection; Comment Request

**AGENCY:** Office of National Drug Control Policy.

**ACTION:** 60 day notice.

**SUMMARY:** The Office of National Drug Control Policy (ONDCP) intends to submit the following information collection request to the Office of Management and Budget for review and approval. ONDCP seeks public comment.

*Abstract:* ONDCP will conduct face-to-face interviews and acquire urine samples from booked arrestees to obtain information concerning drug use; drug and alcohol treatment; and, drug market participation and arrests. The use and manufacture of methamphetamines are of particular interest. Participation is voluntary.

*Type of Information Collection:* New collection.

*Title:* Arrestee Drug Abuse Monitoring (ADAM II) Program Questionnaire.

*Affected Public:* Persons arrested and booked in one of 10 pre-selected booking facilities in the United States in one of two, 2-week data collection cycles spanning six months.

*Estimated Burden:* ADAM II proposes 10 sites that each conduct two cycles of surveys from 250 arrestees per cycle. The total number of participants is 5000. The average survey estimate is 20 minutes. Total burden estimate is 1667 hours.

*Goals:* ONDCP intends to obtain drug-use data that is directly comparable to data collected under the 2000–2003 National Institute of Justice sponsored Arrestee Drug Abuse Monitoring program; provide consistent data collection points to support statistical trend analysis for the use of heroin, cocaine, crack, marijuana and methamphetamine; monitor the spread or emergence of methamphetamine use; and, support ONDCP's efforts to estimate chronic drug use and examine drug market behaviors.

*Comment Request:* Public comments should address whether the proposed data is proper for the functions of the agency; whether the information will have practical utility; the accuracy of ONDCP's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions; the quality, utility, and clarity of the information to be collected; and, the burden on proposed respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, such as electronic submission of responses. Comments will be accepted for sixty days.

**FOR FURTHER INFORMATION CONTACT:** Robert Cohen, ONDCP, Office of Planning and Budget, 750 17th Street #534, Washington DC 20503; telephone (202) 395–5598; facsimile (202) 395–5571.

Dated: November 7, 2006.

**Daniel R. Petersen,**

*Assistant General Counsel.*

[FR Doc. E6–19081 Filed 11–9–06; 8:45 am]

**BILLING CODE 3180–02–P**

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 71 FR 52348, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. 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: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. 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 703–292–7556.

NSF 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.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Model Institutions for Excellence Graduates' Survey.

*OMB Approval Number:* 3145–NEW.

*Expiration Date of Approval:* Not applicable.

*Type of Request:* Intent to seek approval to establish an information collection for three years.

*Proposed Project:* The Division of Human Resource Development (EHR/HRD) of the National Science Foundation (NSF) has requested impact information on the Model Institutions for Excellence (MIE) Program. Jointly funded by NSF and the National Aeronautics and Space Administration (NASA), the MIE Program funded eight minority-service undergraduate institutions to promote underrepresented minority participation in the fields of science, technology, engineering and mathematics (STEM). Now NSF seeks follow-up information on program graduates to determine whether or not they have continued their education in STEM graduate programs and/or STEM employment, and how the MIE program influenced their decisions with respect to graduate school and employment. NSF proposes a one-time on-line survey of the 931 MIE students who received bachelor's degrees in a STEM field from one of the MIE colleges between 2002 through 2005.

*Estimate of Burden:* The Foundation estimates that, on average, 30 minutes per respondent will be required to complete the survey, for a total of 465.5 hours for all respondents. Respondents from the eight institutions that received NSF MIE support will complete this survey once.

*Respondents:* STEM graduates from MIE programs.

*Estimated Number of Responses:* 931.

*Estimated Total Annual Burden on Respondents:* 465.5 hours.

Dated: November 7, 2006.

**Suzanne Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. E6–19103 Filed 11–9–06; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 71 FR 45076, and no

substantial comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. 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: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov*. 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 703–292–7556.

NSF 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.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* ''National Science Foundation Proposal and Award Information—NSF Proposal and Award Policies & Procedures Guide.''

*OMB Approval Number:* 3145–0058.

*Type of Request:* Intent to seek approval to extend with revision an information collection for three years.

*Proposed Project:* NSF is seeking to improve its existing mechanisms for the issuance of proposal and award policies and procedures. Previously, these policies and procedures were contained in two separate issuances: the *Grant Proposal Guide* and the *Grant Policy Manual*. These documents were each separately maintained and issued with different effective dates and significant redundancies between the two documents. We have now collapsed these two documents into a new policy framework: the *NSF Proposal and Award Policies and Procedures Guide*.

Part I of this document will include *NSF Proposal Preparation and Submission Guidelines*, i.e., the *Grant Proposal Guide (GPG)*, and Part II will include the *NSF Award & Administration Guide* (previously known as the GPM). These documents will be available as a single html file on the NSF Web site. This initial issuance of the *NSF Proposal and Award Policies and Procedures Guide* will be effective following approval by OMB of this information collection request. Future issuances of this Guide will be supplemented with additional documents, such as the *NSF Grants.gov Application Guide*.

This new policy framework will assist both NSF customers as well as NSF staff by:

1. Improving both the awareness and knowledge of the complete set of NSF policies and procedural documents;
2. Increasing ease of access to the policies and procedures that govern the entire grant lifecycle;
3. Eliminating duplicative coverage between the two documents;
4. Increasing the transparency of our proposal and award process; and
5. Allowing NSF to better manage amendments between the two documents necessitated by administrative changes.

This process also will combine the Grant Proposal Guide (OMB Clearance No. 3145–0058) with the Proposal Review Process (3145–0060) to streamline the proposal and award management processes for applicants and awardees. This will allow NSF to better manage amendments between the two collections necessitated by administrative changes. Following OMB approval, this information will be available electronically by the community via the Internet.

The National Science Foundation (NSF) is an independent Federal agency created by the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–75). The Act states the purpose of the NSF is ''to promote the progress of science; [and] to advance the national health, prosperity, and welfare'' by supporting research and education in all fields of science and engineering.'' The Act authorized and directed NSF to initiate and support:

- Basic scientific research and research fundamental to the engineering process;
- Programs to strengthen scientific and engineering research potential;
- Science and engineering education programs at all levels and in all the various fields of science and engineering;
- Programs that provide a source of information for policy formulation; and
- Other activities to promote these ends.

From those first days, NSF has had a unique place in the Federal Government: It is responsible for the overall health of science and engineering across all disciplines. In contrast, other Federal agencies support research focused on specific missions such as health or defense. The Foundation also is committed to ensuring the nation's supply of scientists, engineers, and science and engineering educators.

The Foundation fulfills this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. It does this through grants and cooperative agreements to more than 2,800 colleges, universities, K–12 school systems, businesses, informal science organizations and other research institutions throughout the U.S. The Foundation accounts for about one-fourth of Federal support to academic institutions for basic research.

Over the years, NSF's statutory authority has been modified in a number of significant ways. In 1968, authority to support applied research was added to the Organic Act. In 1980, The Science and Engineering Equal Opportunities Act gave NSF standing authority to support activities to improve the participation of women and minorities in science and engineering.

Another major change occurred in 1986, when engineering was accorded equal status with science in the Organic Act. NSF has always dedicated itself to providing the leadership and vision needed to keep the words and ideas embedded in its mission statement fresh and up-to-date. Even in today's rapidly changing environment, NSF's core purpose resonates clearly in everything it does: promoting achievement and progress in science and engineering and enhancing the potential for research and education to contribute to the Nation. While NSF's vision of the future and the mechanisms it uses to carry out its charges have evolved significantly over the last four decades, its ultimate mission remains the same.

Use of the Information: The regular submission of proposals to the Foundation is part of the collection of information and is used to help NSF

fulfill this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. NSF receives more than 40,000 proposals annually for new projects, and makes approximately 10,500 new awards.

Support is made primarily through grants, contracts, and other agreements awarded to more than 2,800 colleges, universities, academic consortia, nonprofit institutions, and small businesses. The awards are based mainly on evaluations of proposal merit submitted to the Foundation (proposal review is currently cleared under OMB Control No. 3145–0060).

The Foundation has a continuing commitment to monitor the operations of its information collection to identify and address excessive reporting burdens as well as to identify any real or apparent inequities based on gender, race, ethnicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s).

**Proposal Evaluation Process**

The Foundation relies heavily on the advice and assistance of external advisory committees, ad-hoc proposal reviewers, and to other experts to ensure that the Foundation is able to reach fair and knowledgeable judgments. These scientists and educators come from colleges and universities, nonprofit research and education organizations, industry, and other Government agencies.

In making its decisions on proposals the counsel of these merit reviewers has proven invaluable to the Foundation both in the identification of meritorious projects and in providing sound basis for project restructuring.

Review of proposals may involve large panel sessions, small groups, or use of a mail-review system. Proposals are reviewed carefully by scientists or engineers who are expert in the particular field represented by the proposal. About 54% are reviewed exclusively by panels of reviewers who gather, usually in Arlington, VA, to discuss their advice as well as to deliver it. About 33% are reviewed first by mail reviewers expert in the particular field, then by panels, usually of persons with more diverse expertise, who help the NSF decide among proposals from multiple fields or sub-fields. Finally, about 9% are reviewed exclusively by mail.

**Use of the Information**

The information collected is used to support grant programs of the Foundation. The information collected on the proposal evaluation forms is used by the Foundation to determine the following criteria when awarding or declining proposals submitted to the Agency: (1) What is the intellectual merit of the proposed activity? (2) What are the broader impacts of the proposed activity?

The information collected on reviewer background questionnaire (NSF 428A) is used by managers to maintain an automated database of reviewers for the many disciplines represented by the proposals submitted to the Foundation. Information collected on gender, race, and ethnicity is used in meeting NSF needs for data to permit response to Congressional and other queries into equity issues. These data also are used in the design, implementation, and monitoring of NSF efforts to increase the participation of various groups in science, engineering, and education.

**Confidentiality**

When a decision has been made (whether an award or a declination), verbatim copies of reviews, excluding the names of the reviewers, and summaries of review panel deliberations, if any, are provided to the PI. A proposer also may request and obtain any other releasable material in NSF's file on their proposal. Everything in the file except information that directly identifies either reviewers or other pending or declined proposals is usually releasable to the proposer.

While a listing of panelists' names is released annually, the names of individual reviewers, associated with individual proposals, are not released to anyone.

Because the Foundation is committed to monitoring and identifying any real or apparent inequities based on gender, race, ethnicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s), the Foundation also collects information regarding race, ethnicity, disability, and gender. This information also is protected by the Privacy Act.

*Burden on the Public:* For the Grant Proposal Guide, NSF estimates that an average of 120 hours is expended for each proposal submitted. An estimated 45,000 proposals are expected during the course of one year for a total of 5,400,000 public burden hours annually.

For the proposal review process, NSF estimates that anywhere from one hour to twenty hours may be required to review a proposal. It is estimated that approximately five hours are required to review an average proposal. Each proposal receives an average of 6 reviews, with a minimum requirement of three reviews for an estimated total of 1,350,000 hours. The estimated burden for the Reviewer Background Information (NSF 428A) is estimated at 5 minutes per respondent with up to 10,000 potential new reviewers for a total of 83 hours. The estimated total is 1,350,083 for the reviewer process and the reviewer background information.

The estimated aggregated total for both the Grant Proposal Guide and the proposal review process is 6,750,083 hours.

Dated: November 7, 2006.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. E6–19104 Filed 11–9–06; 8:45 am]

BILLING CODE 7555–01–P

## NATIONAL SCIENCE FOUNDATION

### Proposal Review, Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or

cancellations, please visit the NSF Web site: *http://www.nsf.gov.* This information may also be requested by telephoning, 703/292–8182.

