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Rules and Regulations

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 451

RIN 3206–AL06

Awards

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to amend the incentive awards regulations. The amended regulations clarify that if agencies grant rating-based awards, they must base such awards on a rating of record of ''Fully Successful'' (or equivalent) or higher. In addition, agencies must ensure that rating-based awards granted make meaningful distinctions based on levels of performance.

DATES: The regulations are effective on February 12, 2007.

FOR FURTHER INFORMATION CONTACT: Barbara Colchao by telephone at (202) 606–2720, by fax at (202) 606–2307, or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On June 21, 2006, the Office of Personnel Management (OPM) published proposed regulations amending the incentive awards regulations in part 451 of title 5, Code of Federal Regulations, regarding performance-based cash awards (particularly those authorized under 5 U.S.C. 4505a and 5 CFR 451.101(e) and 451.104(a)(3)). The proposed regulations clarified that agencies using these incentive awards authorities to grant employees performance-based cash awards must base them on a rating of record of ''Fully Successful'' (or equivalent) or higher and ensure that such awards reflect meaningful distinctions based on levels of performance.

The changes to the regulations address only rating-based awards, i.e., those awards given to recognize performance over the course of the appraisal period and that require only the rating of record as justification for granting the award. These changes do not affect other awards agencies may grant, when appropriate, that require independent documentation, such as those based on special acts, suggestions, and gainsharing or goalsharing formulas tied to group performance. In making these changes, OPM intends to retain the flexibilities agencies currently have to design their awards programs while reiterating there is no statutory entitlement to recognition.

The proposed regulations provided for a 30-day public comment period that ended July 21, 2006. During the public comment period OPM received about 74 comments in 39 submissions and 5 phone calls that raised multiple questions or concerns. We received written comments from 31 individuals (representing approximately 19 Federal agencies, and 1 from the private sector), 3 letters from 2 labor unions (American Federation of Government Employees and the National Treasury Employees Union), and 5 agencies (Departments of Agriculture, Commerce, Justice, and Veterans Affairs, and the Nuclear Regulatory Commission).

Most of the comments can be grouped into ten major themes—support for the proposal, concerns about the influence of favoritism and bias, the need to train rating officials, the impact on two-level (pass/fail) rating systems, funding awards, making meaningful distinctions and calculating the awards, the use of performance review boards or awards committees, opposition to changing the regulations, base pay and other awards, and other miscellaneous observations. The following information summarizes and responds to these issues.

Support for the Proposed Regulations

We received three comments from individuals in support of the changes. One comment wholeheartedly supports the proposed regulations. Another comment supports the proposed changes and agrees with the emphasis on making meaningful distinctions between levels of performance. An additional comment suggests that the regulations should require employees to have a rating higher than ''Fully Successful'' to be eligible to receive a performance-based cash award.

These regulations are codifying the statutory threshold for performance-based cash awards established under 5 U.S.C. 4505a, as regulated under 5 CFR 451.101(e) and 451.104(a)(3). Neither the statute nor the regulations require granting awards on the basis of any specific rating level or to all employees who receive such a rating. Therefore, agencies continue to have the flexibility to design their awards programs to support their performance culture and can establish threshold performance levels that are appropriate for them as long as those levels are not lower than the one set forth in statute. Those agencies using rating-based awards typically design their programs so that the awards increase for employees with higher rating levels. Such a design complies with these regulations. Agencies must ensure that in applying their rating-based awards program they retain this aspect of their design. In doing so, they also retain the flexibility to take into consideration other forms of recognition that have been granted to the employee, especially if it recognizes aspects of the employee's performance that are also captured in the rating of record.

Favoritism and Bias

By far the most frequent comment expressed in various fashions was the concern that awards would be influenced by favoritism or bias. We received 11 comments (1 union and 10 individuals) regarding a perceived tendency to show favoritism or bias toward particular groups or categories of employees. The union comments that the proposed regulations do not address possible favoritism and bias, such as the prospect that minorities and women might suffer an adverse impact from changes in personnel policies. The union recommends that, before implementing these regulations, OPM order all Federal agencies to conduct an adverse impact analysis to ensure that there will be no adverse impact on classes of employees based on race, national origin, gender, grade or bargaining unit status. A few comments state that men or supervisors and managers would profit from this policy change more than others. Several other comments state that supervisors would

grant awards to their favorite employees.

OPM understands some employees may fear favoritism will influence the distribution of rating-based awards. However, we believe establishing and maintaining rating-based awards programs with clear guidelines that are applied in a fair and transparent manner and consistently granting awards that make meaningful distinctions based on differences in levels of performance are effective ways to confront favoritism, either real or perceived. Agencies need to inform supervisors and employees on the specifics of their rating-based awards program and the effective use of recognition and incentives. Since rating-based awards are not the only type of award agencies have in their award programs, it is important for all involved to understand the criteria used to grant different types of awards and how they can be used most effectively. Understanding the full range of the types of awards available and the bases for which they might be granted supports the transparency of any awards program.

Regarding the union's comment on conducting an impact analysis, these regulations formalize a practice that has been prevalent in agencies for a long time, i.e., granting performance-based awards so that larger awards go to employees with higher ratings of record. We concur agencies should include in their evaluation of their awards programs the type of analysis recommended by the union comment. We also strongly encourage agencies to include checks and balances in the design and implementation of their incentive awards and recognition programs to further ensure openness and fairness.

Training for Rating Officials

We received eight comments (two unions, one agency, and five individuals) requesting additional training for managers and supervisors. Several comments state rating officials need more specific guidance and oversight in order to implement a fair and unbiased system. Other comments say the regulations are unclear regarding what procedure should be followed to ensure ''meaningful distinction.'' One union comment recommends funding should be made available for performance management training and that legislation should be in place to make performance management training mandatory. Two comments concern the ability of supervisors who lack training in performance management to evaluate employees with special work assignments that cannot be compared to the work assignments of their co-workers. Several comments, including those from the unions, recommend increasing training for managers and holding them accountable for implementing good management practices, including the skills to recognize and reward employee contributions to their agency.

We agree that everyone affected by agency awards programs, both those who administer them and those who might be eligible to participate in them, should understand the types of awards available and their eligibility criteria, i.e., the bases for the different types of awards. We encourage agencies to provide training to all managers and supervisors administering awards programs to ensure these programs are administered fairly. We also encourage agencies, as specified in existing regulations, to inform employees about the various agency awards programs so they understand what is required to be eligible for an award. However, we note again that there is no entitlement to an award.

Although these regulations do not amend the performance appraisal regulations, we agree that for rating-based awards programs to be applied in a way that makes meaningful distinctions based on differences in levels of performance, supervisors and managers must have the necessary skills to practice effective performance management. Agencies are responsible for seeing that their supervisors and managers receive the appropriate training to ensure they have these skills. Furthermore, we encourage agencies to hold supervisors responsible, through their own individual performance plans, for the effective management and appraisal of their employees.

Two-Level (Pass/Fail) Rating System

We received three comments (one union and two individuals) concerning the impact of these regulations on employees covered by a two-level performance appraisal system, commonly referred to as a pass/fail performance appraisal system. Two comments observe agencies still using a pass/fail system are unable to make meaningful distinctions because these systems do not make distinctions above ''Fully Successful.'' One comment wants to know how these requirements for rating-based awards would affect an agency using a pass/fail system.

While at one time pass/fail appraisal programs covered nearly half of all non-Senior Executive Service employees, in recent years the trend has shifted. Under the President's Management Agenda and its performance culture initiative, most agencies have returned to using appraisal systems that provide for differentiating multiple levels of performance. Also, agencies with pass/fail performance appraisal programs tend to ''de-link'' awards from ratings and, therefore, did not and do not use rating-based awards, which use the rating of record as the sole justification for the award. Instead, they commonly use other available award authorities to reward specific employee accomplishments rather than recognizing year-long performance based on their ratings of record, which do not provide differentiation among their successful performers. Therefore, even with these regulatory changes employees who may still be covered by pass/fail performance appraisal programs could be eligible for awards granted on other bases.

Funding and Budgetary Concerns

Four comments (one union and three individuals) raised concerns about the effect of lack of funding or other budgetary constraints on awards programs. The union comment notes that any changes involving the distribution of performance-based cash awards require extensive training for managers, supervisors, and employees and would require adequate funding for such training. The union also states OPM should mandate that awards budgets for bargaining unit and nonbargaining unit employees should be kept separate and distinct and developed based on an equitable formula. Individual comments express concerns about agency-specific awards funding issues, how award amounts are derived, and agencies' ability to operate an awards program with little or no money.

While training and retraining is always an agency concern and responsibility, as we have stated previously, many agencies have been using rating-based awards for many years. Where they are used and employees with higher ratings of record receive larger awards than those with lower ratings, these programs would not appear to need to be changed since they already would comply with these regulations. Agencies retain the flexibility for the design and application of these awards programs. OPM recognizes that there are various ways to meet these requirements and does not intend to restrict agency flexibility.

The changes in the award regulations do not directly impact agency award funding. Agency funding for awards programs has remained fairly constant, around 1 percent of payroll, for many years. Given the reality of funding and

budget constraint concerns, the judicious and effective use of limited funds is even more important. To support high performance cultures, agencies must ensure that the application of their rating-based awards programs makes meaningful distinctions based on differences in performance levels, thus reinforcing the message that performance matters. In addition, the appropriate use of the full complement of employee incentives and recognition can help achieve agencies' performance culture objectives, even in times of lean resources.

Making Meaningful Distinctions and Calculating Awards

While not as numerous as the comments on favoritism, perhaps the areas that generated the most confusion were the phrase, ''making meaningful distinctions based on levels of performance,'' and the explanation that this could be exemplified by employees with higher ratings of record receiving larger awards, as a percentage of base pay, than those with lower ratings. We received a total of 15 comments regarding these two issues (1 union, 4 agencies, and 10 individuals). One comment said the terminology regarding meaningful distinctions is unnecessarily vague and subject to varying interpretation. Several comments inquire whether agencies have the discretion to make the distinctions in performance based on the dollar amount of the awards, rather than their percentage of base salary. Other comments make specific recommendations such as a suggested mathematical formula for determining award amounts, or requiring the same dollar amount for the same performance rating level by grade, or using a mid-point of the grade as the basis for the award rather than the individual employee's specific rate of pay. Other comments request additional guidance on what procedures agencies should put in place to ensure that managers are making meaningful distinctions in performance from one rating level to another and how to ensure that the highest awards are granted to the highest performers. The union comment suggests that lack of uniformity in awards for employees performing at the same high level will cause problems and trigger doubts about the credibility and validity of the system.

Current statute provides a specific authority to pay cash awards on the basis of an employee's most recent rating of record. Because this type of award requires no additional justification beyond the rating of record, these regulations require agencies using this authority to ensure the amounts of these award payments reflect meaningful distinctions based on levels of performance. OPM is confident that agencies using ratings of record as the sole basis for granting cash awards are doing this already. The regulation codifies this practice to ensure that all agencies choosing to use this rating-based award authority do so appropriately. Because OPM views the concept of making meaningful distinctions as a principle and recognizes that there is more than one way meet the requirement to make meaningful distinctions, we believe it is essential to retain Governmentwide flexibility in this area. Such flexibility is certainly not intended and is not expected to result in chaos at the agency level. Each agency program must determine how acting on those distinctions can be translated into agency procedures that are accurately described and applied fairly.

Furthermore, OPM does not intend to restrict how agencies calculate rating-based awards, whether as a lump-sum dollar amount or a percentage of base pay. We believe that expressing the award as a percentage of base pay is a common and easily understood way to explain that making meaningful distinctions in performance means employees with higher performance ratings who get rating-based awards receive larger awards than those with lower ratings. Our choice to use percentage of base pay in our explanation does not affect agencies' ability to make these distinctions by granting employees with higher ratings higher lump-sum dollar payments.

Performance Review Boards and Awards Committees

We received three comments on this issue (one union and two individuals). Two comments suggest the establishment of performance review boards would provide oversight of the process. In addition, the union recommends the use of award committees to assist in keeping the awards process open and transparent. The union states performance review boards and awards committees will counteract some of the perceived secrecy surrounding the awards process, including why specific employees receive awards.

While these regulations do not mandate review boards for awards (as required for the Senior Executive Service), agencies have the flexibility to establish such boards. OPM encourages agencies to have mechanisms in place to provide oversight of and to evaluate their awards programs. However, we do not consider it appropriate to mandate the establishment of such boards and thus leave that decision to the discretion of the agency.

Opposition to Changing the Regulations

We received six comments (two unions, one agency, and three individuals) stating their opposition to the revisions. The agency comments that the regulation would result in unnecessarily rigid rules that would hinder making meaningful distinctions. One union comments that the regulations would undermine the merit principle of equal pay for equal work. Another union states there is no need for the regulation. Two comments recognize that while they consider the General Schedule system to be flawed, it is fair, and they express skepticism about the presence of fairness in the regulations. One comment opposes the change because it is seen as legislating awards.

Many of these comments confuse rating-based awards with position classification and with pay-for-performance systems that would affect the rate of basic pay. Much of the opposition expressed is more directly related to pay for performance than to the revisions in the awards regulations. The practical effect of these regulations does not restrict agency flexibility in its awards programs. Rather, the regulations codify a statutory threshold and ensure the appropriate use of a specific authority.

Base Pay and Other Awards

We also received four comments (three individuals and one agency) concerning what effect the regulations would have on time-off awards, within-grade increases, raises, and gainsharing programs.

The regulations affect only rating-based awards. Other agency incentive and recognition programs are not affected. Furthermore, agencies can continue to establish and use decision criteria that take into account other pay decisions made so that the total aggregation of all forms of compensation and additional recognition do not result in unintended, disproportionate rewards for the employee. While time-off awards are not direct additional payments to an employee, they do represent an expense to the agency and a valued form of recognition to the employee. As such, it may be appropriate to consider substantial time-off awards granted to recognize an employee's accomplishments that are reflected in a rating of record when contemplating the total ''amount'' of

compensation/recognition the agency is providing.

Miscellaneous Issues

One individual comment objects to the waiver of the 60-day comment period.

OPM provided a 30-day comment period in lieu of the 60-day comment period to enable issuance of final regulations when most agencies are making their awards decisions, which will give practical effect to these regulations.

A union comment expresses concern that the regulation violates the merit system principle. In addition, an agency observed that the legal citation for the merit system principle is incorrect. The union further questions the appropriateness of limiting the awards to employees with ratings of record of ''Fully Successful'' or higher since an employee with a lower rating may have accomplished something exemplary in a single aspect of the job.

The regulations clearly support the merit system principle that provides for appropriate incentives and recognition for excellence in performance. Regarding the limitation to employees rated ''Fully Successful'' or higher, this restriction applies only to rating-based awards and is the statutory threshold. Other authorities within 5 CFR part 451 permit agencies to provide recognition for other performance when appropriate. The rating-based award is only one way of providing recognition. Also, OPM acknowledges that the correct citation for the merit system principle referenced is 5 U.S.C. 2301(b)(3).

One comment questions if the regulations would lead employees rated at the ''Fully Successful'' level to feel entitled to a cash award. Others said requiring distinctions would result in the forced distribution of ratings.

As we have stated, and we believe most employees understand, awards are not an entitlement. Furthermore, the requirement for making distinctions in rating-based awards reflects and supports rather than drives those distinctions already made in the levels of performance.

One comment recommends that OPM require agencies to base cash awards programs on methodologies that have been shown through research to result in improved productivity or quality of performance in the entire organization.

OPM regulations set up broad frameworks within which individual agencies design and operate their own specific awards programs. To best support their own performance cultures, agencies have the flexibility to establish and adapt awards policies and the criteria and conditions under which awards may be granted, as long as they do not violate regulation or statute.

One comment asks whether the rate used to compute a rating-based award includes locality pay.

Yes, a recent change in law removed a previous requirement to exclude locality pay from rating-based awards when computed as a percentage of base pay. These regulations do not change the regulations affecting when locality pay is considered to be basic pay.

Other comments are outside the scope and intent of these regulations and thus are not addressed here. These comments include concerns about the National Security Personnel System and the perceived possible adverse impact of pay for performance in the Federal Government, including a decrease in teamwork, low morale and competition among employees, and increased departure from Government service.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget as a significant regulatory action in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 451

Decorations, Medals, Awards, Government employees.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, the Office of Personnel Management is amending 5 CFR part 451 as follows:

PART 451—AWARDS

■ 1. The authority citation for part 451 continues to read as follows:

Authority: 5 U.S.C. 4302, 4501–4509; E.O. 11438, 33 FR 18085, 3 CFR, 1966–1970 Comp., p. 755; E.O. 12828, 58 FR 2965, 3 CFR, 1993 Comp., p. 569.

Subpart A—Agency Awards

■ 2. In § 451.101, paragraph (e) is revised to read as follows:

§ 451.101 Authority and coverage.

* * * * *

(e) An agency may grant performance-based cash awards on the basis of a rating of record at the fully successful level (or equivalent) or above under the authority of 5 U.S.C. 4505a and the provisions of this part to eligible non-GS employees who are covered by 5 U.S.C. chapter 45 and this part and who are not otherwise covered by an explicit statutory authority for the payment of such awards, including 5 U.S.C. 5384 (SES performance awards).

■ 3. In § 451.104, paragraph (a)(3) is revised and a new paragraph (h) is added to read as follows:

§ 451.104 Awards.

(a) * * *

(3) Performance as reflected in the employee's most recent rating of record (as defined in § 430.203 of this chapter), provided that the rating of record is at the fully successful level (or equivalent) or above, except that performance awards may be paid to SES members only under § 534.405 of this chapter and not on the basis of this subpart.

* * * * *

(h) Programs for granting performance-based cash awards on the basis of a rating of record at the fully successful level (or equivalent) or above, as designed and applied, must make meaningful distinctions based on levels of performance.

[FR Doc. E7–262 Filed 1–10–07; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

RIN 1904–AB54

Energy Conservation Standards for Certain Ceiling Fan Light Kits

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; technical amendment.

SUMMARY: The Department of Energy (DOE) is publishing this technical amendment in order to place in the Code of Federal Regulations the energy conservation standards for ceiling fan light kits with sockets other than medium screw base or pin-based for fluorescent lamps that Congress prescribed in the Energy Policy Act of 2005.

DATES: *Effective Date:* January 11, 2007.

FOR FURTHER INFORMATION CONTACT: Linda Graves, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000

Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–1851, e-mail: *Linda.Graves@ee.doe.gov*, or Francine Pinto, Esq., U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7432, e-mail: *Francine.Pinto@hq.doe.gov.*

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I. Background

The Energy Policy Act of 2005 (EPACT 2005) (Pub. L. 109–58) was enacted on August 8, 2005. In addition to provisions directing DOE to undertake rulemakings to promulgate new or amended energy conservation standards for various consumer products and commercial and industrial equipment, Congress prescribed new efficiency standards and related definitions for certain consumer products and commercial and industrial equipment.

By today's action, DOE is placing in the Code of Federal Regulations (CFR) the energy conservation standards that Congress prescribed for ceiling fan light kits with sockets other than medium screw base or pin-based for fluorescent lamps. DOE is not exercising its discretionary authority, provided in section 135(c)(4) of EPACT, (42 U.S.C. 6295(ff)(4)(A)) for the Secretary of Energy to consider and issue requirements, by rule, for any ceiling fan lighting kit with sockets other than medium screw base or pin-based for fluorescent lamps. Instead, the Secretary is adopting the statutory standard in section 325(ff)(4)(C) of EPCA. (42 U.S.C. 6295(ff)(4)(C)) That section, which was added by section 135(c)(4) of EPACT 2005, establishes requirements for these ceiling fan light kits if the Department does not take action by January 1, 2007.

In the future, DOE may exercise its discretion under section 325(ff)(5) of EPCA, after January 1, 2010, to consider and issue amended energy conservation standards for all types of ceiling fan light kits.