Dated: November 7, 2006.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 06–9182 Filed 11–9–06; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for International Science and Engineering; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for International Science and Engineering (25104).

*Date/Time:* December 4, 2006; 8:30 a.m. to 5 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA.

*Type of Meeting:* Open.

*Contact Person:* Eduardo Feller, National Science Foundation, 4201 Wilson Boulevard, (suite 935), Arlington, VA 22230 (703) 292–8100.

If you are attending the meeting and need access to the NSF, please contact the individual listed above so your name may be added to the building access list.

*Purpose of Meeting:* To provide advice on the programs of the Office of International Science and Engineering.

*Agenda:* Presentation of new Committee Members.

Update on work of the Office.

Briefings on Current International Initiatives.

Discussion of International Program Initiatives.

Dated: November 7, 2006.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 06–9181 Filed 11–9–06; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–373 and 50–374]**

### Exelon Generation Company, LLC; Notice of Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has denied a request by Exelon Generation Company, LLC (the licensee) for an amendment to Facility Operating Licenses NPF–11 and NPF–12, issued to the licensee for operation of the Lasalle County Station, Unit Nos. 1 and 2, located in LaSalle County, Illinois.

Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on March 28, 2006 (71 FR 15483).

The purpose of the licensee's amendment request was to revise the technical specifications (TS) to change Surveillance Requirement (SR) 3.7.3.1 which verifies the cooling water temperature supplied to the plant from the core standby cooling system (CSCS) pond (*i.e.*, ultimate heat sink (UHS)) is ≤ 100 °F. Currently, if the temperature of the cooling water supplied to the plant from the CSCS pond is > 100 °F, the UHS must be declared inoperable in accordance with TS 3.7.3. The license amendment request proposed to increase the temperature limit of the cooling water supplied to the plant from the CSCS pond to ≤ 101.5 °F by reducing the temperature measurement uncertainty by replacing the existing thermocouples with higher precision temperature measuring equipment. Should the UHS indicated temperature exceed 101.5 °F, Required Action B.1 would be entered and both units would be placed in Mode 3 within 12 hours and Mode 4 within 36 hours.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by telephone on November 2, 2006.

By 30 days from the date of publication of this notice in the **Federal Register**, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene pursuant to the requirements of 10 CFR 2.309.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov* . A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. Bradley J. Fewell, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Kennett Square, PA 19348, attorney for the licensee. For further details with respect to this action, see (1) the application for amendment dated March 13, 2006, as supplemented by letters dated July 13 and August 4, 2006, and (2) the Commission's letter to the licensee dated November 3, 2006.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and will be accessible electronically through the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 3rd day of November 2006.

For the Nuclear Regulatory Commission.

**Catherine Haney,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E6–19097 Filed 11–9–06; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 030–29319; License No. 42–26838–01; EA–06–021]**

### In the Matter of H&G Inspection Company, Inc., Houston, TX; Confirmatory Order (Effective Immediately)

**I**

H&G Inspection Company, Inc. (H&G), is the holder of Materials License No.

42–26838–01 issued by the Nuclear Regulatory Commission (NRC or Commission) on July 30, 1986, last amended on June 3, 2003, and is due to expire on June 30, 2013. The license authorizes H&G to possess sealed radioactive sources for use in conducting industrial radiography activities in accordance with the conditions specified therein.

**II**

An NRC inspection was conducted at a temporary job site in Rock Springs, Wyoming, and at the H&G field office located in Evanston, Wyoming, on December 15, 2004. Following that inspection, an investigation was initiated on January 31, 2005, by the NRC Office of Investigations (OI) in order to determine whether two radiographers employed by H&G willfully violated NRC regulations.

Based on the results of the NRC inspection and OI investigation, the NRC determined that three violations of NRC requirements occurred. The violations involved failures to: (A) Secure from unauthorized removal or access and control and maintain constant surveillance of licensed material in an unrestricted area (10 CFR 20.1801 and 10 CFR 20.1802); (B) have a second qualified individual observe radiographic operations (10 CFR 34.41(a)), (C) and block and brace a radiographic exposure device during transport (10 CFR 71.5(a) and 49 CFR 177.842(d)). The NRC also determined that Violation C resulted from willful actions on the part of the two radiographers involved.

**III**

In a letter dated May 1, 2006, the NRC issued a Notice of Violation and proposed Civil Penalty for the three violations identified as a result of the December 15, 2004, inspection and subsequent OI investigation. In the May 1, 2006, letter, the NRC offered H&G the opportunity to request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve issues associated with these violations. In response to the May 1, 2006, letter, H&G requested ADR to resolve the matter with the NRC. ADR is a process in which a neutral mediator, with no decision-making authority, assists the NRC and H&G to resolve any differences regarding the matter.

An ADR session was held between H&G and the NRC in Arlington, Texas, on August 24, 2006. During that ADR session, an agreement was reached. The elements of the agreement consisted of the following:

1. The NRC and H&G agree that a Severity Level-III violation of 10 CFR 20.1801 and 10 CFR 20.1802 did occur on December 15, 2004, as noted in the Notice of Violation dated May 1, 2006, in that the licensee stored its radiography camera in the mobile darkroom of its truck parked at the licensee's facility in Evanston, Wyoming, and the door to the darkroom was left unsecured and the licensee did not otherwise control and maintain constant surveillance of the licensed material.

2. The NRC and H&G agree that a Severity Level-III violation of 10 CFR 34.41(a) did occur on December 15, 2004, as noted in the Notice of Violation dated May 1, 2006, in that, although the licensee had two qualified individuals present at a temporary jobsite in Rock Springs, Wyoming, where radiographic operations were being performed, the second qualified individual (radiographer's assistant) was physically located in the licensee's mobile darkroom during radiographic operations, and was therefore not able to observe the operations or provide immediate assistance to prevent unauthorized entry.

3. The NRC and H&G agree that a violation of 49 CFR 177.842(d) did occur on December 15, 2004, as noted in the Notice of Violation dated May 1, 2006, in that the licensee transported a radiographic exposure device containing licensed material to and from a temporary job site without the required blocking and bracing.

4. The NRC and H&G agree that the violation of 49 CFR 177.842(d), as noted in the Notice of Violation dated May 1, 2006, was a willful act on the part of the radiographers involved.

5. The NRC recognizes that H&G took the following immediate and effective corrective actions: (1) Replacing the area supervisor in the associated field office; (2) replacing other personnel in that field office, including those involved in the willful violation; (3) holding company-wide safety meetings about the deficiencies that NRC found; (4) completing implementation of a new locking system (using two physical systems: a lock box installed in each dark room and utilization of the lock on the dark room door); (5) conducting additional field audits; (6) conducting retraining for affected individuals; and (7) clarifying Operation and Emergency procedures regarding the requirements for the 2-person rule.

6. The NRC and H&G agree that the actions in this paragraph are sufficient to address the NRC's concerns. H&G agrees to issuance of this letter and Confirmatory Order confirming this agreement, and also agrees to waive any request for a hearing regarding this Confirmatory Order. The NRC and H&G further agree that this Confirmatory Order should include the following elements:

A. H&G will continue to implement the following corrective actions: (1) A new locking system (using two physical systems: a lock box installed in each dark room and utilization of the lock on the dark room door); (2) conducting additional field audits; and (3) annual training on Operation and Emergency procedures regarding the requirements for the 2-person rule.

B. Not later than 1-year from the date of this Confirmatory Order, H&G will write and submit an article (for publication by both the American Society of Non-Destructive Testing (ASNT) and the Non-Destructive Testing Managers Association (NDTMA)) that is mutually agreeable. The article will address the new H&G management oversight program (detailed below) and the value it adds to overall safe and effective operations. Not later than 11 months from the date of this Confirmatory Order, a draft of the proposed article will be submitted to the NRC Region IV office for review, comment, and concurrence.

C. H&G agrees to implement a management review and oversight program with the following elements:

a. Training of the three area supervisors and three office managers to the Radiation Safety Officer level.

b. Requiring each of the six individuals in 6.C.a to conduct unannounced audits of one of the other field offices on a rotating basis (quarterly for the first 2 years, and annually thereafter).

c. Requiring one of the three senior corporate managers (Radiation Safety Officer, Chief Operations Officer, and President) to conduct unannounced performance observations at each of the field offices on a rotating basis twice a year. Meaning each field office will receive a visit from a senior corporate manager twice each year.

D. H&G understands that the NRC, as part of its normal process, will issue a press release with this Confirmatory Order. The NRC will provide H&G a copy of the press release prior to its release.

E. In recognition of H&G's extensive corrective actions, the NRC agrees to reduce the Civil Penalty originally proposed to $500.

On October 10, 2006, H&G consented to issuing this Confirmatory Order with the commitments, as described in Section IV below. H&G further agreed in the October 10, 2006, letter that this

Confirmatory Order is to be effective upon issuance and that they have waived their right to a hearing. Implementation of these commitments will resolve the NRC's concerns and will satisfy the response requirements listed in the May 1, 2006, Notice of Violation such that no additional written response to that letter is necessary.

I find that H&G's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that H&G's commitments be confirmed by this Order. Based on the above and H&G's consent, this Confirmatory Order is immediately effective upon issuance.

**IV**

Accordingly, pursuant to Sections 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, the Commission's regulations in 10 CFR 2.202, 2.205, 10 CFR Parts 20, 34, and in Part 71 that references 49 CFR 177, *it is hereby ordered, effective immediately, that:*

1. The NRC reduces the civil penalty proposed by letter dated May 1, 2006 in the amount of $6,500 to $500.

2. H&G will continue to implement the following corrective actions: (1) A new locking system (using two physical systems: a lock box installed in each dark room and utilization of the lock on the dark room door); (2) conducting additional field audits; (3) annual training on Operation and Emergency procedures regarding the requirements for the 2-person rule.

3. Not later than 1 year from the date of this Confirmatory Order, H&G will write and submit an article (for publication by both the American Society of Non-Destructive Testing (ASNT) and the Non-Destructive Testing Managers Association (NDTMA)) that is mutually agreeable. The article will address the new H&G management oversight program (detailed below) and the value it adds to overall safe and effective operations. Not later than 11 months from the date of this Confirmatory Order, a draft of the proposed article will be submitted to the NRC Region IV office for review, comment, and concurrence.

4. H&G agrees to implement a management review and oversight program with the following elements:

(a) Training of the three area supervisors and three office managers to the Radiation Safety Officer level.

(b) Requiring each of the six individuals in 4(a) above to conduct unannounced audits of one of the other field offices on a rotating basis (quarterly for the first 2 years, and annually thereafter).

(c) Requiring one of the three senior corporate managers (Radiation Safety Officer, Chief Operations Officer, and President) to conduct unannounced performance observations at each of the field offices on a rotating basis twice a year, meaning each field office will receive a visit from a senior corporate manager twice each year.

The Regional Administrator, NRC Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by H&G of good cause.

**V**

Any person adversely affected by this Confirmatory Order, other than H&G, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to H&G Inspection. Because of the possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309 (d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated this 24th day of October, 2006.

For the Nuclear Regulatory Commission.

**Bruce S. Mallett,**

*Regional Administrator.*

[FR Doc. E6–19098 Filed 11–9–06; 8:45 am]

BILLING CODE 7590–01–P

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review, Request for Comments

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) will be sending an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request a revision to the following collection of information: 3220–0002, Application for Employee Annuity Under the Railroad Retirement Act, consisting of RRB Form(s) AA–1, Application for Employee Annuity, AA–1cert, Application Summary and Certification, AA–1d, Application for Determination of Employee's Disability, and G–204, Verification of Worker's Compensation/Public Disability Benefit Information. Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) the practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number

of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

*Previous Requests for Comments:* The RRB has already published the initial 60-day notice (71 FR 42887 on July 28, 2006) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

**Information Collection Request (ICR)**

*Title:* Application for Employee Annuity Under the Railroad Retirement Act.

*OMB Control Number:* 3220–0002.

*Form(s) submitted:* AA–1, Application for Employee Annuity; AA–1cert, Application Summary and Certification; AA–1d, Application for Determination of Employee's Disability; and G–204, Verification of Worker's Compensation/Public Disability Benefit Information.

*Type of request:* Revision of a currently approved collection.

*Affected public:* Individuals or households, State or local government.

*Obligation to Respond:* Required to obtain or retain benefits.

*Abstract:* The Railroad Retirement Act provides for payment of age, disability, and supplemental annuities to qualified employees. The application and related forms obtain information about the applicant's family work history, military service, disability benefits from other government agencies and public or private pensions. The information is used to determine entitlement to and the amount of the annuity applied for.

*Changes Proposed:* The RRB proposes changes to the certification statements of Form(s) AA–1 and AA–1(cert) that are intended to provide additional specificity regarding post-application events that require an applicant to contact the RRB. Other non-burden impacting editorial and formatting changes to Form AA–1cert and Form AA–1 are also proposed. The RRB also proposes the addition of an item to Form AA–1d to ask a disability applicant if any additional medical procedures are scheduled after the filing of the form, and if so, what those procedures are, as well as minor non-burden impacting, editorial and formatting changes. The RRB proposes no changes to Form G–204.

*The burden estimate for this ICR is unchanged as follows:*

*Estimated annual number of respondents:* 13,105.

*Total annual responses:* 18,110.

*Total annual reporting hours:* 9,498.

**FOR FURTHER INFORMATION CONTACT:** Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@rrb.gov*.

*Comments:* Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, Karen Matsuoka at *kmatsuoka@omb.eop.gov*, FAX (202) 395–6974.

**Charles Mierzwa,**

*RRB Clearance Officer.*

[FR Doc. E6–19067 Filed 11–9–06; 8:45 am]

BILLING CODE 7905–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–27546; File No. 812–13155]**

## Annuity Investors Life Insurance Company, et al.

November 6, 2006.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940, as amended (the ''1940 Act''), approving certain substitutions of securities.

**APPLICANTS:** Annuity Investors Life Insurance Company (''Annuity Investors''), Annuity Investors Variable Account A (''Variable Account A''), Annuity Investors Variable Account B (''Variable Account B'') and Annuity Investors Variable Account C (''Variable Account C,'' together with Variable Account A and Variable Account B, the ''Separate Accounts'') (collectively, the ''Applicants'').

**SUMMARY:** Applicants seek an order pursuant to Section 26(c) of the 1940 Act approving the proposed substitution of shares issued by Old Mutual Insurance Series Fund, DWS Investments VIT Fund, Wells Fargo Variable Trust, and Van Kampen-The Universal Institutional Funds, Inc. (the ''Replaced Portfolios'') and held by Variable Account A, Variable Account B and Variable Account C (the ''Substitutions'').

**FILING DATE:** The Application was filed on January 18, 2005 and an amended and restated application was filed on October 30, 2006.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 1, 2006, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, Mark F. Muething, Esq., Executive Vice President and Secretary, Annuity Investors Life Insurance Company, P.O. Box 5423, Cincinnati, Ohio 45201–5423.

**FOR FURTHER INFORMATION CONTACT:** Alison T. White, Senior Counsel, or Joyce M. Pickholz, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the Application. The complete Application is available for a fee from the Public Reference Branch of the Commission.

### Applicants' Representations

1. Annuity Investors is a stock life insurance company incorporated under the laws of Ohio. Annuity Investors is a subsidiary of Great American Life Insurance Company, which is a wholly-owned subsidiary of Great American Financial Resources, Inc. (''GAFRI''), a publicly traded insurance holding company. GAFRI is in turn indirectly controlled by American Financial Group, Inc., a publicly traded holding company.

2. Variable Account A was established in 1995. Variable Account A is registered under the Act as a unit investment trust (File No. 811–7299) and is used to fund variable annuity contracts issued by Annuity Investors. Two variable annuity contracts funded by Variable Account A are affected by this Application (the ''Variable Account A Contracts'').

3. Variable Account B was established in 1996. Variable Account B is registered under the Act as a unit investment trust (File No. 811–8017) and is used to fund variable annuity contracts issued by Annuity Investors. Three variable annuity contracts funded by Variable Account B are affected by this Application (the ''Variable Account B Contracts'').

4. Variable Account C was established in 2001. Variable Account C is

registered under the Act as a unit investment trust (File No. 811–21095) and is used to fund variable annuity contracts issued by Annuity Investors. Two variable annuity contracts funded by Variable Account C are affected by this Application (the ''Variable Account C Contracts,'' together with the Variable Account A Contracts and the Variable Account B Contracts, the ''Contracts'').

5. Purchase payments under the Contracts may be allocated to one or more subaccounts of the Separate Accounts. Income, gains and losses, whether or not realized, from assets allocated to the Separate Accounts are, as provided in the Contracts, credited to or charged against the Separate Accounts without regard to other income, gains or losses of Annuity Investors. The assets maintained in the Separate Accounts will not be charged with any liabilities arising out of any other business conducted by Annuity Investors. Nevertheless, all obligations arising under the Contracts, including the commitment to make annuity payments or death benefit payments, are general corporate obligations of Annuity Investors. Accordingly, all of the assets of Annuity Investors are available to meet its obligations under its Contracts.

6. Each of the Contracts permits allocations of accumulation value to available subaccounts that invest in specific investment portfolios of underlying mutual funds. As of May 1, 2006, each Variable Account A Contract offered 30 portfolios, each Variable Account B Contract offered 33 portfolios, and each Variable Account C Contract offered 38 portfolios.

7. All of the portfolios in Variable Account B Contracts and Variable Account C Contracts that are the subject of this Application were closed to new investors on or before November 30, 2004. All of the portfolios in Variable Account A Contracts that are the subject of these Substitutions were closed to new investors on or before May 1, 2005.

8. Each of the Contracts permits transfers of accumulation value from one subaccount to another subaccount at any time prior to annuitization, subject to certain restrictions and charges described below. A transfer fee of $25 is charged for each transfer in excess of 12 in any contract year to offset cost incurred in administering the Contracts. A variety of automatically scheduled transfers is permitted without charge and is not counted against the 12 free transfers in a contract year. Transfers from the Variable Account A Contracts and the Variable Account B Contracts must be at least $500, or, if less, the entire amount in the subaccount from which value is to be transferred. Transfers from the subaccounts of the Variable Account C Contracts may be of any amount.

9. Each of the Contracts reserves the right, upon notice to Contract owners and compliance with applicable law, to add or delete subaccounts or to substitute portfolios. This reservation of right is described in each Contract prospectus.

10. The Substitutions are being proposed by Annuity Investors to: (a) Remove those fund families where the authorities have identified improper mutual fund trading and the Applicant is uncertain of the impact on the fund and its performance; (b) substitute stable, established fund families with solid reputations and longevity; and (c) replace those funds that are closed to new investors. None of the Applicants are affiliated with any of the Replaced Portfolios, the Replacement Portfolios or their respective investment advisers.

11. Specifically, Applicants propose the following substitutions:

| Substitution | Replaced portfolio | Replacement portfolio |
|---|---|---|
| 1 | Liberty Ridge Growth II Portfolio (now known as Old Mutual Growth II Portfolio). | American Century VP Vista Fund—Class I. |
| 2 | Liberty Ridge Mid-Cap Portfolio (now known as Old Mutual Mid-Cap Portfolio). | American Century VP Mid Cap Value—Class I. |
| 3 | Liberty Ridge Select Value Portfolio (now known as Old Mutual Select Value Portfolio). | American Century VP Large Company Value—Class I. |
| 4 | Liberty Ridge Large Cap Growth Portfolio (now known as Old Mutual Large Cap Growth Portfolio). | American Century VP Ultra Fund—Class I. |
| 5 | Liberty Ridge Technology & Communications Portfolio (now known as Old Mutual Columbus Circle Technology & Communications Portfolio). | Dreyfus IP Technology Growth Portfolio—Initial Shares. |
| 6 | Scudder VIT Equity 500 Index Fund (now known as DWS Equity 500 Index VIP). | Dreyfus Stock Index Fund, Inc.—Initial Shares. |
| 7 | Wells Fargo Advantage VT Discovery Fund | American Century VP Vista Fund—Class I. |
| 8 | Wells Fargo Advantage VT Opportunity Fund | AIM V.I. Capital Development Fund—Series I Shares. |
| 9 | Wells Fargo Advantage VT Opportunity Fund | AIM V.I. Capital Development Fund—Series II Shares. |
| 10 | Van Kampen UIF Emerging Markets Equity Portfolio—Class I | Janus Aspen Series International Growth Portfolio—Institutional Shares. |

**Comparisons of Fees, Performance and Investment Objectives**

The investment objectives and expense and performance information for the year ended December 31, 2005, for each Replacement and Replaced Fund are as follows:

12. The American Century VP Vista Fund—Class I for the Liberty Ridge Growth II Portfolio (now known as Old Mutual Growth II Portfolio):

COMPARISON OF 2005 FEES

[In percent]

| Portfolio | Mgmt. fee | 12b–1 fee | Other expenses | Total annual operating expenses | Fee reduction | Net total annual expenses |
|---|---|---|---|---|---|---|
| Liberty Ridge Growth II Portfolio | 0.825 | None | 0.365 | 1.19 | 0.15 | 1.04 |
| American Century VP Vista Fund—Class I | 1.00 | None | 0.01 | 1.01 | N/A | 1.01 |

COMPARISON OF PERFORMANCE AS OF DECEMBER 31, 2005

| Portfolio | 1 year (percent) | 3 year (percent) | 5 year (percent) | 10 year (percent) | Inception |
|---|---|---|---|---|---|
| Liberty Ridge Growth II Portfolio | 11.35 | 14.28 | (9.17) | N/A | 2.00% 4/30/97 |
| American Century VP Vista Fund—Class I | 8.13 | 21.12 | N/A | N/A | 9.14% 10/5/01 |

The Liberty Ridge Growth II Portfolio is a capital appreciation fund that normally invests at least 65% of its net assets in equity securities of small- and mid-cap companies with favorable growth prospects. The American Century VP Vista Fund seeks long-term growth. The fund's managers look for stocks of medium-sized and smaller companies they believe will increase in value over time, using investment strategies developed by American Century.

13. American Century VP Mid Cap Value—Class I for the Liberty Ridge Mid-Cap Portfolio (now known as Old Mutual Mid-Cap Portfolio)

COMPARISON OF 2005 FEES

[In percent]

| Portfolio | Mgmt. fee | 12b–1 fee | Other expenses | Total annual operating expenses | Fee reduction | Net total annual expenses |
|---|---|---|---|---|---|---|
| Liberty Ridge Mid-Cap Portfolio | 0.95 | None | 0.22 | 1.17 | 0.18 | 0.99 |
| American Century VP Mid Cap Value—Class I | 1.00 | None | 0.00 | 1.00 | N/A | 1.00 |

COMPARISON OF PERFORMANCE AS OF DECEMBER 31, 2005

| Portfolio | 1 year (percent) | 3 year (percent) | 5 year (percent) | 10 year (percent) | Inception |
|---|---|---|---|---|---|
| Liberty Ridge Mid-Cap Portfolio | 5.71 | 9.06 | 8.18 | N/A | 14.78% 11/30/98 |
| American Century VP Mid-Cap Value—Class I | 9.56 | N/A | N/A | N/A | 12.89% 12//01/04 |

The Liberty Ridge Mid-Cap Portfolio seeks to provide investors with above-average total return over a 3 to 5 year market cycle, consistent with reasonable risk. The American Century VP Mid-Cap Value Fund seeks long-term capital growth.