II. Summary of Today's Action

Section 135(c)(4) of EPACT 2005 amends section 325 of EPCA to, among other things, add subsection (ff) with respect to ceiling fans and ceiling fan light kits. New section 325(ff) establishes design standards for ceiling fans and ceiling fan light kits manufactured on or after January 1, 2007. With respect to ceiling fan light kits, EPACT 2005 created three groupings: (1) Ceiling fan light kits with medium screw base sockets (also called ''E26'' base types), (2) ceiling fan light kits with pin-based sockets for fluorescent lamps, and (3) ceiling fan light kits with any socket type other than medium screw base or pin-based for fluorescent lamps. For this third group, while the statute specifically mentions the example of candelabra screw base sockets (also called ''E12'' base types), this group applies to ceiling fan light kits with any socket type other than medium screw base or pin-based for fluorescent lamps. Thus, this third group would include ceiling fan light kits designed with candelabra screw base sockets, intermediate screw-base sockets, 2-pin halogen sockets, bayonet sockets, and all socket types other than medium screw base or pin-based for fluorescent lamps.

In a final rule published on October 18, 2005, DOE codified the statute's requirements for the first two groupings of ceiling fan light kits—medium screw base and pin-based for fluorescent lamps. 70 FR 60413. In today's technical amendment, DOE is codifying the design standards set out in EPCA's new section 325(ff) for the third grouping, ceiling fan light kits with sockets other than medium screw base or pin-based for fluorescent lamps. As previously discussed, section 135(c)(4) of EPACT 2005, among other things, added section 325(ff)(4)(A) of EPCA, which requires DOE to consider issuing requirements for these ceiling fan light kits by January 1, 2007. The time frame normally allocated to conduct an energy conservation standards rulemaking to determine requirements for a consumer product like this is approximately three years. For these ceiling fan light kits, the time frame that was afforded to DOE by the statute was only 17 months from the date of enactment of EPACT 2005 to the date when these requirements must be in place. After reviewing this statutory requirement, and DOE's backlog of rulemakings and the other new consumer product and commercial equipment rulemakings required in EPACT 2005, DOE stated in its Report to Congress:[1]

> With regard to the rulemaking for ceiling fan light kits (other than those with standards prescribed by EPACT 2005), it is not feasible to complete a rulemaking by the EPACT 2005 final rule deadline of January 1, 2007. Since EPACT 2005 includes a standard that is scheduled to go into effect on January 1, 2009, in the event that the Department cannot meet the deadline, the Department plans to adopt and codify the EPACT 2005 standard in fiscal year 2007, conserving Departmental resources for more complex rulemakings with higher potential benefits. Report to Congress at page vi.

Thus, in today's technical amendment, DOE is codifying at 10 CFR 430.32(s), requirements for ceiling fan light kits with sockets other than medium screw base or pin-based for fluorescent lamps. This statutory standard in section 325(ff)(4)(C) of EPCA (42 U.S.C. 6295(ff)(4)(C)), requires that any ceiling fan light kit with sockets other than medium screw base or pin-based for fluorescent lamps manufactured after January 1, 2009, (1) shall not be capable of operating with lamps that total more than 190 watts; and (2) shall include the lamps that total not more than 190 watts in the ceiling fan light kit.

DOE is interpreting these two requirements as design requirements. The first requirement, that ceiling fan light kits shall not be capable of operating with lamps that total more than 190 watts, is being interpreted as requiring manufacturers to incorporate some electrical device or measure, such as a fuse, circuit breaker, or current limiting device, to ensure that the light kit is not capable of operating with a lamp or lamps that draw more than 190 watts. As this is a design requirement, a test procedure is not required to certify compliance. Moreover, this interpretation is consistent with DOE's interpretation of a similar requirement under EPACT 2005 for torchieres. 71 FR 71340 (December 8, 2006).

The second requirement, that the ceiling fan light kit shall include lamps that total not more than 190 watts, is being interpreted by DOE as a packaging requirement with two parts: first, that the kits are to be packaged with lamps

[1] *Energy Conservation Standards Activities, Submitted Pursuant to Section 141 of the Energy Policy Act of 2005 and to the Conference Report (109–275) to the FY 2006 Energy and Water Development Appropriations Act;* U.S. Department of Energy, January 2006.

and second, that the total wattage of all the lamps packaged with the ceiling fan light kit shall not exceed 190 watts. A test procedure is not required to demonstrate compliance with either of these two provisions of the second requirement. Manufacturers can certify without a test procedure that lamps are included in the ceiling fan light kit packaging and that the sum of the total rated wattages of all the lamps packaged with the kit do not exceed 190 watts.

EPCA defines the term ''manufacture'' as ''to manufacture, produce, assemble, or import.'' (42 U.S.C. 6291(10)) Starting on January 1, 2009, all ceiling fan light kits covered by this final rule must, on the date of manufacture, or in the case of imported products, as of the date of import, meet the standards set forth in today's rule. These requirements apply to the manufacture of covered consumer products for sale in the 50 States as well as all U.S. territories.

As background context for how EPACT addressed the two categories of ceiling fan light kits not covered by this rulemaking, i.e., those with medium screw base sockets and pin-based sockets for fluorescent lamps, the prescribed energy conservation standards for these two types of ceiling fan light kits took effect on January 1, 2007. While products are required to be compliant with the mandatory standards from that effective date, manufacturers are not required to report under DOE's compliance certification and enforcement programs until DOE finalizes its certification and compliance procedures for new covered products and commercial equipment. DOE published a notice of proposed rulemaking on July 25, 2006, which proposed certification and enforcement provisions for a range of products, including all types of ceiling fan light kits. 71 FR 42178. Although manufacturers are not subject to DOE certification and enforcement programs until DOE promulgates the final rule on certification and enforcement, manufacturers must meet the required standards for ceiling fan light kits with medium screw base and pin-based for fluorescent lamps starting January 1, 2007. When the certification and enforcement procedures are finalized, manufacturers must represent to DOE that the ceiling fan light kits for which there are effective standards and packaging requirements set by EPACT 2005 are compliant.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's final rule is not a ''significant regulatory action'' under section 3(f)(1) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, today's action was not subject to review by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. The Department has made its procedures and policies available on the Office of the General Counsel's Web site: *http://www.gc.doe.gov*. DOE today is revising the Code of Federal Regulations to incorporate, without substantive change, energy conservation standards prescribed by Congress in the Energy Policy Act of 2005. Because this is a technical amendment for which a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply to this rulemaking.

C. Review Under the Paperwork Reduction Act of 1995

This rulemaking will impose no new information or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

DOE has determined that this rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.6 of Appendix A to Subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

In this instance, DOE is merely codifying the design standards set out in EPACT 2005 section 325(ff)(4)(C) (42 U.S.C. 6295(ff)(4)(C)) for ceiling fan light kits with sockets other than medium screw base or pin-based for fluorescent lamps. EPACT 2005 gives DOE the authority to conduct a rulemaking for this equipment by January 1, 2007. However, EPACT 2005 also provided that if DOE does not issue a final rule by this statutory deadline, the design standards referenced above would become effective for equipment manufactured after January 1, 2009. DOE is not exercising any discretion in today's final rule.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it does 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's rule. States can petition DOE for exemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically

requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*). This final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements under the Unfunded Mandates Reform Act do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

The Department has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This final rule would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on December 29, 2006.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons set forth in the preamble, DOE hereby amends Chapter II, Subchapter D of Title 10, of the Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.32 of subpart C is amended by adding new paragraph (s)(4) to read as follows:

§ 430.32 Energy and water conservation standards and effective dates.

* * * * *

(s) *Ceiling fans and ceiling fan light kits.*

* * * * *

(4) Ceiling fan light kits with socket types other than those covered in paragraphs (2) and (3) of this section, including candelabra screw base sockets, manufactured on or after January 1, 2009—

(i) Shall not be capable of operating with lamps that total more than 190 watts; and

(ii) Shall be packaged to include the lamps described in clause (i) with the ceiling fan light kits.

* * * * *

[FR Doc. E7–230 Filed 1–10–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 26

[Docket No. 2006–16]

RIN 1557–AD01

FEDERAL RESERVE SYSTEM

12 CFR Part 212

[Regulation L; Docket No. R–1272]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 348

RIN 3064–AD13

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563f

[Docket No. 2006–47]

RIN 1550–AC09

Management Official Interlocks

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Joint interim rule with request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are amending their rules regarding management interlocks to implement section 610 of the Financial Services Regulatory Relief Act of 2006 (FSRRA) and to correct inaccurate cross-references.

DATES: This interim rule is effective on January 11, 2007. Comments on the rule must be received by February 12, 2007.

ADDRESSES: Comments should be directed to:

OCC: You should include OCC and Docket Number 2006–16 in your comment. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *OCC Web Site: http://www.occ.treas.gov.* Click on ''Contact the OCC,'' scroll down and click on ''Comments on Proposed Regulations.''
- *E-mail address: regs.comments@occ.treas.gov.*
- *Fax:* (202) 874–4448.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: All submissions received must include the agency name (OCC) and docket number or Regulatory Information Number (RIN) for this interim rule. In general, the OCC will enter all comments received into the docket without change, including any business or personal information that you provide. You may review comments and other related materials by any of the following methods:

Viewing Comments Personally: You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.

Board: You may submit comments, identified by Docket No. R–1272, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *FAX:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN number, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.*
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.
- *E-mail: Comments@FDIC.gov.*
- *Public Inspection:* Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3502 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

Instructions: Submissions received must include the agency name and RIN for this rulemaking. Comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided.

OTS: You may submit comments, identified by No. 2006–47, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail address: regs.comments@ots.treas.gov.* Please include No. 2006–47 in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2006–47.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2006–33.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*,

including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.*

In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT:

OCC: Heidi M. Thomas, Special Counsel, Legislative and Regulatory Activities Division, (202) 874–4688; Sue Auerbach, Counsel, Bank Activities and Structure Division, (202) 874–5300; or Cheryl A. Martin, Senior Licensing Analyst, Licensing Activities Division, (202) 874–4614, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

Board: Andrew S. Baer, Counsel, (202) 452–2246, or Jennifer L. Sutton, Attorney, (202) 452–3564, Legal Division. For users of Telecommunication Device for the Deaf (TDD) only, contact (202) 263–4869.

FDIC: Patricia A. Colohan, Senior Examination Specialist, Division of Supervision and Consumer Protection, (202) 898–7283, or Leneta G. Gregorie, Counsel, Legal Division, (202) 898–3719.

OTS: David J. Bristol, Senior Attorney, (202) 906–6461, Business Transactions Division, Office of Thrift Supervision, or Donald W. Dwyer, Director of Applications, Examinations and Supervision—Operations, (202) 906–6414, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The Depository Institution Management Interlocks Act (12 U.S.C. 3201 *et seq.*) (Interlocks Act or Act) prohibits individuals from simultaneously serving as a management official [1] at two unaffiliated depository institutions or their holding companies (collectively, depository organizations) under certain circumstances. For example, section 203(1) of the Act (12 U.S.C. 3202(1)) prohibits interlocks between unaffiliated depository organizations if each depository organization (or a depository institution affiliate thereof) has an office in the same relevant metropolitan statistical area (RMSA) (RMSA prohibition), unless each of the depository organizations involved has total assets below a specified threshold (small institution exception). Prior to enactment of the FSRRA, this asset threshold was $20 million. However, section 610 of the FSRRA amended the Interlocks Act by raising this asset threshold to $50 million, effective as of October 13, 2006.[2]

II. Interim Rule

The Agencies are amending their rules in order to implement section 610 of the FSRRA. Specifically, the interim rules modify the RMSA prohibition to allow a management official of one depository organization to serve as a management official of an unaffiliated depository organization that has an office in the same RMSA as the first organization if each of the depository organizations in question (or a depository institution affiliate thereof) has total assets of less than $50 million.

This interim rule also makes technical changes to correct inaccurate cross-references in the definition of management official in each of the Agencies' rules.

III. Regulatory Analysis

Plain Language

Section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. 4809) requires the Agencies to use ''plain language'' in all rules published in the **Federal Register** after January 1, 2000. The Agencies believe the interim rules are presented in a simple and straightforward manner.

Administrative Procedure Act

The interim rule takes effect upon publication in the **Federal Register**. The interim rule implements a statutory change that took effect upon enactment on October 13, 2006. The new statutory provision itself gives the Agencies no discretion to modify the asset-size threshold for the small institution exception. The technical corrections of cross-references effected by the interim rule have no substantive effect. For the foregoing reasons, notice and public procedure are unnecessary. Accordingly, pursuant to 5 U.S.C. 553(b), the Agencies find good cause for making the rule effective as of January 11, 2007 without first seeking and reviewing public comment. However, the Agencies nonetheless invite public comment on the interim rule and will amend the rules if appropriate after reviewing public comments.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the regulatory flexibility analysis otherwise required under section 603 of the RFA (5 U.S.C. 603) is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes such certification and a statement explaining the factual basis for such certification in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, each of the Agencies certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. The Agencies expect that this rule will not create any additional burden on small entities. The interim rule relaxes the criteria for obtaining an exemption from the RMSA prohibition, and specifically addresses the needs of small entities by allowing greater numbers of small organizations to qualify for the small institution exception from the RMSA prohibition. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Agencies have determined that no collections of information pursuant to the Paperwork Reduction Act are contained in the interim rule.

OCC and OTS Executive Order 12866 Statement

The OCC and OTS each have independently determined that the interim rule is not a ''significant regulatory action'' as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required.

OCC and OTS Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), requires the OCC and OTS to prepare a budgetary impact statement before promulgating a rule that includes

[1] Each of the Agencies' regulations generally define ''management official'' to include a director, an advisory or honorary director of a depository institution with total assets of $100 million or more, a senior executive officer, a branch manager, a trustee of a depository organization under the control of trustees, and any person who has a representative or nominee serving in such capacity. *See* 12 CFR 26.2(j) (OCC); 12 CFR 212.2(j) (Board); 12 CFR 348.2(j) (FDIC); and 12 CFR 563f.2(j) (OTS).

[2] Pub. L. 109–351, § 610, 120 Stat.__(Oct. 13, 2006).

a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. However, this requirement does not apply to regulations that incorporate requirements specifically set forth in law. Because this interim rule implements section 610 of the FSRRA, the OTS and OCC have not conducted an Unfunded Mandates Analysis for this rulemaking.

List of Subjects

12 CFR Part 26

Antitrust, Holding companies, National banks.

12 CFR Part 212

Antitrust, Banks, banking, Holding companies.

12 CFR Part 348

Antitrust, Banks, banking, Holding companies.

12 CFR Part 563f

Antitrust, Holding companies, Reporting and recordkeeping requirements, Savings associations.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

■ For the reasons set out in the joint preamble, part 26 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 26—MANAGEMENT OFFICIAL INTERLOCKS

■ 1. The authority citation for part 26 continues to read as follows:

Authority: 12 U.S.C. 93a and 3201–3208.

§ 26.2 [Amended]

■ 2. Amend § 26.2(k)(1)(vi) by removing ''(m)(1)'' and adding in its place ''(k)(1)''.

§ 26.3 [Amended]

■ 3. Amend § 26.3(b) by removing ''$20'' and adding in its place ''$50''.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

■ For the reasons set out in the joint preamble, part 212 of chapter II of title 12 of the Code of Federal Regulations is amended as follows:

PART 212—MANAGEMENT OFFICIAL INTERLOCKS

■ 1. The authority citation for part 212 continues to read as follows:

Authority: 12 U.S.C. 3201–3208; 15 U.S.C. 19.

§ 212.2 [Amended]

■ 2. Amend § 212.2(j)(1)(iii) by removing ''12 CFR 225.71(a)'' and adding in its place ''12 CFR 225.71(c)''.

■ 3. Amend § 212.2(j)(1)(vi), by removing ''(p)'' and adding in its place ''(n)'' and by removing ''(l)(1)'' and adding in its place ''(j)(1)''.

§ 212.3 [Amended]

■ 4. Amend § 212.3(b) by removing ''$20'' and adding in its place ''$50''.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

■ For the reasons set forth in the joint preamble, part 348 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 348—MANAGEMENT OFFICIAL INTERLOCKS

■ 1. The authority citation for part 348 continues to read as follows:

Authority: 12 U.S.C. 1823(k), 3207.

§ 348.2 [Amended]

■ 2. Amend § 348.2(j)(1)(vi), by removing ''(l)(1)'' and adding in its place ''(j)(1)''.

§ 348.3 [Amended]

3. Amend § 348.3(b) by removing ''$20'' and adding in its place ''$50''.

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

■ For the reasons set out in the joint preamble, part 563f of chapter V of title 12 of the Code of Federal Regulations is amended as follows:

PART 563f—MANAGEMENT OFFICIAL INTERLOCKS

■ 1. The authority citation for part 563f continues to read as follows:

Authority: 12 U.S.C. 3201–3208.

§ 563f.2 [Amended]

■ 2. Amend § 563f.2(j)(1)(vi) by removing ''(l)(1)'' and adding in its place ''(j)(1)''.

§ 563f.3 [Amended]

■ 3. Amend § 563f.3(b) by removing ''$20'' and adding in its place ''$50''.

Dated: December 6, 2006.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, January 8, 2007.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, this 22nd day of December, 2006.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

Dated: December 4, 2006.

By the Office of Thrift Supervision.

John J. Reich,

Director.

[FR Doc. 07–79 Filed 1–10–07; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6717–01–P; 6720–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052–AC29

Organization; Termination of System Institution Status; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under part 611 on August 4, 2006 (71 FR 44410). This final rule updates the termination procedures for Farm Credit System banks and associations under sections 7.9, 7.10 and 7.11 of the Farm Credit Act of 1971, as amended, ensures that interested parties have sufficient time and opportunities to be fully informed about a termination proposal, and ensures that a significant proportion of equity holders are engaged in the termination process. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is January 4, 2007.

EFFECTIVE DATE: The regulation amending 12 CFR part 611, published on August 4, 2006 (71 FR 44410) is effective January 4, 2007.

FOR FURTHER INFORMATION CONTACT:

Thomas Dalton, Senior Staff Accountant, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434;

or

Rebecca S. Orlich, Senior Counsel, Office of General Counsel, Farm

Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

(12 U.S.C. 2252(a)(9) and (10))

Dated: January 5, 2007.

James M. Morris,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. E7–214 Filed 1–10–07; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2006–26032, Airspace Docket No. 06–ANE–01]

Establishment of Class E Airspace; Newton Field, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This action confirms the effective dale of a direct final rule that established the Class E airspace area at Newton Field, Jackman, ME (K59B) to provide for adequate controlled airspace for those aircraft using the new Helicopter Area Navigation (RNAV), 285 Instrument Approach Procedure to the Airport. This action also corrects a transposition error and editorial omission that appeared in the airspace description contained in the final rule that was published on Thursday, October 26, 2006.

DATES: *Effective Date:* 0901 UTC, January 18, 2007.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, Systems Support Group, AJO–2E2, FAA Eastern Service Center, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305–5586; fax (404) 305–5099.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on October 26, 2006 (71 FR 62554). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 18, 2007. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction to Final Rule

In the description of the airspace contained in the direct final rule, the FAA transposed the airport name with the name of the city in the title line. In addition, the FAA has added the words ''point in space'' to the longitude and latitude coordinates associated with this airport. This action makes these editorial corrections, which do not change the airspace configuration. The FAA is republishing the entire airspace description.

■ Accordingly, pursuant to the authority delegated to me, the airspace published in the **Federal Register**, Thursday, October 26, 2006 (71 FR 62554) (FR Doc. 06–26032, Airspace Docket No. 06–ANE–01, page 62554, all references to Newton Field, ME are corrected as follows:

§ 71.1 [Corrected]

* * * * *

ANE ME E5 Jackman, ME [New]

Newton Field, ME
Point in Space Coordinates
(Lat. 45°37′57.9″ N., long. 70°14′55.6″ W.)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of Newton Field, ME.

Issued in College Park, GA on December 21, 2006.

Mark D. Ward,

Manager, System Support Group, AJO–2E2, Eastern Service Center.

[FR Doc. 07–31 Filed 1–10–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2006–26031, Airspace Docket No. 06–ANE–02]

Establishment of Class E Airspace; Bethel Regional Airport, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This action confirms the effective date of a direct final rule that established the Class E airspace area at Bethel Regional Airport, Bethel ME (K0B1) to provide for adequate controlled airspace for those aircraft using the new Helicopter Area Navigation (RNAV), 317 Instrument Approach procedure to the Airport. This action also corrects a transposition error and editorial omission that appeared in the airspace description contained in the final rule that was published on Thursday, October 26, 2006.