14. American Century VP Large Company Value—Class I for Liberty Ridge Select Value Portfolio (now known as Old Mutual Select Value Portfolio)

COMPARISON OF 2005 FEES

[In percent]

| Portfolio | Mgmt. fee | 12b–1 fee | Other expenses | Total annual operating expenses | Fee reduction | Net total annual expenses |
|---|---|---|---|---|---|---|
| Liberty Ridge Select Value Portfolio | 0.75 | None | 0.21 | 0.96 | 0.02 | 0.94 |
| American Century VP Large Company Value—Class I | 0.90 | None | 0.01 | 0.91 | N/A | 0.91 |

COMPARISON OF PERFORMANCE AS OF DECEMBER 31, 2005

| Portfolio | 1 year (percent) | 3 year (percent) | 5 year (percent) | 10 year | Inception |
|---|---|---|---|---|---|
| Liberty Ridge Select Value Portfolio | 4.51 | 8.34 | (0.62) | N/A | 7.38 10/28/97 |
| American Century VP Large Company Value—Class I | 4.83 | N/A | N/A | N/A | 6.66 12/01/04 |

The Liberty Ridge Select Value Portfolio seeks to provide investors long-term growth of capital and income. Current income is a secondary objective. The American Century VP Large Company Value Fund seeks long-term capital growth. Income is a secondary objective.

15. American Century VP Ultra Fund Value-Class I for Liberty Ridge Large Cap Growth Portfolio (now known as Old Mutual Large Cap Growth Portfolio)

COMPARISON OF 2005 FEES

[In percent]

| Portfolio | Mgmt. fee | 12b–1 fee | Other expenses | Total annual operating expenses | Fee reduction | Net total annual expenses |
|---|---|---|---|---|---|---|
| Liberty Ridge Large Cap Growth Portfolio | 0.85 | None | 0.30 | 1.15 | 0.19 | 0.96 |
| American Century VP Ultra(r) Fund—Class I | 1.00 | None | 0.01 | 1.01 | N/A | 1.01 |

COMPARISON OF PERFORMANCE AS OF DECEMBER 31, 2005

| Portfolio | 1 year (percent) | 3 year (percent) | 5 year (percent) | 10 year | Inception |
|---|---|---|---|---|---|
| Liberty Ridge Large Cap Growth Portfolio | 4.56 | 14.33 | (5.40) | N/A | 7.71 4/30/97 |
| American Century VP Ultra® Fund—Class I | 2.17 | 12.18 | N/A | N/A | 0.85 5/01/01 |

The Liberty Ridge Large Cap Growth Portfolio seeks to provide investors with long-term growth of capital. The American Century VP Ultra Fund seeks long-term capital growth.

16. Dreyfus IP Technology Growth Portfolio-Initial Series for Liberty Ridge Technology & Communications Portfolio (now known as Old Mutual Columbus Circle Technology & Communications Portfolio)

COMPARISON OF 2005 FEES

[In percent]

| Portfolio | Mgmt. fee | 12b–1 fee | Other expenses | Total annual operating expenses | Fee reduction | Net total annual expenses |
|---|---|---|---|---|---|---|
| Liberty Ridge Technology & Communications Portfolio | 0.95 | None | 0.19 | 1.14 | 0.29 | 0.85 |
| Dreyfus IP Technology Growth Portfolio—Initial Shares | 0.75 | None | 0.06 | 0.81 | N/A | 0.81 |

COMPARISON OF PERFORMANCE AS OF DECEMBER 31, 2005

| Portfolio | 1 year (percent) | 3 year (percent) | 5 year (percent) | 10 year | Inception |
|---|---|---|---|---|---|
| Liberty Ridge Technology & Communications Portfolio | 9.91 | 19.35 | (17.90) | N/A | (0.08) 4/30/97 |
| Dreyfus IP Technology Growth Portfolio—Initial Series | 3.78 | 16.32 | (8.60) | N/A | (4.96) 8/31/99 |

The Liberty Ridge Technology & Communications Portfolio, a non-diversified fund, seeks to provide investors with long-term growth of capital. Current income is incidental to the portfolio's goal. To pursue this goal, the portfolio normally invests at least 80% of its net assets in equity securities of companies in the technology and communications sectors of the stock market. The Dreyfus IP Technology Growth Portfolio seeks capital appreciation. To pursue this goal, the portfolio normally invests at least 80% of its assets in the stocks of growth companies of any size that the fund manager believes to be leading procedures or beneficiaries of technological innovation.

17. Dreyfus Stock Index Fund, Inc.—Initial Series for the Scudder VIT Equity 500 Index Fund (now known as DWS Equity 500 Index VIP)

COMPARISON OF 2005 FEES

[In percent]

| Portfolio | Mgmt. fee | 12b–1 fee | Other expenses | Total annual operating expenses | Fee reduction | Net total annual expenses |
|---|---|---|---|---|---|---|
| Scudder VIT Equity 500 Index Fund | 0.19 | None | 0.15 | 0.34 | 0.06 | 0.28 |
| Dreyfus Stock Index Fund, Inc.—Initial Shares | 0.25 | None | 0.02 | 0.27 | N/A | 0.27 |

COMPARISON OF PERFORMANCE AS OF DECEMBER 31, 2005

| Portfolio | 1 year (percent) | 3 year (percent) | 5 year (percent) | 10 year | Inception |
|---|---|---|---|---|---|
| Scudder VIT Equity 500 Index Fund | 4.68 | 14.05 | 0.24 | N/A | 4.61<br>10/01/97 |
| Dreyfus Stock Index Fund, Inc.—Initial Series | 4.69 | 14.14 | 0.27 | 8.77 | N/A |

The Scudder VIT Equity 500 Index Fund seeks to replicate, as closely as possible, before the deduction of expenses, the performance of the Standard & Poor's 500 Composite Stock Price Index. The Dreyfus Stock Index Fund, Inc. seeks to march the total return of the Standard & Poor's 500 Composite Stock Price Index.

18. American Century VP Vista Fund—Class I for Wells Fargo Advantage VT Discovery Fund

COMPARISON OF 2005 FEES

[In percent]

| Portfolio | Mgmt. fee | 12b–1 fee | Other expenses | Total annual operating expenses | Fee reduction | Net total annual expenses |
|---|---|---|---|---|---|---|
| Wells Fargo Advantage Discovery Fund℠ | 0.75 | 0.25 | 0.23 | 1.23 | 0.08 | 1.15 |
| American Century VP Vista℠ Fund—Class I | 1.00 | None | 0.01 | 1.01 | N/A | 1.01 |

COMPARISON OF PERFORMANCE AS OF DECEMBER 31, 2005

| Portfolio | 1 year (percent) | 3 year (percent) | 5 year (percent) | 10 year | Inception |
|---|---|---|---|---|---|
| Wells Fargo Advantage Discovery Fund℠ | 8.27 | 20.44 | 9.85 | 7.77 | N/A |
| American Century VP Vista℠ Fund—Class I | 8.13 | 21.12 | N/A | N/A | 9.14<br>10/05/01 |

The Wells Fargo Advantage VT Discovery Fund seeks capital appreciation by investing in securities of small- and medium-capitalization companies that the fund manager believes offer attractive opportunities for growth. The American Century VP Vista Fund seeks long-term capital growth. The fund's managers look for stocks of medium-sized and smaller companies they believes will increase in value over time, using investment strategies developed by American Century.

19. AIM V.I. Capital Development Fund—Series I Shares for the Wells Fargo Advantage VT Opportunity Fund

COMPARISON OF 2005 FEES

[In percent]

| Portfolio | Mgmt. fee | 12b–1 fee | Other expenses | Total annual operating expenses | Fee reduction | Net total annual expenses |
|---|---|---|---|---|---|---|
| Wells Fargo Advantage Opportunity Fund | 0.72 | 0.25 | 0.21 | 1.18 | 0.11 | 1.07 |
| AIM V.I. Capital Development Fund—Series I Shares | 0.75 | None | 0.34 | 1.09 | N/A | 1.09 |

COMPARISON OF PERFORMANCE AS OF DECEMBER 31, 2005

| Portfolio | 1 year (percent | 3 year (percent) | 5 year (percent) | 10 year (percent) | Inception |
|---|---|---|---|---|---|
| Wells Fargo Advantage Opportunity Fund | 7.88 | 20.45 | 4.25 | 11.54 | N/A |
| AIM V.I. Capital Development Fund—Series I Shares | 9.61 | 19.66 | 4.37 | N/A | 6.46<br>5/01/98 |

The Wells Fargo Advantage VT Opportunity Fund seeks long-term capital appreciation. The fund manager invests in equity securities of medium-capitalization companies that it believes are under-priced yet, have attractive growth prospects. The AIM V.I. Capital Development Fund's investment objective is long-term growth of capital. The fund seeks to meet its objective by investing primarily in securities of small- and medium-sized companies.

20. AIM V.I. Capital Development Fund—Series II Shares for the Wells Fargo Advantage VT Opportunity Fund

COMPARISON OF 2005 FEES

[In percent]

| Portfolio | Mgmt. fee | 12b–1 fee | Other expenses | Total annual operating expenses | Fee reduction | Net total annual expenses |
|---|---|---|---|---|---|---|
| Wells Fargo Advantage Opportunity Fund℠ | 0.72 | 0.25 | 0.21 | 1.18 | 0.11 | 1.07 |
| AIM V.I. Capital Development Fund—Series II Shares | 0.75 | 0.25 | 0.34 | 1.34 | N/A | 1.34 |

COMPARISON OF PERFORMANCE AS OF DECEMBER 31, 2005

| Portfolio | 1 year (percent) | 3 year (percent) | 5 year (percent) | 10 year (percent) | Inception |
|---|---|---|---|---|---|
| Wells Fargo Advantage Opportunity Fund℠ | 7.88 | 20.45 | 4.25 | 11.54 | N/A |
| AIM V.I. Capital Development Fund—Series II Shares | 9.27 | 19.37 | 4.12 | N/A | 6.20 8/21/01 |

The Wells Fargo Advantage VT Opportunity Fund seeks long-term capital appreciation. The AIM V.I. Capital Development Fund's investment objective is long-term growth of capital.

21. Janus Aspen Series International Growth Portfolio—Institutional Shares for Van Kampen UIF Emerging Markets Equity Portfolio—Class I

COMPARISON OF 2005 FEES

[In percent]

| Portfolio | Mgmt. fee | 12b–1 fee | Other expenses | Total annual operating expenses | Fee reduction | Net total annual expenses |
|---|---|---|---|---|---|---|
| Van Kampen UIF Emerging Markets Equity Portfolio—Class I | 1.25 | None | 0.41 | 1.66 | 0.01 | 1.65 |
| Janus Aspen Series International Growth Portfolio—Institutional Shares | 0.64 | None | 0.06 | 0.70 | N/A | 0.70 |

COMPARISON OF PERFORMANCE AS OF DECEMBER 31, 2005

| Portfolio | 1 year (percent) | 3 year (percent) | 5 year (percent) | 10 year (percent) | Inception |
|---|---|---|---|---|---|
| Van Kampen UIF Emerging Markets Portfolio—Class I | 33.85 | 16.01 | 16.01 | N/A | 6.95 10/01/96 |
| Janus Aspen Series International Growth Portfolio—Institutional Shares | 32.28 | 28.52 | 3.93 | 13.27 | 13.00 5/02/94 |

The Van Kampen UIF Emerging Markets Equity Portfolio seeks long-term capital appreciation by investing primarily in growth-oriented equity securities of issuers in emerging market countries. The Janus Aspen Series International Growth Portfolio is a portfolio that seeks long-term growth of capital by investing, under normal circumstances, at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in securities of issuers from several different countries, excluding the United States.

22. The Substitutions will take place at the portfolios' relative net asset values determined on the date of the Substitutions in accordance with Section 22 of the Act and Rule 22c–l thereunder with no change in the amount of any contract owner's cash value or death benefit or in the dollar value of his or her investment in any of the subaccounts. Accordingly, there will be no financial impact on any contract owner. The Substitutions will be effected by having each of the subaccounts that invests in the Replaced Portfolios redeem its shares for cash at the net asset value calculated on the date of the Substitutions and with such cash purchase shares of the respective Replacement Portfolios at the net asset value calculated on the same date.

23. New contract owners are not permitted to allocate funds to the subaccounts that invest in the Replaced Portfolios (''Closed Subaccounts''). As a result, the prospectuses dated May 1, 2006 for the contracts do not include any information about Closed Subaccounts. Information about the applicable proposed substitutions is included in the supplemental prospectuses dated May 1, 2006 for the Contracts (''2006 Supplemental Prospectuses''), which provide information about Closed Subaccounts to the current contract owners who are permitted to allocate funds to the Closed Subaccounts.

24. The Substitutions will be described in a supplement to the 2006 Supplemental Prospectuses (''Stickers''), which will be filed with the Commission and mailed to contract owners. The Stickers will give contract owners notice of the Substitutions and will describe the reasons for engaging in the Substitutions. The Stickers will also inform contract owners with assets allocated to Closed Subaccounts that no

additional amount may be allocated to Closed Subaccounts on or after the date of the Substitutions. In addition, the Stickers will inform affected contract owners that they will have the opportunity to reallocate accumulation value without the imposition of any transfer charge or limitation and without diminishing the number of free transfers that may be made in a given contract year, both (a) prior to the Substitutions from the Closed Subaccounts; and (b) for 30 days after the Substitutions, from the Replacement Portfolios to subaccounts investing in other portfolios available under the respective Contracts.

25. The prospectuses for the Contracts, as supplemented by the Stickers, will reflect the Substitutions. Each contract owner will be provided with a prospectus for the Replacement Portfolios before the Substitutions. Within five days after the Substitutions, Annuity Investors will send affected contract owners written confirmation that the Substitutions have occurred.

26. Affected contract owners will not incur any fees or charges as a result of the Substitutions, nor will their rights or the obligations of the applicants under the Contracts be altered in any way. The Substitutions will not cause the fees and charges under the Contracts currently being paid by contract owners to be greater after the Substitutions than before the Substitutions. The Substitutions will have no adverse tax consequences to contract owners and will in no way alter the tax benefits to contract owners.

**Applicants' Legal Analysis**

1. Section 26(c) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants represent that the purposes, terms and conditions of the Substitutions are consistent with the principles and purposes of Section 26(c) and do not entail any of the abuses that Section 26(c) is designed to prevent. The Substitutions will not result in the type of costly forced redemption that Section 26(c) was intended to guard against and, for the following reasons, is consistent with the protection of investors and the purposes fairly intended by the Act:

(a) The investment objectives and policies of the Replacement Portfolios are sufficiently similar to those of the corresponding Replaced Portfolios (or its predecessor) that contract owners will have reasonable continuity in investment expectations.

(b) The net total annual expense ratio for the year ended December 31, 2005 of the Replacement Portfolio was the same as or lower than that of the Replaced Portfolio or, if the net total annual expense ratio of the Replacement Portfolio was higher than that of the Replaced Portfolio, Annuity Investors proposes to eliminate this difference for a period of time through an expense reduction at the Separate Account level.

3. In connection with the Substitutions, the Applicants make the following representations:

(a) The investment objectives and policies of each Replacement Portfolios are sufficiently similar to those of the corresponding Replaced Portfolio (or its predecessor) that contract owners will have reasonable continuity in investment expectations.

(b) The costs of the Substitutions, including any legal, accounting and brokerage costs, will be borne by Annuity Investors and will not be borne by contract owners. No charges will be assessed to effect the Substitutions.

(c) The Substitutions will be at the net asset values of the respective shares without the imposition of any transfer or similar charge and there will be no change in the amount of any contract owner's accumulation value, in the amount of his or her cash value or death benefit, or in the dollar value of his or her investment in any of the subaccounts in the applicable Separate Account as a result of the Substitutions.

(d) The Substitutions will not cause the fees and charges under the Contracts currently being paid by contract owners to be greater after the Substitutions than before the Substitutions and will result in contract owners' Contract values being moved to a Replacement Portfolio(s) with a net total annual expense ratio for the most recent fiscal year that is the same or lower than that of the corresponding Replaced Portfolio, except in the case of the four Replacement Portfolios in Substitutions 2, 4, 8 and 9 where, as discussed below in paragraph (i), Annuity Investors proposes to eliminate the difference in expenses (provided that the amount of such expenses is greater than $1.00 for such Contract) through an expense reduction at the Separate Account level.

(e) All Contract owners will be given notice of the Substitutions and the effective date of the Substitutions prior to the Substitutions and will have an opportunity, prior to the effective date of the Substitutions and for 30 days after the Substitutions, to reallocate accumulation value among other available subaccounts without the imposition of any transfer charge or limitation and without the reallocation counting as one of the contract owner's free transfers in a contract year.

(f) Within five days after the Substitutions, Annuity Investors will send to affected Contract owners written confirmation that the Substitutions have occurred and the written confirmation will reiterate that all Contract owners may, during the 30 day period after the effective date of the Substitutions, reallocate accumulation value among other available subaccounts without the imposition of any transfer charge or limitation and without the reallocation counting as one of the Contract owner's free transfers in a contract year.

(g) The Substitutions will in no way alter the insurance benefits to Contract owners or the contractual obligations of Annuity Investors.

(h) The Substitutions will have no adverse tax consequences to Contract owners and will in no way alter the tax benefits to Contract owners.

(i) If, on the last day of each fiscal quarter in the 12 month period following the Substitutions, the net total expense ratio of a Replacement Portfolio exceeds on an annualized basis the net total annual expense ratio of the corresponding Replaced Portfolio for the fiscal year ended December 31, 2005, Annuity Investors will, for each Contract outstanding on the date of the Substitutions, reimburse (provided that the amount of such reimbursement is greater than $1.00 for such Contract) the Separate Account as of the last day of such fiscal quarter so that the amount of the Replacement Portfolio's net expenses for such period, together with the applicable expenses of the corresponding Separate Account will, on an annualized basis, be no greater than the sum of the net expenses of the corresponding Replaced Portfolio and the applicable expenses of the Separate Account for the 2005 fiscal year. In addition, for 12 months following the Substitutions, Annuity Investors will not increase asset-based fees or charges for Contracts outstanding on the day of the Substitutions.

(j) In connection with assets held under Contracts affected by the Substitutions, Annuity Investors will not receive, for three years from the date of the Substitutions, any direct or indirect benefits from the Replacement Portfolios, their advisers or underwriters (or their affiliates) at a rate higher than that which they had received from the

Replaced Portfolios, their advisers or underwriters (or their affiliates), including without limitation 12b–l, shareholder service, administration or other service fees, revenue sharing or other arrangements in connection with such assets. Annuity Investors represents that the Substitutions and the selection of the Replacement Portfolios were not motivated by any financial consideration paid or to be paid by the Replacement Portfolios, their advisers or underwriters, or their respective affiliates.

**Conclusion**

For the reasons and upon the facts set forth above, Applicants submit that the requested order meets the standards set forth in Section 26(c). Applicants request an order of the Commission, pursuant to Section 26(c) of the Act, approving the Substitutions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–19075 Filed 11–9–06; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### In the Matter of FuelNation, Inc. and Sytron, Inc.; Order of Suspension of Trading

November 8, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of FuelNation, Inc. because it has not filed any periodic reports since it filed a Form 10–QSB for the period ended March 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sytron, Inc. because it has not filed any periodic reports since it filed a Form 10–SB on February 1, 2000.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed companies is suspended for the period from 9:30 a.m. EST on November 8, 2006, through 11:59 p.m. EST on November 21, 2006.

By the Commission.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. 06–9189 Filed 11–8–06; 11:55 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54690; File No. SR–NYSEArca–2006–79]**

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Extending the Time Period by Which the Exchange Will Amend the NASD–NYSE Arca Options Agreement Pursuant to Rule 17d–2

November 2, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 25, 2006, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is proposing to amend its undertaking [6] to extend for 90 days from the date of this filing the time period by which the Exchange will enter into an agreement with the National Association of Securities Dealers, Inc. (''NASD'') pursuant to Rule 17d–2 under the Act [7] (the ''NASD / NYSE Arca Options Agreement'' or ''Agreement''). The Agreement would expand the allocation to NASD of regulatory responsibility to encompass all the regulatory oversight and enforcement responsibilities with respect to the options activities of Archipelago Securities, L.L.C. (''Archipelago Securities''),[8] except for ''real-time market surveillance.''

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In connection with the Commission's approval of the Exchange's new electronic options trading platform, OX, Archipelago Securities became a routing broker for OX options orders on the Exchange.[9] In Amendment No. 3 to its filing seeking approval of the OX platform,[10] the Exchange proposed to clarify that NASD, a self-regulatory organization unaffiliated with the Exchange or any of its affiliates, would continue to carry out oversight and enforcement responsibilities as the Designated Examining Authority designated by the Commission pursuant to Rule 17d–1 under the Act [11] with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange has asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay. *See* 15 U.S.C. 78s(b)(3)(A), 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 54238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (SR–NYSEArca–2006–13) (OX Approval Order).

[7] 17 CFR 240.17d–2.

[8] Archipelago Securities, a wholly-owned subsidiary of Archipelago Holdings, Inc. and a registered broker-dealer, acts as the outbound order router for the NYSE Arca Marketplace (formerly known as the Archipelago Exchange) and, as such, is regulated as an exchange ''facility'' of NYSE Arca and NYSE Arca Equities, Inc. *See* 15 U.S.C. 78c(a)(2). As such, any proposed rule change relating to Archipelago Securities' order-routing function must be filed with the Commission, and must operate in a manner that is consistent with the provisions of the Act applicable to exchanges and with NYSE Arca rules.

[9] *See* OX Approval Order, *supra* note 6. Pursuant to NYSE Arca Rule 6.1A(a)(15), which was adopted in connection with the establishment of the new OX trading platform, the term ''OX Routing Broker'' refers to the broker-dealer affiliate of the Exchange that acts as agent for routing orders entered into OX of OTP Holders, OTP Firms and OTP Firms' Sponsored Participants to other Market Centers for execution whenever such routing is permitted by Exchange Rules. Archipelago Securities is the Exchange's only OX Routing Broker.

[10] *See* OX Approval Order, *supra* note 6.

[11] 17 CFR 240.17d–1.

responsibility for examining Archipelago Securities for compliance with the applicable financial responsibility rules. Furthermore, the Exchange represented that it would enter into the NASD/NYSE Arca Options Agreement pursuant to Rule 17d–2 under the Act,[12] to expand the allocation to NASD of regulatory responsibility to encompass all the regulatory oversight and enforcement responsibilities with respect to the options activities of Archipelago Securities, except for ''real-time market surveillance.'' [13] The Exchange agreed to submit the NASD / NYSE Arca Options Agreement to the Commission under Rule 17d–2 within 90 days of the date of the Commission's approval of the OX trading platform.[14] The 90 day period elapsed on October 26, 2006.