DATES: *Effective Date:* 0901 UTC, January 18, 2007.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, Systems Support Group, AJO–2E2, FAA Eastern Service Center, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305–5586; fax (404) 305–5099.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on October 26, 2006 (71 FR 62554). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 18, 2007. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction to Final Rule

In the description of the airspace contained in the direct final rule, the FAA transposed the airport name with the name of the city in the title line. In addition, the FAA has added the words ''point in space'' to the longitude and latitude coordinates associated with this airport. This action makes these editorial corrections, which do not change the airspace configuration. The FAA is republishing the entire airspace description.

■ Accordingly, pursuant to the authority delegated to me, the airspace published in the **Federal Register**, Thursday, October 26, 2006 (71 FR 62554) (FR Doc. 06–26031, Airspace Docket No. 06–ANE–02, page 62552, all references to Bethel Regional Airport, ME are corrected as follows:

§ 71.1 [Corrected]

* * * * *

ANE ME E5 Bethel, ME [New]

Bethel Regional Airport, ME
Point in Space Coordinates
(Lat. 44°23′30.6″ N., long. 70°48′35.7″ W.)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of Bethel Regional Airport, ME.

Issued in College Park, GA on December 21, 2006.

Mark D. Ward,

Manager, System Support Group, AJO–2E2, Eastern Service Center.

[FR Doc. 07–32 Filed 1–10–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25942; Airspace Docket No. 06–ACE–12]

Modification of Class E Airspace; Thedford, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying Class E airspace at Thedford, Thomas County Airport, NE. Standard Instrument Approach Procedures have been developed for Thedford, Thomas County Airport, NE. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of the existing controlled airspace for Thedford, NE.

DATES: This direct final rule is effective on 0901 UTC, May 10, 2007. Comments for inclusion in the Rules Docket must be received on or before February 1, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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–2006–25942/ Airspace Docket No. 06–ACE–12, 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.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet AGL (E5) at Thedford, Thomas County Airport, NE. The radius of the Class E airspace area extending upward from 700 feet above the surface of the earth is expanded from within a 6.4-mile radius to within a 7.7-mile radius of the airport. This modification brings the legal description of the Thedford, Thomas County Airport, NE Class E5 airspace area into compliance with FAA Orders 7400.2F and 8260.19C. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designations listed in this document would be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this 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–2006–25942/Airspace Docket No. 06–ACE–12.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulator action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Thedford, Thomas County Airport, NE.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 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., p. 389.

§ 71.1 [Amended]

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

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

* * * * *

ACE NE E5 Thedford, NE

Thedford, Thomas County Airport, NE
(Lat 41°57′44″ N., long. 100°34′08″ W.)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of Thomas County Airport.

* * * * *

Issued in Fort Worth, TX, on December 26, 2006.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–48 Filed 1–10–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25945; Airspace Docket No. 06–ACE–15]

Modification of Class E Airspace; Alliance, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by modifying Class E airspace at Alliance Municipal Airport, NE. Standard Instrument Approach Procedures have been developed for Alliance Municipal Airport, NE. Additional controlled airspace extending upward from the surface and upward from 700 feet above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of the existing controlled airspace for Alliance Municipal Airport, NE.

DATES: This direct final rule is effective on 0901 UTC, May 10, 2007. Comments for inclusion in the Rules Docket must be received on or before February 1, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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–2006–25945/ Airspace Docket No. 06–ACE–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.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace areas at Alliance Municipal Airport, NE. The radius of the Class E surface area is expanded from within a 4.3-radius to 5.3-radius of the airport. The radius of the Class E airspace area extending upward from 700 feet or more above the surface of the earth is expanded from within a 6.8-mile radius to within a 7.8-mile radius of the airport. This modification brings the legal description of the Alliance Municipal Airport, NE Class E5 airspace areas into compliance with FAA Orders 7400.2F and 8260.19C. Class E surface areas are published in Paragraph 6002 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same order. The Class E airspace designations listed in this document would be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comments is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this 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–2006–25945/Airspace Docket No. 06–ACE–15.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Alliance Municipal Airport, NE.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 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., p. 389.

§ 71.1 [Amended]

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

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ACE NE E2 Alliance, NE

Alliance Municipal Airport, NE
(Lat. 42° 03′12″ N., long. 102°48′14″ W.)
Alliance VOR/DME
(Lat. 42° 03′20″ N., long. 102°48′16″ W.)
Alliance NDB
(Lat. 42° 02′35″ N., long. 102°47′58″ W.)

Within a 5.3-mile radius of Alliance Municipal Airport and within 2.6 miles each side of the 145° radial of the Alliance VOR/DME extending from the 5.3-mile radius to 8.7 miles southeast of the VOR/DME and within 2.6 miles each side of the 302° radial of the Alliance VOR/DME extending from the 5.3-mile radius to 5.7 miles northwest of the VOR/DME and within 2.5 miles each side of the 318° bearing from the Alliance NDB extending from the 5.3-mile radius to 7 miles northwest of the NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ACE NE E5 Alliance, NE

Alliance Municipal Airport, NE
(Lat. 42° 03′12″ N., long. 102°48′14″ W.)
Alliance VOR/DME
(Lat. 42° 03′20″ N., long. 102°48′16″ W.)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of the Alliance Municipal Airport and within 3 miles each side of the 145° radial of the Alliance VOR/DME extending from the 7.8-mile radius to 10.5 miles southeast of the VOR/DME and within 3 miles each side of the 302° radial of the Alliance VOR/DME extending from the 7.8-mile radius to 8.7 miles northwest of the VOR/DME.

* * * * *

Issued in Forth Worth, TX, on December 26, 2006.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–50 Filed 1–10–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25436; Airspace Docket No. 06–AGL–5]

Modification of Class E Airspace; Hayward, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This rule modifies a Class E area airspace area extending upward from 700 feet above the surface at Hayward, WI.

The effect of this rule is to provide appropriate controlled Class E airspace for aircraft departing from the executing instrument approach procedures to Hayward, WI and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

EFFECTIVE DATE: 0901 UTC, January 18, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION:

History

On Friday, October 6, 2006, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Hayward, WI (71 FR 59031). The proposal was to modify the Class E5 airspace area to bring Hayward, WI, airspace into compliance with FAA directives. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This notice amends Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class E airspace area extending upward from 700 feet above the surface at Hayward, WI. The establishment of Standard Instrument Approach Procedures has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules operations at Hayward, WI. The area will be depicted on approprite aeronautical charts.

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1 of the same Order. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Hayward, WI.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

PART 71—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., p. 389.

§ 71.1 [Amended]

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

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

* * * * *

AGL WI E5 Hayward, WI

Sawyer County Airport, WI
(Lat. 46°01′31″ N., long. 91°26′39″ W.)
Hayword VOR/DME
(Lat. 46°01′08″ N., long. 91°26′47″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Sawyer County Airport, and within 4.0 miles each side of the Hayward VOR/DME 025° radial extending from the 6.5-mile radius to 11.8 miles northeast of the VOR/DME.

* * * * *

Issued in Fort Worth, Texas, on December 26, 2006.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–51 Filed 1–10–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30530 Amdt. No. 3200]

Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and/or Weather Takeoff Minimums for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 11, 2007. The compliance date for each SIAP and/or Weather Takeoff Minimums is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of January 11, 2007.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase—Individual SIAP and Weather Takeoff Minimums copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs and Weather Takeoff Minimums mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), establishes, amends, suspends, or revokes SIAPs and/or Weather Takeoff Minimums. The complete regulatory description of each SIAP and/or Weather Takeoff Minimums is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, 8260–5 and 8260–15A. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs and/or Weather Takeoff Minimums, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs and/or Weather Takeoff Minimums but refer to their depiction

on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP and/or Weather Takeoff Minimums contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs and/or Weather Takeoff Minimums. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and/or Weather Takeoff Minimums as contained in the transmittal. Some SIAP and/or Weather Takeoff Minimums amendments may have been previously issued by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP, and/or Weather Takeoff Minimums amendments may require making them effective in less than 30 days. For the remaining SIAPs and/or Weather Takeoff Minimums, an effective date at least 30 days after publication is provided.

Further, the SIAPs and/or Weather Takeoff Minimums contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and/or Weather Takeoff Minimums, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and/or Weather Takeoff Minimums and safety in air commerce, I find that notice and public procedure before adopting these SIAPs and/or Weather Takeoff Minimums are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs and/or Weather Takeoff Minimums effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on December 29, 2006.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and Weather Takeoff Minimums effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 15 February 2007

Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (GPS) Y RWY 27R, Amdt 1A
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (RNP) Y RWY 9L, Orig–A
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (RNP) Z RWY 9R, Orig–A
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (RNP) Z RWY 27R, Orig–A
Ponce, PR, Mercedita, RNAV (GPS) RWY 30, Orig–A
Martinsville, VA, Blue Ridge, RNAV (GPS) RWY 30, Amdt 1

Effective 15 March 2007

Hot Springs, AR, Memorial Field, ILS OR LOC RWY 5, Amdt 15
Sarasota (Bradenton), FL, Sarasota/Bradenton Intl, ILS OR LOC/DME RWY 32, Amdt 6
Mount Vernon, IL, Mount Vernon, Takeoff Minimums and Textual DP, Orig
Hawley, MN, Hawley Muni, RNAV (GPS) RWY 34, Orig
Hawley, MN, Hawley Muni, GPS RWY 34, Orig, CANCELLED
Hawley, MN, Hawley Muni, VOR/DME–A, Amdt 2
Hawley, MN, Hawley Muni, Takeoff Minimums and Textual DP, Orig
Asheville, NC, Asheville Regional, RNAV (GPS) RWY 16, Amdt 1
Asheville, NC, Asheville Regional, RNAV (GPS) RWY 34, Amdt 1
Corpus Christi, TX, Corpus Christi Intl, RNAV (GPS) RWY 31, Amdt 2
Lufkin, TX, Angelina County, VOR RWY 33, Amdt 14
Lufkin, TX, Angelina County, Takeoff Minimums and Textual DP, Orig
Rockport, TX, Aransas County, RNAV (GPS) RWY 14, Amdt 2
Rockport, TX, Aransas County, Takeoff Minimums and Textual DP, Orig

[FR Doc. E7–31 Filed 1–10–07; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–40761A; File No. S7–13–98]

RIN 3235–AH39

Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correcting amendment.

SUMMARY: In connection with rules adopted in Release No. 34–40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (''Original Release''), the Commission is making a technical correction to the delegation of authority to the Director of the Division of Market Regulation appearing in the Commission's Rules of Practice and Investigations. Specifically, the Commission is correcting a cross-reference appearing in the delegation.

EFFECTIVE DATE: February 20, 1999.

FOR FURTHER INFORMATION CONTACT: Frances Sienkiewicz, Securities and Exchange Commission, at (202) 551–5418.

SUPPLEMENTARY INFORMATION: The Commission is making a technical correction to Rule 30–3(a)(59) of its

Rules of Practice and Investigations. Currently, Rule 30–3(a)(59) contains a cross-reference to paragraph (e)(6)(iii) of Rule 19b–4 under the Securities Exchange Act of 1934. In connection with the adoption in the Original Release of a new paragraph (e) to Rule 19b–4, the cross-reference to paragraph (e)(6)(iii) of Rule 19b–4 appearing in Rule 30–3(a)(59) should have been redesignated as paragraph (f)(6)(iii) of Rule 19b–4, to reflect the redesignation of former paragraph (e) of Rule 19b–4 as paragraph (f) of Rule 19b–4. This document corrects that cross-reference.

List of Subjects in 17 CFR Part 200

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

■ Accordingly, 17 CFR part 200 is corrected by making the following correcting amendment:

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

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

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

* * * * *

§ 200.30–3 [Amended]

■ 2. Section 200.30–3(a)(59) is amended by revising the cite ''(e)(6)(iii)'' to read ''(f)(6)(iii)''.

Dated: January 5, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–238 Filed 1–10–07; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice 5654]

Exchange Visitor Program—Professors and Research Scholars

AGENCY: Department of State.

ACTION: Final Rule; Announcement of Effective Date for Implementation of Five-Year Professor and Research Scholar Categories.

SUMMARY: By Notice published on November 1, 2006, 71 FR 64330, the Department of State identified November 4, 2006 as the effective date for its Final Rule published May 19, 2005, 70 FR 28815. The effective date of the Final Rule had been in order to permit the Department of Homeland Security to complete modifications to the Student and Exchange Visitor Information System (SEVIS) necessary for implementation. However, these SEVIS modifications did not become operational until the evening of November 17, 2006. Accordingly, effective November 18, 2006, current and future professor and research scholar participants will be eligible for five years of program participation as provided in the Final Rule, as amended. These participants will also be subject to the eligibility requirements for repeat participation set forth in the Final Rule, as amended. The Final Rule was amended by a **Federal Register** document published on June 23, 2005, 70 FR 36344. Requirements governing initial eligibility for participation as a professor or research scholar are unchanged. This document supersedes the Department's document published November 1, 2006, and the language of the Department's Final Rule published May 19, 2005, as it regards the rule's effective date. This certification will be published in the **Federal Register**.

DATES: *Effective Date:* The final rule published at 70 FR 28815, May 19, 2005, and corrected at 70 FR 36344, June 23, 2005, is effective November 18, 2006.

FOR FURTHER INFORMATION CONTACT: Karen Hawkins, (202) 203–5072.

Dated: December 28, 2006.

Stanley S. Colvin,

Director, Office of Exchange Coordination and Designation, Department of State.

[FR Doc. E6–22631 Filed 1–10–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510–AB09

Administrative Offset Under Reciprocal Agreements With States

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule describes the rules applicable to the offset of Federal nontax payments to collect delinquent debts owed to States pursuant to reciprocal agreements between the Secretary of the Treasury and the States. In addition to providing for the offset of Federal nontax payments, the reciprocal agreements will provide for the offset of State payments to collect delinquent, nontax Federal debts. The offsets described in this rule will be processed by the Treasury Offset Program (TOP). The Department of the Treasury's Financial Management Service (FMS) established TOP in order to centralize the process by which Federal payments are withheld or reduced (in other words, offset) to collect delinquent debts. This interim rule specifically applies to the centralized offset of Federal nontax payments by Federal disbursing officials to collect delinquent debts owed to States pursuant to reciprocal agreements. Therefore, this interim rule affects persons who owe delinquent debts to a State of the United States and who receive Federal payments. It also affects persons who owe delinquent, nontax Federal debts and who receive payments from States. This rule does not apply to collection of past-due support debts (*see* 31 CFR 285.1), the offset of Federal tax refund payments, the offset of Federal salary payments, or the offset of other Federal payments excluded from offset by law.

DATES: This rule is effective January 11, 2007. Comments must be received by March 12, 2007.

ADDRESSES: All comments should be addressed to Thomas Dungan, Senior Policy Analyst, Debt Management Services, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Room 435B, Washington, DC 20227. Comments may also be submitted via the internet as directed on the FMS Web site at the following address: *http://www.fms.treas.gov/debt*. A copy of this interim rule is being made available for downloading from the Web site.

FOR FURTHER INFORMATION CONTACT: Thomas Dungan, Senior Policy Analyst, at (202) 874–6660, or Tricia Long, Senior Counsel, at (202) 874–6680.

SUPPLEMENTARY INFORMATION:

Background

The Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104–134, 110 Stat. 1321–358 *et seq.* (April 26, 1996), authorized Federal disbursing officials to withhold or reduce eligible Federal payments to pay the payee's delinquent debt owed to the United States. *See* 31 U.S.C. 3716(c). This process is known as ''administrative offset'' or ''offset.'' The DCIA also provided that Federal payments may be offset to collect delinquent debts owed to States provided that the States enter into reciprocal agreements with the Secretary of the Treasury and meet

certain other qualifications. *See* 31 U.S.C. 3716(h).

FMS, a bureau of the Department of the Treasury (Treasury), is responsible for the implementation of centralized administrative offset of Federal payments for the collection of delinquent debt. FMS has established TOP to meet this and other debt collection responsibilities. By centralizing offset through TOP, FMS has consolidated and simplified debt collection procedures for the Federal Government. TOP works as follows: Creditor agencies submit information about delinquent debts to FMS, which maintains the information in its delinquent debtor database. Payment agencies prepare and certify payment vouchers to FMS and disbursing officials at certain other Federal agencies with disbursing authority (such as the Department of Defense or the United States Postal Service), who then disburse payments. The payment vouchers contain information about the payment including the name and taxpayer identifying number (TIN) of the recipient.

Before an eligible Federal payment is disbursed to a payee, FMS compares the payment information (including information from payments disbursed by other Federal agencies) with debtor information in FMS's delinquent debtor database. If the payee's name and TIN match the name and TIN of a debtor, the disbursing official offsets the payment, in whole or in part, to satisfy the debt, to the extent legally allowed.

FMS transmits amounts collected through offset to the appropriate creditor agencies after deducting fees to cover the costs of operating the offset program, pursuant to 31 U.S.C. 3716(c)(4). If not otherwise prohibited by law, creditor agencies may add the fees to the debts as administrative costs, pursuant to 31 U.S.C. 3717(e).

Section 3716(h) authorizes the Secretary of the Treasury to allow States to participate in administrative offset to collect delinquent State debts so long as the States meet the requirements of 31 U.S.C. 3716(h), including entering into reciprocal agreements with the Secretary of the Treasury. Such reciprocal agreements shall contain any requirements that the Secretary considers appropriate to facilitate offset and prevent duplicative efforts.

In order to determine if it is in the best interests of the United States and the States to fully implement reciprocal offsets under this section, FMS invited the States to participate in the development of a pilot program. Three States have chosen to work with FMS to develop and participate in the pilot. The purpose of the pilot is to test systems and procedures to facilitate offset and to evaluate whether the benefits of the program outweigh the costs. FMS will consider information gained from the operation of the pilot, in addition to comments received on this interim rule, before issuing a final rule.

Section Analysis

(a) *Scope.* Paragraph (a) describes the scope of this rule, which governs the administrative offset of Federal nontax payments to collect delinquent debts owed to States in accordance with the requirements of 31 U.S.C. 3716(h). This rule does not apply to the offset of Federal tax refund payments, because the authority for this section—31 U.S.C. 3716—does not authorize the offset of Federal tax refunds to collect debts. This rule also does not apply to the offset of Federal salary payments. While Federal salary payments may be offset under 31 U.S.C. 3716, there are many statutes and regulations that affect Federal salary offsets. FMS has chosen not to address those authorities in this rule. Additionally, this rule does not apply to the collection of past-due support payments. (*See* 31 CFR 285.1 for rules applicable to administrative offset to collect past-due support).

(b) *Definitions.* Paragraph (b) of this rule sets forth definitions applicable to this rule. Unless otherwise defined in this rule, all terms have the meanings set forth in section 285.5(b) of this part. As defined in this rule, ''administrative offset'' is used to describe the offset of Federal payments to collect delinquent State debts. The definition of ''State debt'' expressly excludes debts owed by other governments. FMS has determined that TOP is not the appropriate tool for resolving issues of indebtedness between State, local and foreign governments. Also, the term ''debt'' is limited by statute to exclude debts owed by agencies of the United States. *See* 31 U.S.C. 3701(c). The term ''State payment offset'' means the offset of State payments, pursuant to State law, to collect delinquent Federal nontax debts. The term ''reciprocal agreement'' is defined to mean a written agreement between FMS and a State, which will govern administrative offset to collect that State's debts and the offset of that State's payments to collect Federal debts.

(c) *General rule.* Paragraph (c) sets forth the general rule that Federal disbursing officials are authorized to offset Federal payments to collect delinquent State debts as long as the requirements of 31 U.S.C. 3716(h) are met. Among other things, States must enter into reciprocal agreements with FMS that provide for the offset of State payments to collect Federal nontax debts.