On October 20, 2006, the Exchange submitted to the Commission a draft NASD/NYSE Arca Options Agreement, but has not yet received Commission approval. The Exchange believes that an extension of time for an additional 90 days from the date of this filing to enter into the NASD/NYSE Arca Options Agreement will give the Commission staff sufficient time to publish and take action on the proposal.

The Exchange believes that the requested extension of time is consistent with the Act and the rules and regulations thereunder, will not significantly affect the protection of investors or the public interest, and does not impose any significant burden on competition. The Exchange notes that NASD already carries out oversight and enforcement responsibilities as the Designated Examining Authority designated by the Commission pursuant to Rule 17d–1 under the Act [15] with the responsibility for examining Archipelago Securities for compliance with the applicable financial responsibility rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest,[18] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20]

The Exchange has requested that the Commission waive the 30-day operative delay, which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver will allow the Exchange to comply with its undertaking made in connection with the OX Approval Order to submit the NASD/NYSE Arca Options Agreement to the Commission. The Exchange requests a waiver of the 30-day period on the basis that the current deadline for entering into the NASD/NYSE Arca Options Agreement was October 26, 2006, and a delay of 30 days would place the Exchange out of compliance with its undertaking. Extending the compliance date for the Exchange's undertaking by an additional 90 days will provide time for the Exchange to finalize and file the Agreement. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number NYSEArca–2006–79 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 NYSEArca–2006–79. 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

[12] 17 CFR 240.17d–2.

[13] *See* OX Approval Order, *supra* note 6.

[14] *Id.*

[15] 17 CFR 240.17d–1.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement. The Commission has determined to waive this requirement for this filing.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6).

[21] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number NYSEArca–2006–79 and should be submitted on or before December 4, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–19063 Filed 11–9–06; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #10640 and #10641]**

### Indiana Disaster Number IN–00008

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Indiana (FEMA–1662–DR), dated 10/10/2006.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 09/12/2006 through 09/14/2006.

**EFFECTIVE DATE:** 11/01/2006.

*Physical Loan Application Deadline Date:* 12/05/2006.

*EIDL Loan Application Deadline Date:* 07/06/2007.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of Indiana, dated 10/10/2006 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: Warrick.

Contiguous Counties:

Indiana: Dubois, Pike, Spencer.

Kentucky: Daviess.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

**Roger B. Garland,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E6–19053 Filed 11–9–06; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 10701 and # 10702]**

### Louisiana Disaster # LA–00007

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1668–DR), dated 11/02/2006.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 10/16/2006 and continuing.

*Effective Date:* 11/02/2006.

*Physical Loan Application Deadline Date:* 01/02/2007.

*Economic Injury (EIDL) Loan Application Deadline Date:* 08/02/2007.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 11/02/2006, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Parishes (Physical Damage and Economic Injury Loans):*

Caldwell, Franklin, Grant, La Salle, Madison, Morehouse, Natchitoches, Richland, Sabine, Vernon, Winn.

*Contiguous Parishes / Counties (Economic Injury Loans Only):*

*Louisiana:* Allen, Avoyelles, Beauregard, Bienville, Catahoula, De Soto, East Carroll, Jackson, Ouachita, Rapides, Red River, Tensas Union, West Carroll.

*Arkansas:* Ashley, Chicot, Union.

*Mississippi:* Warren.

*Texas:* Newton, Sabine, Shelby.

The Interest Rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners With Credit Available Elsewhere | 6.250 |
| Homeowners Without Credit Available Elsewhere | 3.125 |
| Businesses With Credit Available Elsewhere | 7.934 |
| Other (Including Non-Profit Organizations) With Credit Available Elsewhere | 5.000 |
| Businesses And Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |
| For Economic Injury: | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 10701 6 and for economic injury is 10702 0.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E6–19055 Filed 11–9–06; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration, National Small Business Development Centers Advisory Board will be conducting a conference call to discuss such matters that may be presented by members, and the staff of the U.S. Small Business Administration. The conference call will be held on Tuesday, November 21, 2006 at 1 p.m. eastern standard time.

The purpose of the meeting is to discuss internal board matters such as the status of proposed new Board members, administrative issues, the marketing of the SBDC Program, and to follow up with the ''Dialogue with the State Directors'' meeting held at the ASBDC Conference in September.

Anyone wishing to make an oral presentation to the Board must contact Erika Fischer, Senior Program Analyst, U.S. Small Business Administration, Office of Small Business Development Centers, 409 3rd Street, SW.,

Washington, DC 20416, telephone (202) 205–7045 or fax (202) 481–0681.

**Thomas M. Dryer,**

*Acting Committee Management Officer.*

[FR Doc. E6–19062 Filed 11–9–06; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Small Business Investment Companies; Increase in Maximum Leverage Ceiling

13 CFR 107.1150(a) sets forth the maximum amount of Leverage (as defined in 13 CFR 107.50) that a Small Business Investment Company may have outstanding at any time. The maximum Leverage amounts are adjusted annually based on the increase in the Consumer Price Index published by the Bureau of Labor Statistics. The cited regulation states that SBA will publish the indexed maximum Leverage amounts each year in a Notice in the **Federal Register**.

Accordingly, effective the date of publication of this notice, and until further notice, the maximum Leverage amounts under 13 CFR 107.1150(a) are as stated in the following table:

| If your leverageable capital is: | Then your maximum leverage is: |
|---|---|
| (1) Not over $21,200,000 | 300 percent of Leverageable Capital. |
| (2) Over $21,200,000 but not over $42,400,000 | $63,600,000 + [2 × (Leverageable Capital − $21,200,000)]. |
| (3) Over $42,400,000 but not over $63,600,000 | $106,000,000 + (Leverageable Capital − $42,400,000). |
| (4) Over $63,600,000 | $127,200,000. |

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: November 6, 2006.

**Jaime Guzmán-Fournier,**

*Associate Administrator for Investment.*

[FR Doc. E6–19058 Filed 11–9–06; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Small Business Size Standards: Waiver of the Nonmanufacturer Rule

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of denial to waive the Nonmanufacturer Rule for Personal Computers.

**SUMMARY:** The U.S. Small Business Administration (SBA) is denying a request for a waiver of the Nonmanufacturer Rule for Personal Computers based on our discovery of small business manufacturers for this class of product. Denying this waiver will require recipients of contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program to provide the products of small business manufacturers or processors on such contracts.

**DATE:** This notice of denial is effective November 28, 2006.

**FOR FURTHER INFORMATI0N CONTACT:** Edith Butler, Program Analyst, by telephone at (202) 619–0422; by fax at (202) 481–1788; or by e-mail at *edith.butler@sba.gov.*

**SUPPLEMENTARY INFORMATION:** Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule.

The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. The SBA defines ''class of products'' based on a six digit coding system. The coding system is the Office of Management and Budget North American Industry Classification System (NAICS).

The SBA received a request on September 21, 2006, to waive the Nonmanufacturer Rule for Personal Computers. In response, on October 12, 2006, SBA published in the **Federal Register** a notice of intent to waive the Nonmanufacturer Rule for Personal Computers. SBA explained in the notice that it was soliciting comments and sources of small business manufacturers of this class of product. In response to that October 12, 2006 notice, SBA received comments from small business manufacturers indicating that they have furnished this product to the Federal Government.

Accordingly, based on the available information, SBA has determined that there are small business manufacturers of this class of product, and, is therefore denying the class waiver of the Nonmanufacturer Rule for Personal Computers, NAICS code 334111.

Dated: November 6, 2006.

**Arthur E. Collins,**

*Acting Associate Administrator for Government Contracting.*

[FR Doc. E6–19056 Filed 11–9–06; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Opportunity for Public Comment on Surplus Property Release at Bruce Campbell Field, Madison, MS

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

**ACTION:** Notice of intent to rule on land release request.

**SUMMARY:** Under the provisions of Title 49, U.S.C. 47153(c), notice is being given that the FAA is considering a request from the City of Madison, MS to waive the requirement that a 8.765-acre parcel of surplus property, located at the Bruce Campbell Field, be used for aeronautical purposes.

**DATES:** Comments must be received on or before December 13, 2006.

**ADDRESSES:** Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted the FAA must be

mailed or delivered to Mr. Denson Robinson, Director of Public Works, City of Madison, MS at the following address:

City of Madison, 525 Post Oak Road, Madison, MS 39110.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey D. Orr, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9885. The land release request may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA is reviewing a request by the City of Madison, MS to release 8.765 acres of surplus property at the Bruce Campbell Field. The property will be purchased by City of Madison for R.O.W. for roadway improvements. The property is currently undeveloped. The net proceeds from the sale of this property will be used for airport purposes.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the City of Madison.

Issued in Jackson, Mississippi, on October 31, 2006.

**Rans D. Black,**

*Manager, Jackson Airports District Office, Southern Region.*

[FR Doc. 06–9180 Filed 11–9–06; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Opportunity for Public Comment on Surplus Property Release at Henry Tift Myers Airport, Tifton, GA

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

**ACTION:** Notice.

**SUMMARY:** Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the City of Tifton and Tift County to waive the requirement that approximately 2-acres of surplus property, located at the Henry Tift Myers Airport, be used for aeronautical purposes.

**DATES:** Comments must be received on or before December 13, 2006.

**ADDRESSES:** Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Chuck Garrison, Program Manager, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Robert G. Anderson, M.D., Chairman, Tifton-Tift County Airport Authority at the following address: Henry Tift Myers Airport, Post Office Box 826, Tifton, GA 31793.

**FOR FURTHER INFORMATION CONTACT:** Chuck Garrison, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747, (404) 305–7145. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA is reviewing a request by the City of Tifton and Tift County to release approximately 2 acres of surplus property at the Henry Tift Myers Airport. The property consists of one parcel located South of Tifton Eldorado Road (Formerly, Lower Brookfield Road), and to the West of Tri County Road. This property is currently shown on the approved Airport Layout Plan as aeronautical use land; however the property is currently not being used for aeronautical purposes and the proposed use of this property is compatible with airport operations. The City/County will ultimately use this land to acquire a 2.33 acre parcel located south of Washington Street, and East of Highway 41 South. The Washington Street property is located within the FAR Part 77 Primary and Transitional Approach Surfaces for a Precision Instrument Runway, and will be used to protect the approach surface to Runway 15.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Henry Tift Myers Airport.

Issued in Atlanta, Georgia on October 23, 2006.

**Scott L. Seritt,**

*Manager, Atlanta Airports District Office, Southern Region.*

[FR Doc. 06–9178 Filed 11–9–06; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Release Certain Properties From All Terms, Conditions, Reservations and Restrictions of a Quitclaim Deed Agreement Between the Miami-Dade County Board of County Commissioners and the Federal Aviation Administration for the Miami International Airport, Miami, FL

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

**ACTION:** Request for public comment.

**SUMMARY:** The FAA hereby provides notice of intent to release a portion of airport property (Parcel '2'—4.61 acres) at the Miami International Airport, Miami, FL. The release of property will allow the Miami-Dade County Board of County Commissioners to exchange the property for another parcel (Parcel '1'—also 4.61 acres and of equal value to the parcel intended for release). Parcel '2' begin a part of LeJeune Garden Estates is located in the Section 32, Township 53 South, Range 43 East, being a part of the amended plat of clear zone 27–L M.I.A. as recorded in plat book 104 page 12, of the Miami-Dade County Public Records. Parcel '1' lies in Section 32, Township 53 South, Range 41 East and being a part of the following plats: Cummings Subdivision plat book 81 page 18, Flight Deck Motel plat book 71 page 26, and LeJeune Garden Estates Section 3 plat book 44, page 11. The parcel is currently designated as non-aeronautical use. The property will be exchanged for Parcel '1' for the purpose of relocating and constructing Perimeter Road improvements, extending and constructing NW. 42nd Court and the necessary bridge to access the Terminal and to construct a new replacement bus maintenance facility. Parcel '2' will be used by the Florida Department of Transportation/Miami-Dade Expressway Authority for a dry storm water retention area required for other roadway improvement projects in the area. The parcels are equal in size and highest/best use, therefore the exchange is considered to be an even exchange with no cash consideration to be paid by either party. This type of exchange complies with Chapter 125.37 of the Florida Statutes and will be published in newspapers of general circulation.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Miami-Dade Aviation Department Office and the FAA Airports District Office.

**SUPPLEMENTARY INFORMATION:** Section 125 of The Wendell H. Ford Aviation

Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the ''waiver'' or ''modification'' of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

**DATES:** December 13, 2006.

**ADDRESSES:** Documents are available for review at the Miami-Dade Aviation Department, 4200 NW. 36th Street, Building 4A, Suite 400, Miami, Florida 33122, and the FAA Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822. Written comments on the Sponsor's request must be delivered or mailed to: Krystal G. Hudson, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

**FOR FURTHER INFORMATION CONTACT:** Krystal G. Hudson, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

**W. Dean Stringer,**

*Manager, Orlando Airports District Office, Southern Region.*

[FR Doc. 06–9173 Filed 11–9–06; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activity Seeking OMB Approval

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

**ACTION:** Notice.

**SUMMARY:** The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on June 28, 2006, vol. 71, no. 124, page 36868–36869. The information collected is needed for the applicant's noise certification compliance report in order to demonstrate compliance with part 36.

**DATES:** Please submit comments by December 13, 2006.

**FOR FURTHER INFORMATION CONTACT:** Carla Mauney at *Carla.Mauney@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Federal Aviation Administration (FAA)**

*Title:* Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes.

*Type of Request:* Revision of a currently approved collection.

*OMB Control Number:* 2120–0659.

*Form(s):* No FAA forms are associated with this collection.

*Affected Public:* An estimated 10 Respondents.

*Frequency:* This information is collected on occasion.

*Estimated Average Burden Per Response:* Approximately 135 hours per response.

*Estimated Annual Burden Hours:* An estimated 1,350 hours annually.

*Abstract:* Sections A36.5.2 and A36.5.2.5 of the Federal Aviation Administration (FAA) noise certification standards for subsonic jet airplanes and subsonic transport category large airplanes (14 CFR part 36) contain information collection requirements. The information collected is needed for the applicant's noise certification compliance report in order to demonstrate compliance with part 36.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 6, 2006.

**Carla Mauney,**

*FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.*

[FR Doc. 06–9174 Filed 11–9–06; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. E–2006–40]**

### Petitions for Exemption; Summary of Petitions Received

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

**ACTION:** Notice of extension of comment period.

**SUMMARY:** In accordance with 14 CFR 11.47(c), the FAA has received a petition from the Association of Flight Attendants–CWA, AFL–CIO (AFA–CWA). That petition requested an extension of the comment period for Alaska Airlines, Inc. petition for exemption. That exemption, if granted, would allow Alaska Airlines to eliminate the requirement for a procedure on their B737–400 combination passenger/cargo operations for a flight attendant to enter the pilot compartment in the event a flight crew member becomes incapacitated. The FAA finds that AFA–CWA has a substantive interest in the exemption request and has shown that good cause exists to extend the comment period if consistent with public interest.

**DATES:** Comments must identify the petition docket number and must be received on or before December 22, 2006.

**ADDRESSES:** Send comments on the petition 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–2006–25916 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) 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:** Frances Shaver (202–267–9681), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW.,

Washington, DC 20591 or Susan Lender (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on November 3, 2006.

**Brenda D. Courtney,**

*Acting Director, Office of Rulemaking.*

[FR Doc. 06–9183 Filed 11–9–06; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: City of Salem, Polk and Marion Counties, OR

**AGENCY:** Federal Highway Administration, Oregon Department of Transportation, and City of Salem.

**ACTION:** Notice of intent.

**SUMMARY:** The Federal Highway Administration (FHWA) is issuing this notice of intent to advise the public that an Environmental Impact Statement (EIS) will be prepared for solutions to improve mobility across the Willamette River in the City of Salem and Marion and Polk Counties, Oregon.

**DATES:** Public and Agency scoping meetings will be held in Salem, Oregon during November 2006.

**FOR FURTHER INFORMATION CONTACT:** Edward J. DeCleva, Environmental Protection Specialist, Federal Highway Administration, The Equitable Building, Suite 100, 530 Center Street NE., Salem, OR 97301, (503) 587–4710.

**SUPPLEMENTARY INFORMATION:** The FHWA in cooperation with the Oregon Department of Transportation (ODOT) and the City of Salem will prepare an EIS for solutions to improve mobility across the Willamette River in Salem, Oregon. The existing Marion and Center Street bridges in Salem (Oregon Highway 22) are the only vehicular crossings of the Willamette River within the Salem-Keizer urban area. Increasing traffic volumes and continued population growth are causing congestion levels on the bridges and the connecting infrastructure to exceed Oregon Highway Plan mobility standards. Without mobility improvements, congestion is forecast to worsen in the future. Additional information on the Salem River Crossing project can be found on the project Web site at *http://www.salemrivercrossing.org.*

A reasonable range of alternatives will be considered in the EIS, including alternatives identified in the 2002 Willamette River Crossing Study General Corridor Evaluation that are still valid and meet the project purpose and need. A No Build alternative also will be studied.

The lead agencies will evaluate significant transportation, environmental, social, and economic impacts of the alternatives. Potential areas of impact include: support of State, regional, and local land use and transportation plans and policies, neighborhoods, land use and economics, cultural resources, environmental justice, and natural resources. All impacts will be evaluated for both the construction period and the long-term period of operation. As relevant, measures to avoid, minimize and mitigate any significant impacts, will be developed.

A series of public and agency meetings will be held in Salem, Oregon throughout the EIS study process. 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 made available for public and agency review and comment prior to the public hearing.

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 proposal will be accepted at the public meetings or can be sent to the FHWA at the address provided above or via the project Web site at *http://www.salemrivercrossing.org.*

(Authority: 23 U.S.C. 315; 49 CFR 1.48)

Dated: November 3, 2006.

**Ed DeCleva,**

*Environmental Protection Specialist, Oregon Division.*

[FR Doc. 06–9159 Filed 11–9–06; 8:45 am]

**BILLING CODE 4910–22–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–98–3637, FMCSA–99–5748, FMCSA–00–7006, FMCSA–00–7165, FMCSA–00–7363]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemption; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 17 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective December 8, 2006. Comments must be received on or before December 13, 2006.

**ADDRESSES:** You may submit comments identified by DOT Docket Management System (DMS) Docket Numbers FMCSA–98–3637, FMCSA–99–5748, FMCSA–00–7006, FMCSA–00–7165, FMCSA–00–7363, using any of the following methods.

- *Web Site: http://dmses.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the Agency name and docket numbers for this Notice. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading for further information.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment

page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@dot.gov* FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Exemption Decision

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This Notice addresses 17 individuals who have requested renewal of their exemptions in a timely manner. FMCSA has evaluated these 17 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Henry W. Adams
Delbert R. Bays
Robert F. Berry
Robert W. Brown
Eugene A. Gitzen
Nelson V. Jaramillo
Larry D. Johnson
Bruce T. Loughary
Demetrio Lozano
Wayne R. Mantela
Kenneth D. May
Gordon L. Nathan
Bernice R. Parnell
Frances C. Ruble
Patrick W. Shea
Roy F. Varnado, Jr.
Rick A. Young

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

## Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 17 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285; 63 FR 54519; 65 FR 77069; 67 FR 71610; 69 FR 64810; 64 FR 40404; 64 FR 66962; 67 FR 10475; 65 FR 20245; 65 FR 57230; 65 FR 33406; 65 FR 57234; 65 FR 57266; 65 FR 45817; 65 FR 77066). Each of these 17 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

## Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by December 13, 2006.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published Notices of final disposition announcing its decision to exempt these 17 individuals from the vision requirement in 49 CFR 391.41(b)(10). That final decision to grant the exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its Notices of applications. Those Notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: November 3, 2006.

**Larry W. Minor,**

*Office Director, Bus and Truck Standards and Operations.*

[FR Doc. E6–19107 Filed 11–9–06; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Bureau of Transportation Statistics

**[Docket Number—RITA—2006—26278]**

### Request for OMB Clearance of an Information Collection; Survey of State Funding for Public Transportation

**AGENCY:** Research and Innovative Technology Administration, Bureau of Transportation Statistics (RITA/BTS), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of Survey of State Funding for Public Transportation.

**DATES:** Written comments should be submitted by January 12, 2007.

**ADDRESSES:** You may submit a comment (identified by DMS Docket Number RITA–2006–26278) through one of the following methods:

*Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.

*Fax:* 1–202–493–2251.

*Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.

*Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday throughFriday, except Federal Holidays.

*Instructions:* All comments must include the agency name and DMS Docket Number RITA–2006–26278. Note that all comments received will be posted without change to *http://dms.dot.gov,* including and personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19475–19570) or you may visit *http://dms.dot.gov.*

*Docket:* For access to the docket to read background documents or comments, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 a.m., Monday through Friday, except Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on Docket RITA–2006–26278. The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider and alternative method (Internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT.

*Comments:* We particularly request your comments on the accuracy of the estimated burden; ways to enhance the quality, usefulness, and clarity of the collected information; and ways to minimize the collection burden without reducing the quality of the information collected including additional use of automated collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Ms. June Jones,Office of Advanced Studies, RTS–31, Room 3430, Department of Transportation, Research and Innovative Technology Administration, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–474.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval No.* 2139–NEW.

*Title:* Survey of State Funding for Public Transportation.

*Form No.:* None.

*Type of Review:* New Collection (previously part of 2139-0007 which is being discontinued as of November 30, 2006.)

*Respondents:* Fifty States and the District of Columbia.

*Number of Respondents:* 51.

*Estimated Time per Response:* Two hours or 120 minutes.

*Total Annual Burden:* 102 hours.

*Needs and Uses:* This survey provides data that are used to create an annual summary report of State funding for public transportation in the 50 States and the District of Columbia. The information in this report is widely used and requested by Congress, State legislatures and local governing bodies. The information is useful in showing state comparisons in types of public transportation programs as well as commitment to fund public transportation capital and operation costs.

*Description of Survey:* The survey includes, by state, types of public transportation programs, funding sources and funding amounts, eligible uses and allocation of funding. The primary purpose of the Survey of State Funding for Public Transportation is to create an annual report which provides a State by State summary of public transportation funding information. The Survey of State Funding for Public Transportation is designed as an annual survey.

*Burden Statement:* The total annual respondent burden estimate is 102 hours. The burden hours per State will vary based on the amount of State transit, with an average respondent burden of 2 hours.

Issued in Washington, DC on November 6, 2006.

**William Bannister,**

*Office of Advanced Studies, Research and Innovative Technology Administration,Bureau of Transportation Statistics.*

[FR Doc. E6–19096 Filed 11–9–06; 8:45 am]

BILLING CODE 4910–HY–P

# Corrections

Federal Register

Vol. 71, No. 218

Monday, November 13, 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 TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–2006–25553]**

### Request for Public Comment on Noise Analysis for Fort Lauderdale–Hollywood International Airport, Broward County, FL

*Correction*

In notice document 06–8975 beginning on page 63829 in the issue of Tuesday, October 31, 2006, make the following correction:

On page 63830, in the third column, in the first paragraph, in the last five lines,

''(See *http://www.faa.gov/airports_airtraffic/airports/regional_guidance/southern/environmental/media/fll_exhib3_2004_2005_baseline.pdf*)''

should read

''(See *http://www.faa.gov/airports_airtraffic/airports/regional_guidance/southern/environmental/media/fll_exhib3_compare_2004_2005_baseline.pdf*)''.