(d) *Reciprocal agreements.* Paragraph (d) sets forth the basic parameters for the reciprocal agreements between FMS and the States. As required by 31 U.S.C. 3716(h)(1)(B)(i), a State must enter into a reciprocal agreement before it may collect its debts through administrative offset under this section. The reciprocal agreement will contain more detailed provisions consistent with this rule. A reciprocal agreement will not necessarily require that each party will offset the exact same types of payments. FMS and the State shall determine which payments will be part of the offset programs in order to make the agreements mutually beneficial and, thus, reciprocal.

(e) *Requirements for administrative offset.* Paragraph (e) sets forth the requirements for collecting State debts by administrative offset of Federal payments. State debts must meet the same eligibility requirements for administrative offset as Federal debts are required to meet under 31 CFR 285.5(d)(3)(i). States must comply with the same certification requirements as Federal agencies under 31 CFR 285.5(d)(6) except for requirements that are clearly inapplicable to administrative offset under this section. The specific exceptions are establishment of Federal salary offset procedures and the requirement to assess interest on Federal debts.

Additionally, with respect to paragraph (d)(6)(ii) of section 285.5 of this part, States will only be required to certify that they have complied with the requirements of 31 U.S.C. 3716 and this section; States are not required to certify compliance with 31 U.S.C. 3720A or 26 U.S.C. 6402, both of which apply to Federal tax refund offsets. States shall also certify that they have complied with any requirements imposed by State law or procedure that may be applicable to administrative offset under this section.

(f) *Debts previously submitted by States for tax refund offset.* Pursuant to 31 CFR 285.8, States have submitted delinquent State income tax obligations to FMS for collection by Federal tax refund offset. At the time of submission, States certified the debts in substantially the same manner as required under this rule, including that the State has given the debtor notice of the State's intention to collect the debt through offset of Federal tax refunds. State income tax obligations may also be collected by administrative offset under this rule. FMS has determined that it is unnecessary to require the States to

certify those debts again as a condition to eligibility for administrative offset under this rule. However, with respect to these debts, within 30 days of an administrative offset under this section, the State must notify the debtor in writing that the debtor may exercise the due process rights set forth in paragraph (e) of this rule, if the State has not previously notified the debtor that Federal payments other than tax refunds are subject to administrative offset, and the debtor has not exercised his or her due process rights prior to the submission of the debt to FMS. This paragraph also notes that nothing in this rule requires the State to duplicate any notice or any opportunity for a hearing or review previously provided to the debtor.

(g) *Federal Payments subject to administrative offset under this section.* Paragraph (g) states that the types of Federal payments that will be offset to collect a State's debts shall be set forth in the reciprocal agreement. A number of payment types are expressly excluded from administrative offset under this rule. In accordance with the statutory prohibitions contained in 31 U.S.C. 3716(h), disbursing officials may not offset the following payments to collect debts under this rule: (a) Any payments exempted from offset as set forth in 31 CFR 285.5(e)(2); (b) payments due to an individual under the Social Security Act; (c) payments due an individual pursuant to part B of the Black Lung Benefits Act; and (d) payments due an individual pursuant to any law administered by the Railroad Retirement Board. Additionally, as explained above, offset of Federal tax refunds and salary payments are not authorized by this rule.

(h) *Conducting the administrative offset.* Paragraph (h) instructs Federal disbursing officials to conduct administrative offset under this rule in the same manner as under 31 CFR 285.5. This paragraph also specifies the priority for applying offset funds when a payment matches with multiple debts in TOP. FMS uses TOP to collect many types of delinquent debts under various legal authorities. If a payment matches with multiple debts, the disbursing official shall apply offset amounts to all other types of debts collected by offset under subpart A of 31 CFR part 285 (i.e., debts owed to Federal agencies and past due support debts) before applying any available amounts to a debt under this rule. Additionally, in accordance with 31 U.S.C. 3716(c)(8), a levy pursuant to the Internal Revenue Code has precedence over offsets under this section. Disbursing officials, therefore, will satisfy a levy to collect tax debts prior to offsetting funds under this section.

(i) *Liability of disbursing officials and payment agencies.* Paragraph (i) restates the statutory provision that disbursing officials and payment agencies shall not be liable to the payee for nonpayment of any amounts offset under this rule.

(j) *Notification to a State of Federal debt.* Paragraph (j) addresses the requirements for offsetting a State payment to collect a Federal debt. State payment offset is governed by the law of the State conducting the offset. This paragraph provides that all State law requirements that Federal creditor agencies must meet for State payment offset shall be set forth in the reciprocal agreement. Such requirements shall not exceed the requirements for collecting Federal debts by administrative offset under 31 CFR 285.5(d). This paragraph also provides that FMS will certify to the State conducting the offset that the Federal debts FMS submits to the State have been certified as valid and legally enforceable in accordance with 31 U.S.C. 3716(a).

(k) *Conducting State payment offset.* Paragraph (k) provides that States shall conduct State payment offset pursuant to the State's laws and regulations. The paragraph sets forth two requirements regarding State payment offset that parallel requirements for conducting administrative offset. First, in the case of a State payment that is payable to two or more joint payees, the entire payment shall be subject to offset to collect the debt of any one of the payees, unless prohibited by State law. Such prohibition must be set forth in the reciprocal agreements. Because the Treasury Offset Program only matches one debtor at a time per payment, FMS will generally not enter into reciprocal agreements that prohibit offsetting a payment to collect a debt owed by only one of the joint payees. Second, if a payment is made to a person solely in that person's capacity as a representative payee for another person having the beneficial interest in the payment, the State disbursing official shall only offset such payments for the debts of the person having the beneficial interest. For example, if a State makes a payment to a minor child, and the payment is made payable to that child's parent as the representative payee for that child, the State shall not offset the payment to collect a debt that the parent owes to the United States.

Paragraph (k) also sets forth the requirement that the State notify the payee of any State payment offset. While the reciprocal agreement may set forth additional requirements, this rule requires, at a minimum, that the notice inform the payee of the type and amount of the payment that was offset, the identity of the Federal agency that requested the offset, and a contact point within the Federal agency that will handle concerns regarding the offset. Operationally, FMS will provide this information to the State at the time FMS requests the State payment offset.

(l) *Limitations.* Paragraph (l) sets forth limitations on the collectibility of both Federal and State debts. Debts shall remain eligible for State payment offset or administrative offset, as applicable, so long as the debts remain valid and legally enforceable for purposes of offset. Among other things, this means that, unless otherwise provided by law, the debt has not been outstanding for more than 10 years. *See* 31 U.S.C. 3716(e). The 10-year limitation, however, does not apply to collecting debts reduced to judgment by administrative offset. *See* the Federal Claims Collection Standards at 31 CFR 901.3(a)(4). There are no time limitations on collecting Federal judgments. Many State judgments are also not subject to time limitations. Therefore, this rule states that a Federal or State debt that has been reduced to judgment shall remain enforceable for purposes of administrative offset for as long as the judgment remains enforceable against the debtor under the laws applicable to the judgment.

(m) *Fees.* Paragraph (m) states that FMS will deduct a fee from amounts offset pursuant to this rule. As required by 31 U.S.C. 3716(c)(4), the fee will be in an amount that FMS has determined to be sufficient to reimburse FMS for the full cost of conducting offsets under this section. FMS will notify States and Federal agencies of the amount of the fee in advance.

Special Analysis

FMS is promulgating this interim rule without opportunity for prior public comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553 (the ''APA''), because FMS has determined, for the following reasons, that a comment period would be unnecessary and contrary to the public interest. The DCIA provision authorizing the offset of Federal payments to collect delinquent debt owed to the States pursuant to reciprocal agreements was effective on August 26, 1996. A comment period is unnecessary because this interim rule does not change the ongoing offset process under the TOP, but rather provides guidance for State agencies and Federal disbursing officials to facilitate the addition of State debts into TOP. Under this interim rule, State

agencies are required to provide to the debtor the same pre-offset notice, opportunities, and rights to dispute the debt and seek waiver as currently required under 31 U.S.C. 3716 and 3720A and implementing regulations. Since this interim rule provides important guidance ensuring that debtors receive appropriate notices and opportunities from States that elect to participate, FMS believes that it is in the public interest to issue this interim rule without opportunity for prior public comment.

For the same reasons, FMS has determined that good cause exists to make this interim rule effective upon publication without providing the 30-day period between publication and the effective date contemplated by 5 U.S.C. 553(d)(3). The public is invited to submit comments on the interim rule, which will be taken into account before a final rule is issued.

Regulatory Analysis

This interim rule is not a significant regulatory action as defined in Executive Order 12866. Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Federalism

This rule has been reviewed under Executive Order 13132, Federalism. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Participation in the program governed by this rule is voluntary for the States, and this rule only sets forth the general procedures for State participation. Additionally, as described above, FMS has worked closely with States in the development of a pilot program that will operate pursuant to this interim rule. As part of that collaborative process, FMS has consulted with the States participating in the pilot regarding the provisions of this rule and the operational requirements for participation. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Black lung benefits, Child support, Claims, Credit, Debts, Disability benefits, Federal employees, Garnishment of wages, Hearing and appeal procedures, Loan programs, Privacy, Railroad retirement, Railroad unemployment insurance, Salaries, Social Security benefits, Supplemental Security Income (SSI), Taxes, Veteran's benefits, Wages.

Authority and Issuance

■ For the reasons set forth in the preamble, 31 CFR part 285 is amended as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

■ 1. The authority citation for part 285 continues to read as follows:

Authority: 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3719, 3720A, 3720B, 3720D; 42 U.S.C. 664; E.O. 13019, 61 FR 51763, 3 CFR, 1996 Comp., p. 216.

■ 2. Section 285.6 is added to part 285, subpart A, to read as follows:

§ 285.6 Administrative offset under reciprocal agreements with states.

(a) *Scope.* (1) This section sets forth the rules that apply to the administrative offset of Federal nontax payments to collect delinquent debts owed to States. As set forth in 31 U.S.C. 3716(h), States may participate in administrative offset so long as they meet certain requirements, including entering into reciprocal agreements with the Secretary of the Treasury. Such reciprocal agreements may contain any requirements that the Secretary considers appropriate to facilitate offset. Participation in offset under this section is voluntary for both FMS and the States. This section prescribes the minimum requirements for such reciprocal agreements, including provisions applicable to the offset of State payments, pursuant to State law, to collect delinquent Federal debts. Such offsets are defined in this section as ''State payment offsets.''

(2) This section does not apply to the offset of Federal salary payments, Federal tax refunds (*see* 31 CFR 285.8), or the collection of past-due support debts (*see* 31 CFR 285.1 and 285.3).

(b) *Definitions.* (1) Unless otherwise defined in paragraph § 285.5(b) of this subpart.

(2) For purposes of this section:

Administrative offset has the meaning set forth in 31 U.S.C. 3701(a) and means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee. The term *debt* in this definition means a State debt.

Debtor means a person who owes a debt to the United States or a State.

Federal debt means any amount of money, funds or property that has been determined by an appropriate official of the Federal government to be owed to the United States by a person, organization, or entity, except another Federal agency. The term includes debt administered by a third party acting as an agent for the Federal Government. For purposes of this section, the term ''Federal debt'' does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*), the tariff laws of the United States, or the Social Security Act (42 U.S.C. 301 *et seq.*), except to the extent provided in sections 204(f) and 1631(b)(4) of such Act (42 U.S.C. 404(f) and 1383(b)(4)(A), respectively) and 31 U.S.C. 3716(c).

Offset means withholding funds payable to a person to satisfy a debt owed by the payee.

Participating State means a State that has entered into a reciprocal agreement under this section.

Reciprocal agreement means a written agreement between FMS and a State, entered into pursuant to 31 U.S.C. § 3716(h), which provides for administrative offset and State payment offset.

State has the meaning set forth in 31 U.S.C. 3701(b)(2) and includes the several states of the United States, the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.

State debt means any amount of money, funds or property that has been determined by an appropriate State official to be owed to that State by a person, organization, or entity, except the United States, a foreign sovereign, or another State (including local governments within a State). For purposes of this rule, the term includes debt administered by a third party acting as an agent for the State.

State payment offset means withholding funds payable by a State to, or held by a State for, a person to satisfy a debt owed by the payee to the United States.

(c) *General rule.* FMS and other disbursing officials of the Federal Government will conduct administrative offset to collect past-due State debts certified to FMS, and participating States will conduct State payment offset to collect delinquent Federal debts in accordance with the terms of reciprocal agreements entered into between the States and FMS, acting on behalf of the Secretary. Upon notification of a delinquent State debt

from a participating State to FMS, disbursing officials of the United States shall offset the Federal payments specified in the reciprocal agreement to collect the State debt. The amount offset, minus an offset fee, shall be forwarded to the State to be distributed in accordance with applicable laws and procedures. Upon notification of a delinquent Federal debt from FMS to a participating State, authorized officials of the participating State shall conduct State payment offset as specified in the applicable reciprocal agreement to collect the Federal debt.

(d) *Reciprocal agreements.* (1) FMS may enter into reciprocal agreements with States for administrative offset and State payment offset. The agreements shall contain any requirements which FMS considers appropriate to facilitate the offset and prevent duplicative efforts, and shall require States to prescribe procedures governing the collection of delinquent State debts which are substantially similar to requirements imposed on Federal agencies pursuant to 31 U.S.C. § 3716(b). States may prescribe such procedures through legislation or regulations, as deemed appropriate by State officials. States which have entered into a reciprocal agreement with FMS pursuant to this section may thereafter request, in the manner prescribed in the reciprocal agreement, that administrative offsets be performed. Such requests shall be made by the appropriate State disbursing official, which, for purposes of this section, means an appropriate official of the State agency that is responsible for collecting the State debt. Reciprocal agreements must be signed by a State official authorized to enter into such agreements.

(2) Once FMS has entered into a reciprocal agreement with a State pursuant to this section, FMS may request that the State perform State payment offsets to collect delinquent Federal debts in accordance with the terms of the reciprocal agreement.

(3) A duly executed reciprocal agreement is required before a State may request an administrative offset pursuant to 31 U.S.C. 3716(h).

(e) *Requirements for submitting State debts for administrative offset*—(1) *Debt eligibility.* A State debt submitted to FMS for collection by administrative offset must meet the debt eligibility requirements of 31 CFR 285.5(d)(3)(i).

(2) *Certification.* At the time a participating State notifies FMS of a State debt for purposes of collection by administrative offset under this section, the State shall comply with the certification requirements set forth in paragraph 31 CFR 285.5(d)(6) with the following two exceptions:

(i) Paragraph (d)(6)(ii)(E)—Federal salary offset; and

(ii) Paragraph (d)(6)(iii)—Federal requirements for the assessment of interest and penalties to Federal debts. Additionally, with respect to paragraph (d)(6)(ii) of § 285.5, States shall only be required to certify that they have complied with the requirements of 31 U.S.C. 3716 (not 31 U.S.C. 3720A or 26 U.S.C. 6402) and this section 285.6. States shall also certify that they have complied with any requirements imposed by State law or procedure that may be applicable to administrative offset.

(f) *State debts submitted to FMS for tax refund offset prior to the effective date of this section.* A State shall be deemed to have complied with the requirements of paragraph (e)(2) of this section with respect to any State debt that the State certified to Treasury prior to the effective date of this section for collection pursuant to 31 CFR 285.8, *Offset of tax refund payments to collect state income tax obligations.* However, within 30 days of an administrative offset under this section, the State shall notify the debtor in writing that the debtor may exercise the rights set forth in the applicable sections of 31 CFR 285.5(d) as set forth in paragraph (e) of this section, only if the State has not previously informed the debtor in writing that Federal payments other than tax refunds may be offset to collect the State debt, and the debtor has not exercised such rights previously with respect to the State debt that was collected by the offset. Nothing in this section requires any State to duplicate any notice or any opportunity for a hearing or review provided to the debtor prior to administrative offset.

(g) *Federal Payments subject to administrative offset under this section.* (1) The Federal payments that will be offset to collect a participating State's debts shall be set forth in the reciprocal agreement. Federal payments that are excluded from administrative offset under this section include:

(i) Any payments described in 31 CFR 285.5(e)(2) ''Payments excluded from offset'';

(ii) Payments due to an individual under the Social Security Act;

(iii) Payments due an individual pursuant to part B of the Black Lung Benefits Act;

(iv) Payments due an individual pursuant to any law administered by the Railroad Retirement Board;

(v) Federal tax refunds; and

(vi) Federal salary payments.

(h) *Conducting the administrative offset.* (1) Disbursing officials shall conduct administrative offset under this section in the same manner as set forth in 31 CFR 285.5(f) through (i).

(2) When a payee owes more than one delinquent State debt which has been referred to FMS for collection, amounts will be applied to delinquent State debts under this section after any amounts offset pursuant to any other section of this subpart A and any amounts levied pursuant 26 U.S.C. 6331.

(i) *Liability of disbursing officials and payment agencies.* Neither the Federal disbursing official nor the agency authorizing the Federal payment shall be liable to a debtor for the amount of the administrative offset on the basis that the underlying obligation, represented by the payment before the administrative offset was taken, was not satisfied.

(j) *Notification to a State of Federal debt.* (1) A State may set forth in the reciprocal agreement the requirements for FMS to follow when submitting a Federal debt for collection by State payment offset. Such agreements shall set forth all requirements contained in State law for the State payment offset. Such requirements, however, may not exceed the requirements for collecting Federal debts by administrative offset as set forth in § 285.5(d) of this subpart.

(2) FMS shall certify to a participating State that each debt FMS submits for State payment offset has been certified by the Federal creditor agency to be delinquent, valid, and legally enforceable in the amount stated, and that the Federal creditor agency owed the debt has complied with the requirements of 31 U.S.C. 3716(a) prior to submitting the debt for offset.

(k) *Conducting State payment offset.* (1) An official of a participating State shall conduct State payment offset pursuant to the laws and regulations of the participating State; provided that:

(i) If a payment is owed jointly to more than one payee, the entire payment shall be offset for a debt of either payee, unless otherwise prohibited by law or regulation; and

(ii) If a payment is made to a person solely in that person's capacity as a representative payee for another person having the beneficial interest in the payment, the disbursing official shall offset that payment only to collect debts owed by the person having the beneficial interest in the payment.

(2) Any prohibitions on offsetting a joint payment described in paragraph (k)(1)(i) of this section shall be set forth in the reciprocal agreement.

(3) An official of the participating State shall notify the payee of the State

payment offset. The reciprocal agreement may contain detailed guidance and procedures regarding sending such notice, but shall, at a minimum require that the notice inform the payee of:

(i) The type and amount of the payment that was offset;

(ii) The identity of the Federal agency that requested the offset; and

(iii) A contact point within the Federal agency that will handle concerns regarding the offset.

(l) *Limitations.* A debt properly submitted to FMS or the State for administrative offset or State payment offset shall remain subject to collection until withdrawn by the entity that submitted the debt for collection, provided the debt remains past-due and legally enforceable for purposes of administrative offset or State payment offset, as applicable. A debt which has been reduced to a judgment shall remain legally enforceable for purposes of administrative offset and State payment offset for as long as the judgment remains enforceable against the debtor.

(m) *Fees.* FMS shall deduct a fee from each administrative offset and State payment offset amount before transferring the balance of the offset funds to the State or Federal agency owed the debt. Pursuant to 31 U.S.C. 3716(c)(4), the fee will be in an amount that FMS has determined to be sufficient to reimburse FMS for the full cost of the offset procedure. FMS will notify the States and creditor agencies, annually and in advance, of the amount of the fee FMS will charge for each offset.

Dated: January 4, 2007.

Kenneth R. Papaj,

Commissioner.

[FR Doc. E7–127 Filed 1–10–07; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–07–006]

Drawbridge Operation Regulations; Acushnet River, New Bedford and Fairhaven, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Route 6 highway bridge across the Acushnet River, mile 0.0, between New Bedford and Fairhaven, Massachusetts. Under this temporary deviation a 30-minute advance notice for bridge openings shall be required between 7 a.m. and 5 p.m., Monday through Friday, from January 8, 2007 through February 2, 2007. This deviation is necessary to facilitate emergency bridge fender repairs.

DATES: This deviation is effective from January 8, 2007 through February 2, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The Route 6 highway bridge, across the Acushnet River, mile 0.0, between New Bedford and Fairhaven, Massachusetts, has a vertical clearance in the closed position of 8 feet at mean high water and 12 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.585.