[FR Doc. C6–8975 Filed 11–9–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
November 13, 2006

# Part II

# The President

## Memorandum of November 6, 2006—Determinations Under Section 1106(a) of the Omnibus Trade and Competitiveness Act of 1988—Socialist Republic of Vietnam

Federal Register
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# Presidential Documents

**Title 3—**

## The President

**Memorandum of November 6, 2006**

## Determinations Under Section 1106(a) of the Omnibus Trade and Competitiveness Act of 1988—Socialist Republic of Vietnam

**Memorandum for the United States Trade Representative**

Consistent with section 1006(a) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2905(a)) (the ''Act''), I determine that state trading enterprises account for a significant share of the exports of the Socialist Republic of Vietnam (Vietnam) and goods that compete with imports into Vietnam. I further determine that such state trading enterprises unduly burden and restrict, or adversly affect, the foreign trade of the United States or the United States economy, or are likely to result in such burden, restriction, or effect.

Vietnam is seeking to become a member of the World Trade Organization (WTO). The terms and conditions for Vietnam's accession to the WTO include Vietnam's commitments that it will ensure that all state trading enterprises within the meaning of section 1106 will make purchases not for governmental use and sales in international trade based solely on commercial considerations (including price, quality, availability, marketability, and transportation) and that U.S. firms will have an adequate opportunity, in accordance with customary business practice, to compete for participation in sales to and purcahses from these enterprises on nondiscriminatory terms and conditions. In addition, the Government of Vietnam will not influence, directly or indirectly, commercial decisions on the part of state trading enterprises, including decisions on the quantity, value, or country of origin of any goods purchased or sold, except in a manner consistent with the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement) and the rights accorded to nongovernmental enterprise owners or shareholders.

The obligations that Vietnam will assume under the WTO Agreement, including Vietnam's protocol of accession, meet the requirements of section 1106(b)(2)(A) of the Act (19 U.S.C. 2905(b)(2)(A)), and thus my determinations under section 1106(a) do not require invocation of the nonapplication provisions of the WTO Agreement.

You are directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
*Washington, November 6, 2006.*

[FR Doc. 06–9193
Filed 11–9–06; 8:45 am]
Billing code 3190–01–M

Federal Register

Monday,
November 13, 2006

# Part III

# The President

## Notice of November 9, 2006—Continuation of the National Emergency With Respect to Iran

Federal Register
Vol. 71, No. 218
Monday, November 13, 2006

# Presidential Documents

**Title 3—**

## The President

**Notice of November 9, 2006**

## Continuation of the National Emergency With Respect to Iran

On November 14, 1979, by Executive Order 12170, the President declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 2006. Therefore, consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year this national emergency with respect to Iran.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

THE WHITE HOUSE,
*November 9, 2006.*

[FR Doc. 06–9200
Filed 11–9–06; 10:31 am]
Billing code 3195–01–P

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| 200–End | (869–060–00127–1) | 57.00 | July 1, 2006 |
| **34 Parts:** | | | |
| 1–299 | (869–060–00128–0) | 50.00 | July 1, 2006 |
| 300–399 | (869–060–00129–8) | 40.00 | July 1, 2006 |
| 400–End & 35 | (869–060–00130–1) | 61.00 | [8] July 1, 2006 |
| **36 Parts:** | | | |
| 1–199 | (869–060–00131–0) | 37.00 | July 1, 2006 |
| 200–299 | (869–060–00132–8) | 37.00 | July 1, 2006 |
| 300–End | (869–060–00133–6) | 61.00 | July 1, 2006 |
| **37** | (869–060–00134–4) | 58.00 | July 1, 2006 |
| **38 Parts:** | | | |
| 0–17 | (869–060–00135–2) | 60.00 | July 1, 2006 |
| 18–End | (869–060–00136–1) | 62.00 | July 1, 2006 |
| **39** | (869–060–00137–9) | 42.00 | July 1, 2006 |
| **40 Parts:** | | | |
| 1–49 | (869–060–00138–7) | 60.00 | July 1, 2006 |
| 50–51 | (869–060–00139–5) | 45.00 | July 1, 2006 |
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| 52 (52.1019–End) | (869–060–00141–7) | 61.00 | July 1, 2006 |
| 53–59 | (869–060–00142–5) | 31.00 | July 1, 2006 |
| 60 (60.1–End) | (869–060–00143–3) | 58.00 | July 1, 2006 |
| 60 (Apps) | (869–060–00144–7) | 57.00 | July 1, 2006 |
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| 63 (63.1–63.599) | (869–060–00146–8) | 58.00 | July 1, 2006 |
| 63 (63.600–63.1199) | (869–060–00147–6) | 50.00 | July 1, 2006 |
| 63 (63.1200–63.1439) | (869–060–00148–4) | 50.00 | July 1, 2006 |
| 63 (63.1440–63.6175) | (869–060–00149–2) | 32.00 | July 1, 2006 |
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| 63 (63.8980–End) | (869–060–00151–4) | 35.00 | July 1, 2006 |
| 64–71 | (869–060–00152–2) | 29.00 | July 1, 2006 |
| 72–80 | (869–060–00153–1) | 62.00 | July 1, 2006 |
| 81–85 | (869–060–00154–9) | 60.00 | July 1, 2006 |
| 86 (86.1–86.599–99) | (869–060–00155–7) | 58.00 | July 1, 2006 |
| 86 (86.600–1–End) | (869–060–00156–5) | 50.00 | July 1, 2006 |
| 87–99 | (869–060–00157–3) | 60.00 | July 1, 2006 |
| 100–135 | (869–060–00158–1) | 45.00 | July 1, 2006 |
| 136–149 | (869–060–00159–0) | 61.00 | July 1, 2006 |
| 150–189 | (869–060–00160–3) | 50.00 | July 1, 2006 |
| 190–259 | (869–060–00161–1) | 39.00 | July 1, 2006 |
| 260–265 | (869–060–00162–0) | 50.00 | July 1, 2006 |
| 266–299 | (869–060–00163–8) | 50.00 | July 1, 2006 |
| 300–399 | (869–060–00164–6) | 42.00 | July 1, 2006 |
| 400–424 | (869–060–00165–4) | 56.00 | July 1, 2006 |
| 425–699 | (869–060–00166–2) | 61.00 | July 1, 2006 |
| 700–789 | (869–060–00167–1) | 61.00 | July 1, 2006 |
| 790–End | (869–060–00168–9) | 61.00 | July 1, 2006 |
| **41 Chapters:** | | | |
| 1, 1–1 to 1–10 | | 13.00 | [3] July 1, 1984 |
| 1, 1–11 to Appendix, 2 (2 Reserved) | | 13.00 | [3] July 1, 1984 |
| 3–6 | | 14.00 | [3] July 1, 1984 |
| 7 | | 6.00 | [3] July 1, 1984 |
| 8 | | 4.50 | [3] July 1, 1984 |
| 9 | | 13.00 | [3] July 1, 1984 |
| 10–17 | | 9.50 | [3] July 1, 1984 |
| 18, Vol. I, Parts 1–5 | | 13.00 | [3] July 1, 1984 |
| 18, Vol. II, Parts 6–19 | | 13.00 | [3] July 1, 1984 |
| 18, Vol. III, Parts 20–52 | | 13.00 | [3] July 1, 1984 |
| 19–100 | | 13.00 | [3] July 1, 1984 |
| 1–100 | (869–060–00169–7) | 24.00 | July 1, 2006 |
| 101 | (869–060–00170–1) | 21.00 | [8] July 1, 2006 |
| 102–200 | (869–060–00171–9) | 56.00 | July 1, 2006 |
| 201–End | (869–060–00172–7) | 24.00 | July 1, 2006 |
| **42 Parts:** | | | |
| 1–399 | (869–056–00173–8) | 61.00 | Oct. 1, 2005 |
| 400–429 | (869–056–00174–6) | 63.00 | Oct. 1, 2005 |
| 430–End | (869–056–00175–4) | 64.00 | Oct. 1, 2005 |
| **43 Parts:** | | | |
| 1–999 | (869–056–00176–2) | 56.00 | Oct. 1, 2005 |
| 1000–end | (869–056–00177–1) | 62.00 | Oct. 1, 2005 |
| ***44** | (869–060–00179–4) | 50.00 | Oct. 1, 2006 |
| **45 Parts:** | | | |
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| *200–499 | (869–060–00181–6) | 34.00 | Oct. 1, 2006 |
| 500–1199 | (869–056–00171–9) | 56.00 | Oct. 1, 2005 |
| 1200–End | (869–056–00182–7) | 61.00 | Oct. 1, 2005 |
| **46 Parts:** | | | |
| 1–40 | (869–056–00183–5) | 46.00 | Oct. 1, 2005 |
| 41–69 | (869–056–00184–3) | 39.00 | [10] Oct. 1, 2005 |
| *70–89 | (869–060–00186–7) | 14.00 | Oct. 1, 2006 |
| *90–139 | (869–060–00187–5) | 44.00 | Oct. 1, 2006 |
| 140–155 | (869–056–00187–8) | 25.00 | Oct. 1, 2005 |
| *156–165 | (869–060–00189–1) | 34.00 | Oct. 1, 2006 |
| 166–199 | (869–056–00189–4) | 46.00 | Oct. 1, 2005 |
| 200–499 | (869–056–00190–8) | 40.00 | Oct. 1, 2005 |
| *500–End | (869–060–00192–1) | 25.00 | Oct. 1, 2006 |
| **47 Parts:** | | | |
| 0–19 | (869–056–00192–4) | 61.00 | Oct. 1, 2005 |
| *20–39 | (869–060–00194–8) | 46.00 | Oct. 1, 2006 |
| 40–69 | (869–056–00194–1) | 40.00 | Oct. 1, 2005 |
| 70–79 | (869–056–00195–9) | 61.00 | Oct. 1, 2005 |
| 80–End | (869–056–00196–7) | 61.00 | Oct. 1, 2005 |
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| 1 (Parts 1–51) | (869–056–00197–5) | 63.00 | Oct. 1, 2005 |
| 1 (Parts 52–99) | (869–056–00198–3) | 49.00 | Oct. 1, 2005 |
| *2 (Parts 201–299) | (869–060–00200–6) | 50.00 | Oct. 1, 2006 |
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| 15–28 | (869–056–00202–5) | 47.00 | Oct. 1, 2005 |

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|---|---|---|---|
| 29–End | (869–056–00203–3) | 47.00 | Oct. 1, 2005 |
| **49 Parts:** | | | |
| 1–99 | (869–056–00204–1) | 60.00 | Oct. 1, 2005 |
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| 600–999 | (869–056–00210–6) | 19.00 | Oct. 1, 2005 |
| *1000–1199 | (869–060–00212–0) | 28.00 | Oct. 1, 2006 |
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| **50 Parts:** | | | |
| *1–16 | (869–060–00214–6) | 11.00 | [9] Oct. 1, 2006 |
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| *17.99(i)–end and 17.100–end | (869–060–00218–9) | 47.00 | [9] Oct. 1, 2006 |
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2005 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2006. The CFR volume issued as of October 1, 2005 should be retained.

[10] No amendments to this volume were promulgated during the period October 1, 2004, through October 1, 2005. The CFR volume issued as of October 1, 2004 should be retained.