The owner of the bridge, Massachusetts Highway Department, requested a temporary deviation to facilitate emergency bridge protective fender repairs. The bridge fender system on the east channel was recently damaged by a vessel allision. The damaged fender system must be repaired as soon as possible in the interest of navigational safety.

Under this temporary deviation the Route 6 highway bridge shall require at least a 30-minute advance notice for bridge openings between 7 a.m. and 5 p.m., Monday through Friday, from January 8, 2007 through February 2, 2007.

The bridge will continue to open in accordance with the normal operating schedule which requires the bridge to open on the hour between 6 a.m. and 10 a.m. and at a quarter past the hour between 11:15 a.m. and 6:15 p.m. However, in order to perform necessary bridge repairs, a 30 minute advance notice for such openings is required between 7 a.m. and 5 p.m., Mondays through Fridays from January 8 through February 2, 2007.

During this period the bridge shall open at any time for vessels whose draft exceeds 15 feet. However, such vessels must also provide 30 minute advance notice.

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

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

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

Dated: January 3, 2007.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E7–240 Filed 1–10–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–06–139]

Drawbridge Operation Regulations; Shaw Cove, New London, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Amtrak Bridge across Shaw Cove, mile 0.0., at New London, Connecticut. Under this temporary deviation, an advance notice shall be required for bridge openings during designated bridge opening time periods each day from January 5, 2007 through March 30, 2007; however, bridge openings shall be provided at any time for DDLC Energy, if at least a 24-hour advance notice is given. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from January 5, 2007 through March 30, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard

District, Bridge Branch Office, One South Street, New York, New York, 1004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Amtrak Bridge, across Shaw Cove at mile 0.0, at New London, Connecticut, has a vertical clearance in the closed position of 3 feet at mean high water and 6 feet at mean low water. The existing drawbridge operation regulations are listed in 33 CFR 117.223.

The owner of the bridge, the National Railroad Passenger Corporation, (Amtrak), requested a temporary deviation to facilitate scheduled bridge maintenance, replacement of the rail lifting equipment. The bridge will not be able to open while the bridge maintenance is underway.

The normal waterway users are predominantly recreational vessels that do not operate during the winter months this deviation will be in effect. The only oil facility, DDLC Energy, and the few local fishing vessel operators that operate during the winter were contacted regarding this deviation and have agreed to this temporary bridge opening schedule.

Under this temporary deviation, the Amtrak Bridge shall operate as follows:

The bridge shall open on signal from January 5, 2007 through February 23, 2007, between 5 a.m. and 5:20 a.m. and between 12:45 p.m. and 1:05 p.m., daily after at least a 4-hour advance notice is given.

From February 24, 2007 through February 25, 2007, the draw shall open at any time after at least an 8-hour advance notice is given.

The bridge shall open on signal from February 26, 2007 through March 30, 2007, between 5 a.m. and 5:20 a.m., 12:45 p.m. and 1:05 p.m. and between 5:15 p.m. and 5:35 p.m., daily after at least a 4-hour advance notice is given.

The bridge shall open at any time for DDLC Energy oil delivery vessels after at least a 24-hour advance notice is given.

The contact information for providing the advance notice for bridge openings shall be via marine radio channel 123 or by calling (860) 446–3959/3943.

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

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

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

Dated: January 3, 2007.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E7–239 Filed 1–10–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2006–0638; FRL–8267–7]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compounds From Medical Device Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Maryland Department of the Environment. This revision pertains to the control of volatile organic compounds from medical device manufacturing. EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on February 12, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2006–0638. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068, or by e-mail at *miller.linda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 31, 2006 and July 5, 2006, the State of Maryland submitted a revision to the State Implementation Plan (SIP). The revision (#06–04) establishes the Reasonably Available Control Technology (RACT) requirement for Volatile Organic Compounds (VOC) for medical device manufacturing. Medical Device manufacturing includes the manufacturing of hypodermic products, syringes, catheters, blood handling and other medical devices. EPA proposed approval of the SIP revision on October 10, 2006 (71 FR 59413).

II. Summary of SIP Revision

The revision establishes the Reasonably Available Control Technology (RACT) requirement for Volatile Organic Compounds (VOC) for medical device manufacturing installations that emit or have the potential to emit, 100 pounds or more per day of VOC emissions.

Other specific requirements of the provisions of COMAR 26.11.19.31 and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving the VOC RACT requirements for medical device manufacturing including the manufacture of hypodermic products, syringes, catheters, blood handling and other medical devices as a revision to the Maryland SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves

state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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 requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 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 to approve VOC RACT requirements for medical device manufacturing 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 4, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by adding an entry for COMAR 26.11.19.31 to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA—APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
*	*	*	*	*
26.11.19 Volatile Organic Compounds from Specific Processes				
*	*	*	*	*
26.11.19.31	Control of Volatile Organic Compounds from Medical Device Manufacturing.	6/5/06	1/11/07 [Insert page number where the document begins]	
*	*	*	*	

* * * * *

[FR Doc. E7–250 Filed 1–10–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2005–MD–0009; FRL–8267–6]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; VOC RACT for Perdue Farms, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the Maryland State Implementation Plan (SIP). The revision pertains to a Consent Order establishing volatile organic compound (VOC) reasonably available control technology (RACT) for Perdue Farms, Incorporated. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on February 12, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2005–MD–0009. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

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

SUPPLEMENTARY INFORMATION:

I. Background

On July 29, 2005 (70 FR 43817), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of the establishment of VOC RACT for Perdue Farms, Inc., located at 6906 Zion Church Road, Wicomico County, Maryland. The formal SIP revision (#05–04) was submitted by the Maryland Department of the Environment (MDE) on May 31, 2005. Specific requirements of the SIP revision and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. On August 9, 2005, EPA received an adverse comment on its July 29, 2005 NPR. A summary of the comment submitted and EPA's response is provided in Section II of this document.

II. Summary of Public Comments and EPA Responses

Comment: A commenter states that the annual limit is inappropriate because it is not calculated on a rolling basis. Specifically, the VOC limit of 0.3 gallons per ton of soybean processes in a calendar year requires calculation of compliance on a rolling 12-month basis.

Response: EPA disagrees with this comment. Perdue Farms, Inc. is required by their Title V Operating Permit No. 24–045–00042, issued on August 1, 2005, to report their compliance with the RACT VOC limit of 0.3 gallons per ton on soybeans processed to MDE on a rolling 12-month period (Section 5.5, Reporting Requirements). This is consistent with the requirements of MDE (COMAR 26.11.19.02, Applicability, Determining Compliance, Reporting, and General Requirements) and with 40 CFR 63 Subpart GGGG, National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production, which require these sources to determine compliance with annual VOC emission limits on a rolling 12-month period.

III. Final Action

EPA is approving the Consent Order establishing VOC RACT for Perdue Farms, Inc. located in Wicomico County, Maryland submitted on May 31, 2005. EPA is approving this SIP submittal because MDE established and imposed requirements in accordance with the criteria set forth in SIP-approved regulations for imposing RACT. MDE has also imposed recordkeeping, monitoring, and testing requirements on this source sufficient to determine compliance with these requirements.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement

for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 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, pertaining to a Consent Order establishing VOC RACT for Perdue Farms, Inc. located in Wicomico County, Maryland, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: January 4, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (d) is amended by adding an entry for Perdue Farms, Inc. at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED MARYLAND SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit number/type	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Perdue Farms, Inc	Consent Order	02/01/05	01/11/07 [Insert page number where the document begins].	52.1070(d)(1)

* * * * *

[FR Doc. E7–252 Filed 1–10–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2006–0399; FRL–8267–9]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of the Allen County 8-hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 30, 2006, the Indiana Department of Environmental Management (IDEM), submitted a request to redesignate the Allen County, Indiana, (Fort Wayne) nonattainment area to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS). In this submittal, IDEM also requested EPA approval of an Indiana State Implementation Plan (SIP) revision containing a 14-year maintenance plan for Allen County. EPA is making a determination that the Allen County, Indiana ozone nonattainment area has attained the 8-hour ozone NAAQS. This determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2003–2005 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area. Quality-assured monitoring data for 2006 show that the area continues to attain the standard. EPA is also approving the request to redesignate the area to attainment for the 8-hour ozone standard. EPA's approval of the 8-hour ozone redesignation request is based on its determination that Allen County, Indiana has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). EPA is also approving as a SIP revision the State's maintenance plan for the area. Further, EPA is approving, for purposes of transportation conformity, the motor vehicle emission budgets (MVEBs) for the year 2020 that are contained in the 14-year, 8-hour ozone maintenance plan for Allen County.

DATES: This final rule is effective on February 12, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2006–0399. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available,

i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604,(312) 886–6052, *rosenthal.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: In the following, whenever ''we,'' ''us,'' or ''our'' are used, we mean the United States Environmental Protection Agency.

Table of Contents

I. What Is the Background for This Rule?
II. What Comments Did We Receive on the Proposed Action?
III. What Are Our Final Actions?
IV. Statutory and Executive Order Review

I. What Is the Background for This Rule?

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOC) react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone.

The CAA requires EPA to designate as nonattainment any area that is violating the 8-hour ozone NAAQS based on three consecutive years of air quality monitoring data. EPA designated Allen County as a nonattainment area in a **Federal Register** notice published on April 30, 2004, (69 FR 23857). The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. Some areas are subject only to the provisions of subpart 1. Other areas are also subject to the provisions of subpart 2. Under EPA's 8-hour ozone implementation rule, signed on April 15, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (i.e., the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas are covered under subpart 1, based upon their 8-hour design values. Allen County was originally designated as an 8-hour ozone nonattainment area by EPA on April 30, 2004, (69 FR 23857). At the same time EPA classified Allen County as a subpart 1 8-hour ozone nonattainment area, based on air quality monitoring data from 2001–2003.

Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (i.e., 0.084 ppm) is less than or equal to 0.08 ppm. (See 69 FR 23857 (April 30, 2004) for further information). The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness as determined in Appendix I of Part 50.

On May 30, 2006, Indiana submitted a request for redesignation of Allen County to attainment for the 8-hour ozone standard. The redesignation request included three years of complete, quality-assured data for the period of 2003 through 2005, indicating the 8-hour NAAQS for ozone had been achieved. The data satisfy the CAA requirements when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

II. What Comments Did We Receive on the Proposed Action?

EPA provided a 30-day review and comment period on the direct final approval and proposal that were published in the **Federal Register** on August 30, 2006. The direct final approval was withdrawn as a result of comments received on September 4, 2006. Comments from a second commenter were received well after the close of the comment period, but are considered here. These comments, and EPA's responses, follow:

(1) *Comment:* More information is needed to determine if the air quality and enforceable emission reductions meet the requirements for redesignation. Preliminary summer 2006 data is now available. It cannot be determined from the data presented if enforceable emission reductions have taken place in Allen County.

Response: The Allen County redesignation is based upon air quality monitoring data for 2003–2005 that clearly establishes that the 8-hour ozone standard is being achieved. This air quality monitoring data is described in EPA's August 30, 2006 proposal at 71 FR 51491. Also, quality-assured 2006 data show continuing attainment. Using this 2006 data, the average of the 4th high values for the Leo and Ft. Wayne monitoring sites are 0.077 and 0.072 ppm, respectively. This is well below the violating level of 0.085 ppm.

As discussed in the direct final approval, EPA believes that Indiana has demonstrated that the observed air quality improvement in Allen County is due to permanent and enforceable emission reductions resulting from implementation of the SIP, Federal measures, and other state-adopted measures. See the discussion at 71 FR 51493–51494 and Tables 2 and 3. These include Statewide reasonably available control technology (RACT) rules, the Indiana NO_X SIP and acid rain control, tier 2 emission standards for vehicles and gasoline sulfur standards, and rules for both on and off-road diesel engines. Indiana has documented both reductions in VOC (4.88 tons/day) and NO_X (3.81 tons/day) emissions in Allen County between 2002 (a nonattainment year) and 2004 (an attainment year), and also that enforceable emission control requirements have been implemented in Allen County. These controls have contributed to the documented emission reductions. Therefore, we believe that they have caused and contributed to the observed air quality improvement. Finally, as noted above, 2006 data show continued attainment in Allen County.

(2) *Comment:* It appears that cold and wet summers caused the improvement in air quality. Doesn't the Cox/Chu model show that 2003–2005 was an unusual met period?

Response: EPA's redesignation policy requires the use of three years of air quality data to compensate for the variation in meteorological conditions and their effect on ozone levels. EPA

did not consider the Cox/Chu model or any other model to account for year-to-year meteorological deviations. Consideration of such modeling is not required by EPA's redesignation policy.

(3) *Comment:* At the Leo site, 2003–2005 is the first period in the entire site's monitoring history that it did not violate the standard. However, it did have 8 exceedances over 84 ppb. This is more exceedances than 10 of its 17-year history. We know from the met analysis that was done that 2004 was an extremely unusual year with rain and the seventh coldest August on record.

Response: As discussed in detail in the Direct Final Notice, an area is considered to be in attainment of the 8-hour ozone standard if the 3-year average of the 4th high 8-hour ozone value, for each of the three years, is 84 ppb or lower. Therefore, to determine compliance with the standard, only the 4th high 8-hour ozone values are considered, not the number of exceedances. Also, three years of air quality data are used to allow for year-to-year variations in meteorology. The commenter provides no data supporting the contention that the ''lower'' ozone concentrations of 2004 completely dominated the 2003–2005 average or that the 2003–2005 period as a whole had ozone averages atypically influenced by meteorology compared to other three-year periods.

(4) *Comment:* EPA should delay redesignation until after the 2005–2007 air quality data is collected and enforceable reduction(s) are made.

Response: Delay of the redesignation is not necessary because Allen County is in attainment of the 8-hour ozone standard for 2003–2005. Quality-assured 2004–2006 data shows continued attainment and both the (ozone precursor) VOC and NO_X emissions will continue to decline through 2020, further decreasing peak ozone levels and maintaining ozone attainment. As discussed previously, EPA believes that Indiana has demonstrated that the observed air quality improvement in Allen County is due to permanent and enforceable emission reductions resulting from implementation of the SIP, Federal measures and other state-adopted measures.

(5) *Comment:* The commenter quotes John Stafford, Director, Community Research Institute, Indiana University Purdue University, Fort Wayne as saying: ''From an employment perspective, it appears that northeast Indiana hit the low point of the downturn in the last three quarters of 2003 and the first quarter of 2004. In 2006, northeast Indiana should expect to see continued job growth, likely at a pace reflective of that for Indiana statewide. On the conservative end, additional 2,000 to 2,500 jobs to the Fort Wayne-Huntington-Auburn CSA should be very achievable.'' The commenter concludes that it appears that reductions came from activity changes and not enforceable reductions.

Response: Documentation was neither submitted supporting the above employment projections, nor their potential impact on emissions. As set forth above, EPA believes that the improvement in air quality was due to permanent and enforceable emission reductions. Furthermore, Indiana in its maintenance plan considered population and source growth when making its future year emission projections which show decreasing VOC and NO_X emissions, and continued attainment throughout the maintenance period. It should also be noted that Indiana's and 21 other states' electric generating unit NO_X emission control rules stemming from EPA's NO_X SIP Call have already been implemented, with additional NO_X emission reductions expected through 2007. More specifically for Indiana, Table 3 in the withdrawn direct final notice (at 71 FR 51494) shows that NO_X emissions have declined substantially from 1999 through 2005 from its electric generating units. Further, Tables 4 and 5 in the withdrawn direct final notice show that VOC and NO_X emissions in Allen County will continue to decline through 2020. In addition, the Clean Air Interstate Rule, to be implemented beginning in 2006, will further lower NO_X emissions in upwind areas, resulting in decreased ozone and ozone precursor transport into Allen County—also supporting maintenance of the ozone standard in Allen County.

(6) *Comment:* Another commenter asked EPA to reconsider the adequacy of the 8-hour ozone standard. The commenter stated her belief that the current standard was inadequate to protect Allen County's citizens. (It should be noted that EPA received this comment on October 30, 2006, well after the comment period closed on September 29, 2006.)

Response: The adequacy of the ozone standard is not at issue in this rulemaking, which is an action to redesignate an area pursuant to the current standard. EPA revised and promulgated the current ozone standard (0.08 ppm, measured over an 8-hour period) on July 18, 1997 (62 FR 38856). This standard was promulgated to better protect public health and is more stringent than the 1-hour ozone standard that was previously in effect. This comment, which was not specific to the Allen County redesignation request, would have more appropriately been submitted in response to the proposal of the existing 8-hour standard; it is not relevant with regard to whether Allen County is attaining the current standard, which is the subject of this redesignation action.

III. What Are Our Final Actions?

EPA is taking several related actions. EPA is making a determination that the Allen County nonattainment area has attained the 8-hour ozone standard. EPA is also approving the State's request to change the legal designation of the Allen County area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also approving Indiana's maintenance plan SIP revision for Allen County (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep Allen County in attainment for ozone for the next 14 years, through 2020. In addition, and supported by and consistent with the ozone maintenance plan, EPA is approving the 2020 VOC and NO_X MVEBs for Allen County for transportation conformity purposes.

IV. Statutory and Executive Order Review

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory

requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Redesignation is an action that merely affects the status of a geographical area, and does not impose any new requirements on sources, or allows a state to avoid adopting or implementing additional requirements, and does not alter the relationship or distribution of power and responsibilities established in the Clean Air Act.

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

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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 March 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 force its requirements. (See Section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: January 3, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ Parts 52 and 81, 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 P—Indiana

■ 2. Section 52.777 is amended by adding paragraph (ff) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(ff) Approval—On May 30, 2006, Indiana submitted a request to redesignate Allen County to attainment of the 8-hour ozone National Ambient Air Quality Standard. As part of the redesignation request, the State submitted a maintenance plan as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit a subsequent maintenance plan revision in eight years as required by the Clean Air Act. Also included were motor vehicle emission budgets to determine transportation conformity in Allen County. The 2020 motor vehicle emission budgets are 6.5 tons per day for VOC and 7.0 tons per day for NO_X.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. Section 81.315 is amended by revising the entry for Fort Wayne, IN: Allen County in the table entitled ''Indiana Ozone (8-Hour Standard)'' to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA OZONE

[8-Hour standard]

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date	Type
* * * *	*	*		*
Fort Wayne, IN: Allen County	2/12/07	Attainment		
* * * *	*	*		*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

[FR Doc. E7–255 Filed 1–10–07; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

48 CFR Parts 3001, 3002, and 3033

[Docket No. DHS–2007–0001]

RIN 1601–AA42

Revision of Department of Homeland Security Acquisition Regulation

AGENCY: Department of Homeland Security.

ACTION: Interim rule with requests for comments.

SUMMARY: The Department of Homeland Security (DHS) is amending its acquisition regulation to reflect a statutorily-mandated jurisdictional change for the agency Board of Contract Appeals from the Department of Transportation Board of Contract Appeals to the Civilian Board of Contract Appeals. DHS is also making several non-substantive amendments to its acquisition regulation in order to reflect organization changes.

DATES: This rule is effective January 11, 2007. Comments must reach the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy on or before February 12, 2007, to be considered in the formation of the final rule.

ADDRESSES: Please submit written comments, identified by agency name and docket number DHS–2007–0001, by *one* of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

(2) By mail to the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Oversight, ATTN: Anne Terry, 245 Murray Drive, Bldg. 410 (RDS), Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Anne Terry, Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy, at (202) 447–5253.

SUPPLEMENTARY INFORMATION:

I. Request for Comments
II. Background
III. Discussion of Interim Rule
IV. Regulatory Requirements
A. Executive Order 12866 Assessment
B. Regulatory Flexibility Act
C. Good Cause To Issue an Interim Rule

I. Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule. Comments should be organized by Homeland Security Acquisition Regulation (HSAR) Part, and address the specific section that is being commented on. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. *See* **ADDRESSES** above for information on how to submit comments. If you submit comments by mail, please submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you would like DHS to acknowledge receipt of comments submitted by mail, please enclose a self-addressed, stamped postcard or envelope. DHS will consider all comments and material received during the comment period.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

II. Background

In the National Defense Authorization Act for Fiscal Year 2006, Congress established the Civilian Board of Contract Appeals (CBCA), and terminated every agency Board of Contract Appeals (BCA), except those for the armed services, the Tennessee Valley Authority, and the U.S. Postal Service. Public Law 109–163, Title VIII, section 847.

The General Services Administration (GSA) announced this change by Notice in the **Federal Register**. *See* 71 FR 65825 (Nov. 9, 2006). In that Notice, GSA stated that, effective January 6, 2007, jurisdiction would be transferred from the BCAs for GSA and the Departments of Agriculture, Energy, Housing and Urban Development, Interior, Labor, Transportation, and Veterans Affairs to the CBCA.

Through January 5, 2007, DHS contract appeals were handled by the Department of Transportation's BCA. However, on January 6, 2007, BCA jurisdiction for DHS transferred to the CBCA. While the statutory change with regard to BCA jurisdiction was self-executing, this rule is required to ensure that the information contained in the HSAR regarding contract appeals is accurate, and corresponds to the requirements of section 847 of the 2006 National Defense Authorization Act.

This rule also provides technical amendments to correct organizational information reflected in the HSAR.

General changes made to HSAR by this rulemaking are provided in the list below.

III. Discussion of Interim Rule

The interim rule revises HSAR 48 CFR 3001.104, 3002.270, 3033.201, 3033.211 and 3033.214 to implement Public Law 109–163, Title VIII, Section 847 (jurisdictional change for hearing and deciding contract appeals for DHS).

This rule also establishes additional technical amendments at HSAR 48 CFR 3001.105–2 and 3002.101 to correct nomenclature for the Federal Emergency Management Agency in the HSAR.

IV. Regulatory Requirements

A. Executive Order 12866 Assessment

DHS has determined that this interim rule is not a major rule under 5 U.S.C. 804, nor is it a significant regulatory action under Executive Order 12866, Regulatory Planning and Review. It therefore does not require an assessment of potential costs and benefits under

section 6(a)(3) of that Order, nor has it been reviewed by the Office of Management and Budget.

B. Small Entities

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

C. Good Cause To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Homeland Security that urgent and compelling reasons exist to promulgate this interim rule regarding jurisdictional changes to hearing and deciding contract appeals for DHS without prior opportunity for public comment. This action is necessary because the effective date for the transfer of jurisdiction from the DOTBCA to the CBCA for DHS contract appeals was January 6, 2007. While the statute is self-executing, DHS believes that it is important to amend its regulations promptly in order to ensure that the regulation reflects accurate information as to the contract appeals process. Moreover, the jurisdictional changes reflected in this rule are the results of Congressional action, rather than a new DHS policy. Accordingly, providing an opportunity to comment before the change is implemented is impracticable and not in the public interest.

However, pursuant to Public Law 98–577 and Federal Acquisition Regulation (FAR) 48 CFR 1.501, DHS 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 3001, 3002, and 3033

Government procurement.

Dated: January 4, 2007.

Elaine C. Duke,

Chief Procurement Officer.

■ Accordingly, DHS amends 48 CFR parts 3001, 3002 and 3033 as follows:

PART 3001—FEDERAL ACQUISITION REGULATION SYSTEM

■ 1. The authority citation for 48 CFR parts 3001, 3002, and 3033 continues to read as follows:

Authority: 41 U.S.C. 418b (a) and (b).

■ 2. Amend Section 3001.104 by revising paragraphs (b) and (c) to read as follows:

3001.104 Applicability.

* * * * *

(b) The Transportation Security Administration (TSA) exception to this regulation is authorized by the Aviation and Transportation Security Act of 2001 (section 101(a) of Public Law 107–71).

(c) Contracts involving Non-Appropriated Fund Instrumentalities (NAFIs) must contain suitable dispute provisions and may provide for appellate dispute jurisdiction in the Civilian Board of Contract Appeals (CBCA). However, the contract must not attempt to confer court jurisdiction that does not otherwise exist.

* * * * *

■ 3. Amend Section 3001.105–2 by revising paragraph (a) to read as follows:

3001.105–2 Arrangement of regulations.

(a) General. The HSAR, which encompasses both Department-wide and Component-unique guidance, conforms to the arrangement and numbering system prescribed by 48 CFR 1.105–2. Guidance that is unique to a Component contains the organization's acronym or abbreviation directly following the title. The following acronyms apply:

Bureau of Customs and Border Protection (CBP);
Bureau of Immigration and Customs Enforcement (ICE);
DHS Office of Procurement Operations (OPO);
Federal Emergency Management Agency (FEMA);
Federal Law Enforcement Training Center (FLETC);
Transportation Security Administration (TSA);
U.S. Coast Guard (USCG); and
U.S. Secret Service (USSS).

PART 3002—DEFINITIONS OF WORDS AND TERMS

■ 4. Amend Section 3002.101 by revising the definition for ''Component'' to read as follows:

3002.101 Definitions.

* * * * *

Component means the following entities for purposes of this chapter:

(1) Bureau of Customs and Border Protection (CBP);

(2) Bureau of Immigration and Customs Enforcement (ICE);

(3) DHS Office of Procurement Operations (OPO);

(4) Federal Emergency Management Agency (FEMA);

(5) Federal Law Enforcement Training Center (FLETC);

(6) Transportation Security Administration (TSA); (TSA is exempt from the HSAR and HSAM, pursuant to the ''Aviation and Transportation Security Act of 2001'');

(7) U.S. Coast Guard (USCG); and

(8) U.S. Secret Service (USSS).

* * * * *

■ 5. Section 3002.270 is revised to read as follows:

3002.270 Abbreviations.

CBCA Civilian Board of Contract Appeals
CFO Chief Financial Officer
CIO Chief Information Officer
COCO Chief of the Contracting Office
COR Contracting Officer's Representative
COTR Contracting Officer's Technical Representative
CPO Chief Procurement Officer
D&F Determination and Findings
FOIA Freedom of Information Act
HCA Head of Contracting Activity
J&A Justification and Approval for Other than Full and Open Competition
KO Contracting Officer
MD Management Directive
OCPO Office of the Chief Procurement Officer
OIG Office of the Inspector General
OSDBU Office of Small and Disadvantaged Business Utilization
PCR SBA's Procurement Center Representative
RFP Request for Proposal
SBA Small Business Administration
SBS Small Business Specialist
SPE Senior Procurement Executive

PART 3033—PROTESTS, DISPUTES, AND APPEALS

■ 6. Section 3033.201 is revised to read as follows:

3033.201 Definitions.

Agency Board of Contract Appeals means the Civilian Board of Contract Appeals (CBCA).

■ 7. Section 3033.211 is revised to read as follows:

3033.211 Contracting Officer's decision.

For DHS contracts, the Board of Contract Appeals (BCA) noted in (FAR) 33.211 is the Civilian Board of Contract Appeals (CBCA) 1800 F Street, NW., Washington, DC 20405.

■ 8. Section 3033.214(c) introductory text is revised to read as follows:

3033.214 Alternate disputes resolution (ADR).

(c) The Administrative Dispute Resolution Act (ADRA) of 1996, as amended, 5 U.S.C. 571, *et seq.*,

authorizes and encourages agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes, and for other purposes. CBCA guidance on ADR may be obtained at *http://www.gsbca.gsa.gov/CBCA-17712-v1-CBCA_ADR_INFORMATION.pdf* or from the CBCA upon request. ADR procedures may be used—

* * * * *

[FR Doc. 07–61 Filed 1–8–07; 11:15 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST–2007–26828]

RIN 2105–AD64

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Procedures for Non-Evidential Alcohol Screening Devices

AGENCY: Office of the Secretary, DOT.

ACTION: Interim final rule.

SUMMARY: The National Highway Transportation Safety Administration (NHTSA) has recently approved a new breath tube alcohol screening device (ASD) which will qualify for use in DOT Agency regulated testing once it appears on NHTSA's conforming products list (CPL). This interim final rule (IFR) will provide procedures for use of the new device and remove procedures for a previously approved breath tube ASD which is no longer being manufactured.

DATES: This rule is effective January 11, 2007. Comments to the interim final rule should be submitted by February 12, 2007. Late-filed comments will be considered to the extent practicable.

ADDRESSES: *Written Comments:* Submit written comments to the Docket Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You may submit comments identified by the docket number (OST–2007–26828) by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2478.
- *Mail:* Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* To the Docket Management System; 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.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: George Ellis or Bohdan Baczara, Office of Drug and Alcohol Policy and Compliance, Room 10403, 400 Seventh Street, SW., Washington, DC 20590; 202–366–3784 (voice), 202–366–3897 (fax), or *bohdan.baczara@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Purpose

Department regulations require that in order for an employer to utilize a specific ASD to conduct required DOT alcohol tests, the device must (a) Have been approved by NHTSA as meeting required model specifications, (b) be published by NHTSA in the **Federal Register** on their most current ASD CPL, and (c) have Department-approved procedures in part 40 for its use. The procedures in this IFR will ensure that the NHTSA-approved breath tube ASD will be immediately available for use by employers upon publication of NHTSA's ASD CPL in the **Federal Register**.

Background

When it originally published its alcohol testing rules on February 15, 1994 (54 FR 7302 et seq.), the Department established breath testing using evidential breath testing devices (EBTs) as the required method. However, in response to comments requesting additional flexibility in testing methods, the Department said that NHTSA would develop model specifications for non-evidential alcohol screening devices, evaluate additional screening devices against those specifications, and periodically publish a conforming products list of screening devices that met the model specifications. The Department noted, too, that the Department would also have to undertake separate rulemaking proceedings to establish part 40 procedures for use by DOT-regulated industries of any devices approved by NHTSA.

On April 20, 1995 (60 FR 19675), the Department published procedures for use of both breath and saliva ASDs. At that time, the Department did not anticipate that additional breath and saliva screening devices would be developed that would necessitate new procedures for their use. As a result, the revised part 40 published December 19, 2000 (65 FR 79462) stated, in part, that ASDs on the NHTSA CPL could be used for part 40 alcohol screening tests. Because NHTSA added an ASD to their CPL and the Department had no procedures for its use, we were forced to amend that rule. On August 9, 2001 (65 FR 41944), part 40 was amended to read, ''You may use an ASD that is on the NHTSA CPL for DOT alcohol tests only if there are instructions for its use in this part.''

On October 1, 2002 (67 FR 61521), the Department published procedures for the use of a breath tube ASD that had been approved by NHTSA and added to their May 4, 2001 CPL (66 FR 22639). By 2005, that device was no longer being manufactured, and was removed from the CPL effective September 19, 2005 (70 FR 54972).

NHTSA has recently approved a new breath tube ASD and anticipates adding it to their CPL in late January 2007. However, the breath tube procedures currently in our regulation are not consistent with instructions for use of the newly approved ASD. In this IFR, we have amended part 40 by eliminating procedures specific for the breath tube ASD which is no longer being manufactured and adding procedures for use of the newly approved device.

Instructions for use of the new ASD are generally similar to those for the previously approved breath tube device. The principal difference is in how the alcohol result is read by the technician. Instead of comparing the color of the crystals in the ASD with the colored crystals in a manufacturer-produced control tube, the new ASD uses an electronic analyzer to provide the technician and the employee with an automated visual result of negative (a flashing green light) or positive (a flashing red light) at 0.02. The Department will retain the requirement to read the result within 15 minutes of the test to ensure a confirmation test, when necessary, is conducted in a timely manner.

The addition of an electronic analyzer with this type of breath tube ASD will also add an entry to the list of fatal flaws which would require the alcohol screening test to be cancelled.

According to the manufacturer, each electronic analyzer is pre-calibrated for use with a specific lot of detector devices. Use of an electronic analyzer not pre-calibrated for that lot will result in a fatal flaw.

Please note that employers participating in the DOT alcohol testing program are not authorized to use the new alcohol screening device until it appears on the NHTSA ASD CPL.

Regulatory Analyses and Notices

The statutory authority for this rule derives from the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 et seq.) and the Department of Transportation Act (49 U.S.C. 322).

This IFR is not significant for purposes of Executive Order 12866 or the DOT's regulatory policies and procedures. It represents minor modifications to our procedures which do not increase costs on regulated parties. In fact, it would facilitate the use of an alcohol screening device that may increase flexibility and lower costs for employers who choose to use them over more expensive options already approved by the Department. Consequently, the Department certifies under the Regulatory Flexibility Act that this interim rule will not have a significant economic impact on a substantial number of small entities. To the extent that there is any such impact, it is expected to be negligible.

Under the criteria of section 553 of the Administrative Procedure Act (APA), an agency may determine that prior notice and public comment are impractical, unnecessary, or contrary to the public interest. The Department believes that this interim change meets this requirement. The rule will impose no burdens on any parties, and NHTSA has already determined that the device is technically acceptable for use in the DOT alcohol testing program. We have concluded that it is necessary to make this procedural amendment without prior notice and comment in order to ensure that employers can use the ASD when it is placed on NHTSA's CPL as a qualified device (meeting DOT specifications for accuracy and precision). These same reasons provide good cause under the APA to make this rule effective immediately. The Department will, however, consider any comments concerning the procedures for use of the ASD.

List of Subjects in 49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Subtitle A

Authority and Issuance

Issued at Washington DC this 4th day of January, 2007.

Mary E. Peters,

Secretary of Transportation.

■ For reasons discussed in the preamble, the Department of Transportation amends part 40 of Title 49, Code of Federal Regulations, as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESING PROGRAMS

■ 1. The authority citation for 49 CFR part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 45101 *et seq.*

■ 2. Revise § 40.245(b)(1), (2), (3), (6), (8), (9), and (10) to read as follows:

§ 40.245 What is the procedure for an alcohol screening test using a saliva ASD or a breath tube ASD?

* * * * *

(b) * * *

(1) Check the expiration date on the detector device and the electronic analyzer or on the package containing the device and the analyzer and show it to the employee. You must not use the device or the analyzer after their expiration date. You must not use an analyzer which is not specifically pre-calibrated for the device being used in the collection.

(2) Remove the device from the package and secure an inflation bag onto the appropriate end of the device, as directed by the manufacturer on the device's instructions.

(3) Break the tube's ampoule in the presence of the employee.

* * * * *

(6) When the employee completes the breath process, take the device from the employee (or if you were holding it, remove it from the employee's mouth), remove the inflation bag, and prepare the device to be read by the analyzer in accordance with the manufacturer's directions.

* * * * *

(8) If you were able to successfully follow the procedures of paragraphs (b)(4) through (b)(6) of this section and after having waited the required amount of time directed by the manufacturer for the detector device to incubate, you must place the device in the analyzer in accordance with the manufacturer's directions. The result must be read from the analyzer no earlier then the required incubation time of the device. In all cases, the result must be read within 15 minutes of the test.

(9) You must follow the manufacturer's instructions for determining the result of the test. You must show the analyzer result to the employee and record the result on Step 3 of the ATF.

(10) You must never re-use detector devices or any gloves used in breath tube testing. The inflation bag must be voided of air following removal from a device. Inflation bags and electronic analyzers may be re-used but only in accordance with the manufacturer's directions.

* * * * *

■ 3. Amend § 40.267 by adding a new paragraph (a)(4) to read as follows:

§ 40.267 What problems always cause an alcohol test to be cancelled?

(a) * * *

(4) The breath tube ASD is tested with an analyzer which has not been pre-calibrated for that device's specific lot (see § 40.245(b)(1)).

* * * * *

[FR Doc. E7–242 Filed 1–10–07; 8:45 am]

BILLING CODE 4910–9X–P

Proposed Rules

Federal Register
Vol. 72, No. 7
Thursday, January 11, 2007

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

FARM CREDIT ADMINISTRATION

12 CFR Part 613

RIN 3052–AC33

Eligibility and Scope of Financing; Processing and Marketing

AGENCY: Farm Credit Administration.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Farm Credit Administration (FCA, Agency, or we) Board reopens the comment period for 45 days following the date of publication in the **Federal Register** on the proposed rule to amend its regulation governing financing of processing and marketing operations by Farm Credit System (Farm Credit, FCS, or System) institutions under titles I and II of the Farm Credit Act of 1971, as amended (Act), so that interested parties will have additional time to provide comments.

DATES: Please send your comments to us on or before February 26, 2007.

ADDRESSES: We offer a variety of methods to receive your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the Agency's Web site or the Federal eRulemaking Portal. As faxes are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, please consider another means to submit your comment if possible.

Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at *reg-comm@fca.gov.*
- *Agency Web site: http://www.fca.gov.* Select ''Legal Info,'' then ''Pending Regulations and Notices.''
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.
- *FAX:* (703) 883–4477. Posting and processing of faxes may be delayed. Please consider another means to comment, if possible.

You may review copies of comments we received at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Legal Info,'' and then select ''Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Barry Mardock, Associate Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA, (703) 883–4456, TTY (703) 883–4434; or
Michael A. Anderson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, Denver, CO, (303) 696–9737; or
Howard I. Rubin, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4029, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: On October 16, 2006, FCA published a proposed rule in the **Federal Register** to amend its regulations in part 613 governing financing of processing and marketing operations by System institutions under titles I and II of the Farm Credit Act of 1971, as amended (Act). *See* 71 FR 60678. Specifically, this proposal would add additional specific criteria to determine eligibility of legal entities for financing as processing and marketing operations. The Agency further proposed a non-substantive technical correction to its regulation defining the term ''person''. The comment period closed on December 15, 2006. In letters dated December 15, 2006, the Independent Community Bankers of America, Independent Bankers of Colorado, Nebraska Independent Community Bankers, Independent Bankers Association of Texas, and Financial Services Roundtable requested the FCA to extend the comment period for at least 90 days because of the breadth and complexity of the proposed rule. On December 19, 2006, the Farm Credit Council filed an opposition to the request for extension of comment period, stating that the proposed rule is of ''vital importance to America's farmers and ranchers,'' that ''ample time'' has already been provided to interested parties to review and comment and that any additional comment period should not extend past January 15, 2007. The commenters requesting an extension asserted that the proposed rule will significantly expand the lending authority of FCS institutions to include virtually all commercial enterprises, up to and including WalMart. Such a wide scale expansion of lending authority is not the intent of the proposed rule. Instead, as discussed at length in the preamble to the proposed rule, the intent of the amended rule is to better ensure that FCS institutions are meeting their statutory mandate to provide necessary credit to bona fide farmers and ranchers for their processing and marketing needs in light of changing ownership structures in the modern agricultural economy. In their written comments on the proposed rule, many FCS institutions submitted examples of family farm operations (that already borrow from FCS lenders) that cannot obtain FCS credit for their processing and marketing operations under current FCA rules because of the way ownership of the processing or marketing operation is structured.

Because the FCA supports public involvement and participation in its regulatory process, we are reopening the comment period for 45 days and invite and encourage all interested parties to submit constructive and specific suggestions on ways our proposed rule can be improved to better meet our goal of ensuring that all bona fide farmers and ranchers have access to FCS credit for their processing and marketing needs in accordance with the Act.

Dated: January 5, 2007.

James M. Morris,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. E7–221 Filed 1–10–07; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–26311; Airspace Docket No. 06–AWP–19]

RIN 2120–AA66

Proposed Modification of Class D Airspace; Luke Air Force Base, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This action corrects the legal description in the notice of proposed rulemaking that was published in the **Federal Register** on December 7, 2006, (71 FR 70909), Docket No. FAA–2006–26311; Airspace Docket No. 06–AWP–19.

FOR FURTHER INFORMATION CONTACT: Frances Hope, Western Terminal Operations, System Support Specialist, AWP–520.3, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6502.

SUPPLEMENTARY INFORMATION:

History

On December 7, 2006, a notice of proposed rulemaking was published in the **Federal Register** (71 FR 70909), Docket No. FAA–2006–26311; Airspace Docket No. 06–AWP–19. This notice proposes to modify Class D airspace at Luke Air Force Base (LUF), AZ. This modification is necessary to contain and protect circling maneuvers for Category E aircraft executing these maneuvers in conjunction with Standard Instrument Approach Procedures (SIAPs) at the airport. The legal description did not correctly describe the proposed airspace modification. This action corrects the legal description.

Correction to Notice of Proposed Rulemaking

Accordingly, pursuant to the authority delegated to me, the changes as described above are corrected, and the legal description for Luke Air Force Base, AZ, as published in the **Federal Register** on December 7, 2006, (71 FR 70909), and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AWP AZ D Phoenix, Luke AFB, AZ [Amended]

Phoenix Luke AFB, AZ
(Lat. 33°32′06″ N., long. 112°22′59″ W.)

That airspace extending upward from the surface to but not including 4,000 feet MSL and within a 5.6-mile radius of Luke AFB from a point intersecting the northwest portion of the Goodyear Class D airspace clockwise to a point intersecting the northern portion of the Glendale Class D airspace; and within a 4.4 mile radius of Luke AFB from the intersection of the southern portion of the Glendale Class D airspace clockwise to the intersection of the Goodyear Class D airspace; and excluding that portion within the Glendale, AZ, and Goodyear, AZ Class D airspace areas. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continually published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on December 21, 2006.

Leonard A. Mobley,

Acting Area Director, Western Terminal Operations.

[FR Doc. 07–33 Filed 1–10–07; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–27600A; File No. S7–03–04]

RIN 3235–AJ62

Investment Company Governance; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

In document E6–21903 beginning on page 76618 in the issue of Thursday, December 21, 2006, make the following correction:

On page 76618, in the first column, the RIN number should read as set forth above.

Dated: January 4, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–210 Filed 1–10–07; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–159444–04]

RIN 1545–BE35

Release of Lien or Discharge of Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations related to release of lien and discharge of property under sections 6325, 6503, and 7426 of the Internal Revenue Code (Code). The proposed regulations update existing regulations and contain procedures for processing a request made by a property owner for discharge of a Federal tax lien from his property, under section 6325(b)(4). The proposed regulations also clarify the impact of these procedures on sections 6503(f)(2) and 7426(a)(4) and (b)(5). The proposed regulations reflect the enactment of sections 6325(b)(4), 6503(f)(2), and 7426(a)(4) by the IRS Restructuring and Reform Act of 1998.

DATES: Written or electronic comments and requests for a public hearing must be received by April 11, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–159444–04), room 5203, Internal Revenue Service, P.O.B. 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–159444–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Alternatively, taxpayers may submit comments electronically to the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (IRS–REG–159444–04).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Debra A. Kohn, (202) 622–7985; concerning submissions of comments and the hearing, Richard A. Hurst, Publications and Regulations Specialist, at *Richard.A.Hurst@irscounsel.treas.gov* or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) under sections 6325, 6503, and

7426 of the Code. Section 6325(b)(4) was enacted by section 3106(a) of the IRS Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105–206 (112 Stat. 685). Section 6503(f)(2) was enacted by section 3106(b)(3) of RRA 1998. Sections 7426(a)(4) and (b)(5) were enacted by section 3106(b)(1) of RRA 1998. These provisions of RRA 1998 provide a statutory mechanism for a person other than the person against whom the underlying tax was assessed, upon furnishing a deposit or bond, to obtain a discharge of the Federal tax lien from property owned by him, and for the IRS or the courts to determine the disposition of the deposit or bond amount.

The provisions added by RRA 1998 were enacted in response to *United States* v. *Williams,* 514 U.S. 527 (1995). In *Williams,* the Supreme Court held that a third party who paid another person's tax liability under protest had standing to bring a civil suit for refund pursuant to 28 U.S.C. 1346(a)(1), which waives the Government's sovereign immunity with respect to refund suits for Federal taxes alleged to have been erroneously or illegally assessed or collected. The Government argued in *Williams* that section 1346(a)(1) was intended to afford a remedy only to the person against whom a tax is assessed, and not a third party in this situation. In rejecting this argument, the Supreme Court reasoned that the plaintiff in *Williams,* who was not the taxpayer and who needed a discharge of the Federal tax lien in order to sell her property, had no effective remedy other than to pay the tax giving rise to the lien and to institute a refund suit. Sections 6325(b)(4), 6503(f)(2), and 7426(a)(4) and (b)(5) afford such a remedy to an owner of the property in this situation if the owner is not the person whose unsatisfied liability gave rise to the lien (a third-party owner). In light of the addition these provisions to the Code, the continuing applicability of *Williams* is extremely limited, as the IRS has noted in other published guidance. See Rev. Rul. 2005–50, 2005–30 I.R.B. 124 (2005).

The current Code of Federal Regulations contains both temporary and final regulations under sections 6325, 6503, and 7426. Neither the temporary regulations nor the final regulations reflect the amendments to the Code made by RRA 1998. These proposed regulations, if adopted as final, would constitute permanent regulations that would incorporate the amendments made by RRA 1998 by replacing the existing temporary regulations and updating the existing final regulations under sections 6325, 6503, and 7426. In particular, these proposed regulations contain procedures for processing a request for a certificate of discharge of a Federal tax lien under section 6325(b)(4). In addition, these proposed regulations clarify the impact of these procedures on the collection limitations period tolling provisions of section 6503(f)(2) and on the judicial remedy provisions of sections 7426(a)(4) and (b)(5).

The proposed regulations also incorporate, with updates, the language of the existing temporary regulations relating to release of lien under section 6325(a), while withdrawing the existing temporary regulations. Changes to the language of the existing temporary regulations have been made to account for the IRS's acceptance of additional forms of payment since the temporary regulations became effective in 1983. Although section 7805(e)(2) provides that temporary regulations expire after three years, this provision applies only to temporary regulations issued after November 20, 1988. Since the temporary regulations relevant here were issued prior to that date, they are not subject to the three-year statutory limit. The proposed regulations provide that the existing temporary regulations under section 6325(a) are removed as of the date the proposed regulations become effective as final regulations.

The existing permanent and temporary regulations do not account for the current organizational structure of the IRS. The existing permanent regulations under sections 6325 and 6503(f) employ the title ''district director,'' in numerous instances, in indicating the highest official of a local office of the IRS. That title was used under an organizational structure of the IRS that no longer exists. In order to account for the IRS's current organizational structure and to allow for future reorganizations of the IRS, the proposed regulations remove the title ''district director'' throughout §§ 301.6325–1 and 301.6503(f)–1, and replace that title with the term ''appropriate official.'' Section 301.6325–1(h) and Section 301.6503(f)–1(c) of the proposed regulations state that as used throughout section 301.6325–1 and section 301.6503(f)–1, respectively, the term ''appropriate official'' means the official or office identified in the relevant IRS Publication, or if such official is not so identified, the Secretary or his delegate. In this context, the relevant publication is either IRS Publication 1450, ''Instructions on How to Request a Certificate of Release of Federal Tax Lien,'' or IRS Publication 783, ''Instructions on How to Apply for a Certificate of Discharge of Property from Federal Tax Lien.''

Explanation of Provisions

I. In General

Under section 6325(a), the Secretary shall issue a certificate of release of a Federal tax lien within 30 days of finding that the liability for the underlying tax either has been fully satisfied or has become legally unenforceable, or if an appropriate bond has been furnished to and accepted by the Secretary.

Under section 6325(b)(4)(A), the Secretary shall issue a certificate of discharge of property from a Federal tax lien if the owner of the property requests the issuance of a certificate of discharge and either deposits an amount of money ''equal to the value of the interest of the United States (as determined by the Secretary) in the property'' or furnishes an acceptable bond in a like amount. Section 6325(b)(4)(D) renders section 6325(b)(4)(A) inapplicable ''if the owner of the property is the person whose unsatisfied liability gave rise to the lien.'' This means that if undivided interests in the property at issue are owned by both the taxpayer and another person, neither the taxpayer nor the other person may obtain a discharge of the property from the Federal tax lien under section 6325(b)(4).

Under section 6325(b)(4)(B), the Secretary shall refund the amount deposited, with interest, or release the bond furnished, ''to the extent that the Secretary determines that'' either: (i) The unsatisfied liability giving rise to the lien ''can be satisfied from a source other than such property''; or (ii) the value of the interest of the United States in the property ''is less than the Secretary's prior determination of such value.'' Section 7426(a)(4) allows a person who has obtained a certificate of discharge under section 6325(b)(4) to bring a civil action in Federal district court against the United States ''for a determination of whether the value of the interest of the United States (if any) in such property is less than the value determined by the Secretary.'' This action must be filed within 120 days after the date the certificate of discharge is issued. Section 7426(a)(4) states that ''[n]o other action may be brought by such person for such a determination.'' Section 7426(b)(5) provides that if the Federal district court determines that the Secretary's determination of the value of the interest of the United States in the property under section 6325(b)(4) exceeds the value of such interest, the court shall grant a judgment ordering a

refund of the deposit amount, or a release of the bond, to the extent that the amount furnished exceeds the value determined by the court.

Section 6325(b)(4)(C) states that if no action is filed under section 7426(a)(4) within the specified 120-day period, the Secretary shall, within 60 days after the expiration of that period: (i) Apply the deposit, or collect on the bond, to the extent necessary to satisfy the liability secured by the lien; and (ii) refund, with interest, any portion of the deposit not used to satisfy such liability.

Section 6503(f)(2) suspends the running of the period provided in section 6502 for collecting an assessed tax liability from the time a person becomes entitled to a certificate of discharge under section 6325(b)(4) until 30 days after: (A) The earliest date on which the Secretary no longer holds any amount as a deposit or bond provided under section 6325(b)(4) because the deposit or bond either has been used to satisfy the unpaid tax liability or has been refunded or released; or (B) the date a judgment secured under section 7426(b)(5) becomes final. Suspension of the running of the collection limitations period under section 6503(f)(2) applies only with respect to the amount of the assessment equal to the value of the interest of the United States in the subject property, plus interest, penalties, and certain other additions to tax.

II. Release of Lien

Section 6325(a) provides that the Secretary shall issue a certificate of release of lien within 30 days of the satisfaction of certain conditions. Section 301.6325–1(a)(1) and (2) of the existing permanent regulations state that the Secretary ''may'' issue a certificate of release if such conditions are met. These proposed regulations change the word ''may'' to ''shall'' in the appropriate instances, and incorporate the 30-day requirement contained in the existing temporary regulations, consistent with section 6325(a).

Much of the remainder of the language of § 401.6325–1(a) of the temporary regulations is essentially the same as the language of § 301.6325–1(a) of the existing permanent regulations. Therefore, the remaining language need not be incorporated into these proposed regulations. The language of § 401.6325–1(b), dealing with notices of Federal tax lien that also contain certificates of release that become effective as of a prescribed date, survives as an addition to § 301.6325–1(a). The language of § 401.6325–1(c), defining the phrase *satisfaction of the tax liability* for purposes of section 6325(a)(1), also survives as an addition to § 301.6325–1(a). The language of § 401.6325–1(d), defining the phrase *proof of full payment* for purposes of § 401.6325–1(a), survives as part of a new subsection of the permanent regulations addressing payment via credit and debit cards and electronic funds transfers, consistent with 26 CFR §§ 31.6302–1(h)(8) and 301.6311–2(a). The language of § 401.6325–1(e), dealing with Federal tax liens listing multiple tax liabilities, and the language of § 401.6325–1(f), dealing with the requirements of a valid request for a certificate of release, is incorporated into the permanent regulations.

III. Discharge of Property Under Section 6325(b)(4)

A. Issuance of the Certificate of Discharge

Section 6325(b)(4)(A) requires the Secretary to issue a certificate of discharge of a third-party owner's property from a Federal tax lien if the third-party owner meets certain requirements. The proposed regulations state that a certificate of discharge must be issued under section 6325(b)(4) if the third-party owner submits a proper request and either deposits an appropriate amount or furnishes an acceptable bond.

1. Request of Third-Party Owner

Section 301.6325–1(b)(4) provides that a person seeking a certificate of discharge under section 6325(b) must submit an application in writing to the local IRS official responsible for collection of the tax at issue, and that the application must contain such information as the official may require. Section 301.6325–1(b)(4) as currently written applies to only certificates of discharge under section 6325(b)(1) through (3). The proposed regulations extend the applicability of the language of § 301.6325–1(b)(4) (redesignated as § 301.6325–1(b)(5)) to a request for a certificate of discharge under section 6325(b)(4) and indicate that the request should be submitted to the appropriate IRS official or office.

New § 301.6325–1(b)(5) of the proposed regulations states that a request for a certificate of discharge made by a third-party owner will be viewed as a request under section 6325(b)(4), and not as a request made under section 6325(b)(2), unless the third-party owner expressly states otherwise in writing. Similarly, any amount the IRS receives from a third-party owner following a discharge request will be viewed as a deposit made under section 6325(b)(4)(A), rather than as a payment under section 6325(b)(2), unless the third-party owner in writing expressly states otherwise, and expressly waives the right to file a civil suit in Federal district court for a refund of the amount received in writing.

The waiver provisions included in the proposed regulations generally protect the third-party owner in that a certificate of discharge granted under section 6325(b)(4), unlike one granted under section 6325(b)(2), affords a third-party owner the right to pursue a civil action under section 7426(a)(4) regarding the IRS's determination of the value of its lien. Amounts paid under section 6325(b)(2) do not constitute deposits and are immediately credited to the taxpayer's account once paid by the taxpayer or another person.

2. Value of the Interest of the United States (as Determined by the Secretary) in the Property

Section 6325(b)(4)(A) and (D) requires the Secretary to issue a certificate of discharge of a third-party owner's property from a Federal tax lien if the third-party owner either deposits with the Secretary an amount ''equal to the value of the interest of the United States (as determined by the Secretary)'' or furnishes a bond acceptable to the IRS in a like amount. The proposed regulations provide that the deposit should be made or the bond should be furnished to the appropriate IRS official or office.

Section 301.6325–1(b)(2)(iii) indicates that in determining the value of the interest of the United States under section 6325(b)(2), the appropriate official ''shall give consideration to the value of the property and the amount of all liens and encumbrances thereon having priority over the Federal tax lien. In determining the value of the property, the [appropriate official] may, in his discretion, give consideration to the forced sale value of the property in appropriate cases.''

The proposed regulations state that this language applies to the determination of the value of the United States' interest in a third-party owner's property under section 6325(b)(4) and provide that the appropriate official shall make the determination.

B. Processing the Deposit

Section 6325(b)(4)(B) states that the Secretary shall refund the amount deposited, with interest at the overpayment rate determined under section 6621, and shall release the bond, to the extent that the Secretary determines that either: (i) The unsatisfied tax liability giving rise to the

lien can be satisfied from a source other than the third-party owner's property; or (ii) the value of the United States' interest in the property is less than the Secretary's prior determination of such value.

The proposed regulations specify that any request for a refund of deposit or release of bond under section 6325(b)(4)(B) must be made in writing and must contain the information required by the appropriate IRS Publication. The proposed regulations also clarify that the phrase ''unsatisfied liability giving rise to the lien'' contained in section 6325(b)(4)(B)(i) refers to the entire tax liability listed on the notice of Federal tax lien, not just the portion of the liability equal to the value of the United States' interest in the third-party owner's property. The proposed regulations, in addition, indicate that the Secretary is afforded discretion as to whether he should make a determination, and if he does so, in determining whether a deposit should be refunded or a bond released under section 6325(b)(4)(B).

As discussed in part IV of this preamble, a third-party owner wishing to file a civil suit for disposition of his deposit or bond is required by section 7426(a)(4) to do so within 120 days of issuance of the certificate of discharge. Consistent with this limitation period for filing suit, the proposed regulations allow the same 120-day period for the IRS to make any administrative determination regarding refund of deposit or release of bond under section 6325(b)(4)(B). During that 120-day period, the third-party owner may request a refund of deposit or release of bond administratively under section 6325(b)(4)(B), file a civil suit in district court under section 7426(a)(4), or both.

IV. Civil Action by Person Other Than Taxpayer for Substitution of Value

Section 7426(a)(4) provides that a person to whom a certificate of discharge has been issued under section 6325(b)(4) with respect to any property may, within 120 days after the day the certificate is issued, bring a civil action in Federal district court for ''a determination of whether the value of the interest of the United States (if any) in such property is less than the value determined by the Secretary.''

A. Allowable Basis for Judicial Determination

The existing permanent regulations under section 7426 do not address the cause of action afforded by section 7426(a)(4). The proposed regulations clarify that the only allowable basis for a judicial determination under section 7426(a)(4) is that the value of the interest of the United States in the third-party owner's property is less than the value as determined by the Secretary under section 6325(b)(4)(A)(i). This follows from the express language of section 7426(a)(2) and is the case despite the fact that an additional basis for reevaluation of the Secretary's original determination—that the tax liability underlying the lien can be satisfied from another source—is provided under section 6325(b)(4)(B)(i).

B. Exclusivity of Remedy

The proposed regulations emphasize that section 7426(a)(4) provides the only judicial remedy available to a third-party owner whose property is subject to a Federal tax lien to obtain a refund of the deposit or bond provided in exchange for a discharge of the lien from the property.

Section 7426(a)(4) explicitly provides that: ''No other action may be brought by such person [to whom a certificate of discharge is issued under section 6325(b)(4)] for such a determination.'' Additionally, by the terms of section 7426(a)(4), a third-party owner must obtain a certificate of discharge under section 6325(b)(4) (and not under section 6325(b)(2)) to have standing to pursue the remedy offered by section 7426(a)(4).

C. No Tolling of 120-Day Period

The proposed regulations state that an administrative request for refund of deposit or release of bond made under section 6325(b)(4)(B) does not affect the running of the 120-day period for bringing a civil suit under section 7426(a)(4). The statutory scheme makes the standing of a third-party owner to bring suit under section 7426(a)(4) independent of, rather than related to, events that might occur under section 6325(b)(4)(B). Thus, an administrative request for refund of deposit or release of bond under section 6325(b)(4)(B) is not a prerequisite to filing an action under section 7426(a)(4), and the 120-day period of section 7426(a)(4) will not be tolled by an administrative request for refund of deposit or release of bond made under section 6325(b)(4)(B).

D. Court's Authority To Issue Judgment

The proposed regulations under section 7426 address section 7426(b)(5), which authorizes a Federal district court to decide whether the Secretary's determination of the value of the United States' interest in a third-party owner's property exceeds the actual value of its interest, and, if so, to grant a judgment ordering refund of all or part of the third-party owner's deposit accordingly.

V. Secretary's Use of Deposit or Bond if Judicial Action Not Filed

Section 6325(b)(4)(C) instructs the Secretary how to process the third-party owner's deposit or bond if the third-party owner does not institute suit under section 7426(a)(4) within the statutorily prescribed 120-day period. Under section 6325(b)(4)(C), the Secretary has 60 days after expiration of the 120-day period to: (i) Apply the amount deposited (or collect on the bond furnished) ''to the extent necessary to satisfy the unsatisfied liability secured by the lien''; and (ii) refund, with interest at the overpayment rate, any portion of the amount deposited ''which is not used to satisfy such liability.'' Thus, the statute affords the Secretary a total of 180 days after issuing the certificate of discharge to complete processing of the third-party owner's deposit or bond.

The proposed regulations specify that the IRS may take these actions even after 180 days have passed. Prohibiting the IRS from either applying or refunding the deposit once the 180-day period has elapsed would prevent the IRS from ever relinquishing a deposit thereafter, in effect requiring IRS personnel to retain amounts deposited despite, in many cases, being aware that the amounts should be applied to outstanding tax liabilities or returned to third-party owners.

However, because section 6325(b)(4)(C) reflects Congress's intent that the deposit or bond be processed within 60 days after expiration of the 120-day period for bringing suit (or 180 days after the date a certificate of discharge is issued under section 6325(b)(4)(A)), the proposed regulations state that the deposit or bond will be deemed to have been processed as of the 60th day after expiration of the 120-day period for purposes of applying payments to the taxpayer's account. This means that if the IRS has not either applied or refunded any part of the deposit within the 180-day period, the IRS will be prohibited from charging the taxpayer interest and penalties on an outstanding liability to which the deposit should have been applied under section 6325(b)(4)(C)(i). On the other hand, the IRS will pay the third-party owner interest at the overpayment rate on any refund that should have been paid under section 6325(b)(4)(C)(ii) within the 60-day period until the refund is actually paid.

VI. Suspension of Running of Period of Limitation

Section 6503(f)(2) states that in the case of any assessment for which a lien

was made on any property, the running of the period for collecting the assessed tax liability, under section 6502, shall be suspended from the date any person becomes entitled to a certificate of discharge with respect to the property under section 6325(b)(4) until the date which is 30 days after the earlier of: (A) The earliest date on which the Secretary no longer holds any amount as a deposit or bond provided under section 6325(b)(4) with respect to the property, because the deposit or bond either has been used to satisfy the unpaid tax or has been refunded; or (B) the date that a judgment secured under section 7426(b)(5) becomes final. Suspension of the running of the collection limitations period under section 6503(f)(2) applies only with respect to the amount of the assessment equal to the value of the interest of the United States in the subject property, plus interest, penalties and certain other additions to tax.

The proposed regulations under section 6503 address the suspension of the running of the period for collecting a tax liability provided by section 6503(f)(2).

Section 6325(b)(4)(A) provides that the Secretary shall issue a certificate of discharge when the third-party owner makes a request and deposits an appropriate amount or furnishes an acceptable bond. The proposed regulations state that the suspension of the running of the collection statute of limitations begins on the date a deposit or bond in the amount determined by the Secretary is received by the appropriate official under section 6325(b)(4)(A), as that is the date the third-party owner becomes entitled to a certificate of discharge under that provision.

Assuming that no judgment is obtained under section 7426(b)(5), section 6503(f)(2)(A) ties the end of the period for suspension of the running of the collection statute to the ultimate disposition of the third-party owner's deposit or bond, which is addressed by section 6325(b)(4)(B) and (C). The proposed regulations state that the suspension ends 30 days after the date the appropriate official no longer holds the deposit or bond by reason of taking actions prescribed under section 6325(b)(4)(B) and (C).

Because section 6325(b)(4)(C) contemplates that the deposit or bond will be processed within 60 days after the expiration of 120 days after the date the Secretary issues the certificate of discharge, as discussed in the previous section, the regulations state that the deposit or bond is deemed processed no later than that date for purposes of section 6503(f)(2)(A). This means that if the deposit or bond is not processed within the 180-day period, the running of the collection statute ceases to be suspended as of 90 days (60 days + the 30 days afforded by section 6503(f)(2)) after the 120-day period ends. Thus, the period for collection resumes running under section 6503(f)(2)(A) 31 days after the 180 days have passed.

Section 6503(f)(2)(B) ties the end of the suspension period to the finality of a judgment obtained under section 7426(b)(5). The proposed regulations state that if a judgment is obtained under section 7426(b)(5), the suspension of the running of the collection statute ends 30 days after all appeals of that judgment, if any, have been exhausted.

Proposed Effective Date

These regulations are proposed to apply to any release of lien or discharge of property that is requested after the date that these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Debra A. Kohn of the Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6325–1 is amended as follows:

1. Paragraphs (a), (b)(1)(i), (b)(2)(i), and (b)(2)(ii) are revised.
2. Paragraph (b)(2)(iii) is redesignated as paragraph (b)(6) and revised.
3. Paragraph (b)(4) is redesignated as paragraph (b)(5) and revised.
4. A new paragraph (b)(4) is added.
5. Paragraphs (c)(1) and (c)(2) are amended by removing the language ''district director'' and adding the language ''appropriate official'' in its place, wherever it appears.
6. The first sentence of paragraph (d)(1) is amended by removing the language ''A district director'' and adding the language ''The appropriate official'' in its place, by removing the word ''Code'' and adding the language ''Internal Revenue Code'' in its place, and by removing the language ''the district director'' and adding the language ''the appropriate official'' in its place. The third sentence is amended by removing the language ''a district director'' and adding the language ''the appropriate official'' in its place, and removing the language ''the district director'' and adding ''the appropriate official'' in its place.
7. Paragraph (d)(2)(i) is amended by removing the language ''A district director'' and adding the language ''The appropriate official'' in its place, by removing the word ''Code'' and adding the language ''Internal Revenue Code'' in its place, and by removing the language ''the district director'' and adding the language ''the appropriate official'' in its place.

8. Paragraph (d)(2)(ii), *Examples 1* through *4*, are amended by removing the language ''district director'' and adding the language ''appropriate official'' in its place, wherever it appears.

9. Paragraphs (d)(3) and (d)(4) are amended by removing the language ''district director'' and adding the language ''appropriate official'' in its place, wherever it appears.

10. The first sentence of paragraph (e) is amended by removing the language ''a district director'' and adding the language ''the appropriate official'' in its place, and by removing the language ''the district director'' and adding the language ''the appropriate official'' in its place. The third and fourth sentences are amended by removing the language ''district director'' and adding the language ''appropriate official'' in its place.

11. Paragraphs (f)(1) and (f)(2)(i) are amended by removing the language ''a district director'' and adding the language ''the appropriate official'' in its place, paragraph (f)(2)(i)(*b*) is amended by removing the language ''the district director'' and adding the language ''the appropriate official'' in its place, and paragraph (f)(3) is amended by removing the word ''Code'' and adding the language ''Internal Revenue Code'' in its place.

12. Paragraphs (h), (i), and (j) are added.

The revisions and additions read as follows:

§ 301.6325–1 Release of lien or discharge of property.

(a) *Release of lien*—(1) *Liability satisfied or unenforceable.* The appropriate official shall issue a certificate of release for a filed notice of Federal tax lien, no later than 30 days after the date on which he finds that the entire tax liability listed in such notice of Federal tax lien either has been fully satisfied (as defined in paragraph (a)(4) of this section) or has become legally unenforceable. In all cases, the liability for the payment of the tax continues until satisfaction of the tax in full or until the expiration of the statutory period for collection, including such extension of the period for collection as is agreed to.

(2) *Bond accepted.* The appropriate official shall issue a certificate of release of any tax lien if he is furnished and accepts a bond that is conditioned upon the payment of the amount assessed (together with all interest in respect thereof), within the time agreed upon in the bond, but not later than 6 months before the expiration of the statutory period for collection, including any agreed upon extensions. For provisions relating to bonds, see sections 7101 and 7102 and §§ 301.7101–1 and 301.7102–1.

(3) *Certificate of release for a lien which has become legally unenforceable.* The appropriate official shall have the authority to file a notice of Federal tax lien which also contains a certificate of release pertaining to those liens which become legally unenforceable. Such release will become effective as a release as of a date prescribed in the document containing the notice of Federal tax lien and certificate of release.

(4) *Satisfaction of tax liability.* For purposes of paragraph (a)(1) of this section, satisfaction of the tax liability occurs when—

(i) The appropriate official determines that the entire tax liability listed in a notice of Federal tax lien has been fully satisfied. Such determination will be made as soon as practicable after tender of payment; or

(ii) The taxpayer provides the appropriate official with proof of full payment (as defined in paragraph (a)(5) of this section) with respect to the entire tax liability listed in a notice of Federal tax lien together with the information and documents set forth in paragraph (a)(7) of this section. See paragraph (a)(6) of this section if more than one tax liability is listed in a notice of Federal tax lien.

(5) *Proof of full payment.* As used in paragraph (a)(4)(ii) of this section, the term *proof of full payment* means—

(i) An internal revenue cashier's receipt reflecting full payment of the tax liability in question;

(ii) A canceled check in an amount sufficient to satisfy the tax liability for which the release is being sought;

(iii) A record, made in accordance with procedures prescribed by the Commissioner, of proper payment of the tax liability by credit or debit card or by electronic funds transfer; or

(iv) Any other manner of proof acceptable to the appropriate official.

(6) *Notice of a Federal tax lien which lists multiple liabilities.* When a notice of Federal tax lien lists multiple tax liabilities, the appropriate official shall issue a certificate of release when all of the tax liabilities listed in the notice of Federal tax lien have been fully satisfied or have become legally unenforceable. In addition, if the taxpayer requests that a certificate of release be issued with respect to one or more tax liabilities listed in the notice of Federal tax lien and such liability has been fully satisfied or has become legally unenforceable, the appropriate official shall issue a certificate of release. For example, if a notice of Federal tax lien lists two separate liabilities and one of the liabilities is satisfied, the taxpayer may request the issuance of a certificate of release with respect to the satisfied tax liability and the appropriate official shall issue a release.

(7) *Taxpayer requests.* A request for a certificate of release with respect to a notice of Federal tax lien shall be submitted in writing to the appropriate official. The request shall contain the information required in the appropriate IRS Publication.

(b) *Discharge of specific property from the lien*—(1) *Property double the amount of the liability.* (i) The appropriate official may, in his discretion, issue a certificate of discharge of any part of the property subject to a Federal tax lien imposed under chapter 64 of the Internal Revenue Code if he determines that the fair market value of that part of the property remaining subject to the Federal tax lien is at least double the sum of the amount of the unsatisfied liability secured by the Federal tax lien and of the amount of all other liens upon the property which have priority over the Federal tax lien. In general, fair market value is that amount which one ready and willing but not compelled to buy would pay to another ready and willing but not compelled to sell the property.

* * * * *

(2) *Part payment; interest of United States valueless*—(i) *Part payment.* The appropriate official may, in his discretion, issue a certificate of discharge of any part of the property subject to a Federal tax lien imposed under chapter 64 of the Internal Revenue Code if there is paid over to him in partial satisfaction of the liability secured by the Federal tax lien an amount determined by him to be not less than the value of the interest of the United States in the property to be so discharged. In determining the amount to be paid, the appropriate official will take into consideration all the facts and circumstances of the case, including the expenses to which the Government has been put into the matter. In no case shall the amount to be paid be less than the value of the interest of the United States in the property with respect to which the certificate of discharge is to be issued.

(ii) *Interest of the United States valueless.* The appropriate official may, in his discretion, issue a certificate of discharge of any part of the property subject to the Federal tax lien if he determines that the interest of the United States in the property to be so discharged has no value.

(3) *Discharge of property by substitution of proceeds of sale.* The appropriate official may, in his discretion, issue a certificate of discharge of any part of the property subject to a Federal tax lien imposed under chapter 64 of the Internal Revenue Code if such part of the property is sold and, pursuant to a written agreement with the appropriate official, the proceeds of the sale are held, as a fund subject to the Federal tax liens and claims of the United States, in the same manner and with the same priority as the Federal tax liens or claims had with respect to the discharged property. This paragraph does not apply unless the sale divests the taxpayer of all right, title, and interest in the property sought to be discharged. Any reasonable and necessary expenses incurred in connection with the sale of the property and the administration of the sale proceeds shall be paid by the applicant or from the proceeds of the sale before satisfaction of any Federal tax liens or claims of the United States.

(4) *Right of substitution of value*—(i) *Issuance of certificate of discharge to property owner who is not the taxpayer.* If an owner of property subject to a Federal tax lien imposed under chapter 64 of the Internal Revenue Code submits an application for a certificate of discharge pursuant to paragraph (b)(5) of this section, the appropriate official shall issue a certificate of discharge of such property after the owner either deposits with the appropriate official an amount equal to the value of the interest of the United States in the property, as determined by the appropriate official pursuant to paragraph (b)(6) of this section, or furnishes an acceptable bond in a like amount. This paragraph does not apply if any owner of the property is the person whose unsatisfied liability gave rise to the Federal tax lien. Thus, if the property is owned by both the taxpayer and another person, neither the taxpayer nor the other person may obtain a certificate of discharge of the property under this paragraph.

(ii) *Refund of deposit and release of bond.* The appropriate official may, in his discretion, determine that either the entire unsatisfied tax liability listed on the notice of Federal tax lien can be satisfied from a source other than the property sought to be discharged, or the value of the interest in the United States is less than the prior determination of such value. The appropriate official shall refund the amount deposited with interest at the overpayment rate determined under section 6621 or release the bond furnished to the extent that he makes this determination.

(iii) *Refund request.* If a property owner desires an administrative refund of his deposit or release of the bond, the owner shall file a request in writing with the appropriate official. The request shall contain such information as the appropriate IRS Publication may require. The request must be filed within 120 days after the date the certificate of discharge is issued. A refund request made under this paragraph neither is required nor is effective to extend the period for filing an action in court under section 7426(a)(4).

(iv) *Internal Revenue Service's use of deposit if court action not filed.* If no action is filed under section 7426(a)(4) for refund of the deposit or release of the bond within the 120-day period specified therein, the appropriate official shall, within 60 days after the expiration of the 120-day period, apply the amount deposited or collect on such bond to the extent necessary to satisfy the liability listed on the notice of Federal tax lien, and shall refund, with interest at the overpayment rate determined under section 6621, any portion of the amount deposited that is not used to satisfy the liability. If the appropriate official has not completed the application of the deposit to the unsatisfied liability before the end of the 60-day period, the deposit will be deemed to have been applied to the unsatisfied liability as of the 60th day.

(5) *Application for certificate of discharge.* Any person desiring a certificate of discharge under this paragraph (b) shall submit an application in writing to the appropriate official. The application shall contain the information required by the appropriate IRS Publication. For purposes of this paragraph (b), any application for certificate of discharge made by a property owner who is not the taxpayer, and any amount submitted pursuant to the application, will be treated as an application for discharge and a deposit under section 6325(b)(4) unless the owner of the property submits a statement, in writing, that the application is being submitted under another paragraph of section 6325 and not under section 6325(b)(4), and the owner in writing waives the rights afforded under paragraph (b)(4), including the right to seek judicial review.

(6) *Valuation of interest of United States.* For purposes of paragraphs (b)(2) and (b)(4) of this section, in determining the value of the interest of the United States in the property, or any part thereof, with respect to which the certificate of discharge is to be issued, the appropriate official shall give consideration to the value of the property and the amount of all liens and encumbrances thereon having priority over the Federal tax lien. In determining the value of the property, the appropriate official may, in his discretion, give consideration to the forced sale value of the property in appropriate cases.

* * * * *

(h) As used in this section, the term *appropriate official* means either the official or office identified in the relevant IRS Publication or, if such official or office is not so identified, the Secretary or his delegate.

(i) *Temporary regulations removed.* The provisions of § 401.6325–1 of this chapter are removed on the date these regulations are published as final regulations in the **Federal Register**.

(j) *Effective date.* This section applies to any release of lien or discharge of property that is requested after these regulations are published as final regulations in the **Federal Register**.

Par. 3. Section 301.6503(f)–1 is amended as follows:

1. The section heading is revised.
2. The undesignated paragraph is designated as paragraph (a) and a paragraph heading is added.
3. In newly designated paragraph (a), the language ''a district director'' is removed and the language ''the appropriate official'' is added in its place, the language ''the district director'' is removed and the language ''the appropriate official'' is added in its place, and in the *Example* the language ''district director'' is removed and the language ''appropriate official'' is added in its place, wherever it appears.
4. Paragraphs (b), (c), and (d) are added.

The revisions and additions read as follows:

§ 301.6503(f)–1 Suspension of running of period of limitation; wrongful seizure of property of third-party owner and discharge of wrongful lien for substitution of value.

(a) *Wrongful seizure.* * * *

(b) *Discharge of wrongful lien for substitution of value.* If a person other than the taxpayer submits a request in writing for a certificate of discharge for a filed Federal tax lien under section 6325(b)(4), the running of the period of limitations on collection after assessment under section 6502 for any liability listed in such notice of Federal tax lien shall be suspended for a period equal to the period beginning on the date the appropriate official receives a deposit or bond in the amount specified in § 301.6325–1(b)(4)(i) and ending on the date that is 30 days after the earlier of—

(1) The date the appropriate official no longer holds, or is deemed to no longer hold, within the meaning of paragraph (b)(4)(iv) of this section, any amount as a deposit or bond by reason of taking such actions as prescribed in sections 6325(b)(4)(B) and (C); or

(2) The date the judgment secured under section 7426(b)(5) becomes final.

(c) As used in this section, the term *appropriate official* means either the official or office identified in the relevant IRS Publication or, if such official or office is not so identified, the Secretary or his delegate.

(d) *Effective date.* This section applies to any request for a certificate of discharge made after these regulations are published as final regulations in the **Federal Register**.

Par. 4. In § 301.7426–1, paragraphs (a)(4), (b)(5), and (d) are added.

§ 301.7426–1 Civil actions by persons other than taxpayers.

(a) * * *

(4) *Substitution of value.* A person who obtains a certificate of discharge under section 6325(b)(4) with respect to any property may, within 120 days after the day on which the certificate is issued, bring a civil action against the United States in a district court of the United States for a determination of whether the value of the interest of the United States (if any) in such property is less than the value determined by the appropriate official. A civil action under this provision shall be the exclusive judicial remedy for a person other than the taxpayer who obtains a certificate of discharge for a filed notice of Federal tax lien.

(b) * * *

(5) *Substitution of value.* If the court determines that the determination by the appropriate official of the value of the interest of the United States in the property exceeds the actual value of such interest, the court may grant a judgment ordering a refund of the amount deposited, or a release of the bond, to the extent that the aggregate of those amounts exceeds the value as determined by the court.

* * * * *

(d) Paragraphs (a)(4) and (b)(5) of this section apply to any request for a certificate of discharge made after these regulations are published as final regulations in the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–219 Filed 1–10–07; 8:45 am]

BILLING CODE 4830–01–P

Notices

Federal Register
Vol. 72, No. 7
Thursday, January 11, 2007

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

AGENCY FOR INTERNATIONAL DEVELOPMENT

Bureau for Democracy, Conflict and Humanitarian Assistance; Office of Food for Peace; Announcement of Final 2007 Food for Peace Guidelines and Procedures for International Food Relief Partnership (IFRP) Transportation and Distribution Applications; Notice

Pursuant to the Agricultural Trade Development and Assistance Act of 1954 (Public Law 480, as amended), notice is hereby given that the final FY 2007 Food for Peace Guidelines and Procedures for International Food Relief Partnership (IFRP) Transportation and Distribution Applications are available to interested parties for general viewing.

Individuals who wish to access the current guidelines should visit the Food for Peace Web site at *http://www.usaid.gov/our_work/humanitarian_assistance/ffp/,* or contact the Office of Food for Peace, via AMEX International, Attn: 2007 IFRP Applications, 1300 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20004 or *IFRP@amexdc.com.*

William Hammink,

Director, Office of Food for Peace, Bureau for Democracy, Conflict and Humanitarian Assistance.

[FR Doc. E7–222 Filed 1–10–07; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability; Inviting Applications for the Quality Samples Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.605.

SUMMARY: The Commodity Credit Corporation (CCC) announces the availability of $2.5 million in funding for the 2007 Quality Samples Program (QSP). The purpose of this notice is to solicit applications for participation in the FY 2007 QSP. QSP is administered by personnel of the Foreign Agricultural Service (FAS). This notice supercedes any prior notices concerning QSP.

DATES: All proposals must be received by 5 p.m. Eastern Standard Time, February 12, 2007. Applications received after this date will be considered only if funds are still available.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Policy Staff, Foreign Agricultural Service, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 22024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *ppsadmin@fas.usda.gov.* Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/mos/programs/QSP.asp.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: QSP is authorized under Section 5(f) of the CCC Charter Act, 15 U.S.C. 714c(f).

Purpose: QSP is designed to encourage the development and expansion of export markets for U.S. agricultural commodities by assisting U.S. entities in providing commodity samples to potential foreign importers to promote a better understanding and appreciation for the high quality of U.S. agricultural commodities.

QSP participants will be responsible for procuring (or arranging for the procurement of) commodity samples, exporting the samples, and providing the technical assistance necessary to facilitate successful use of the samples by importers. Participants that are funded under this announcement may seek reimbursement for the sample purchase price and the costs of transporting the samples domestically to the port of export and then to the foreign port, or point, of entry. Transportation costs from the foreign port, or point, of entry to the final destination will not be eligible for reimbursement. CCC will not reimburse the costs incidental to purchasing and transporting samples, for example, inspection or documentation fees. Although providing technical assistance is required for all projects, CCC will not reimburse the costs of providing technical assistance. A QSP participant will be reimbursed after CCC reviews its reimbursement claim and determines that the claim is complete.

General Scope of QSP Projects: QSP projects are the activities undertaken by a QSP participant to provide an appropriate sample of a U.S. agricultural commodity to a foreign importer, or a group of foreign importers, in a given market. The purpose of the project is to provide information to an appropriate target audience regarding the attributes, characteristics, and proper use of the U.S. commodity. A QSP project addresses a single market/commodity combination.

As a general matter, QSP projects should conform to the following guidelines:

- Projects should benefit the represented U.S. industry and not a specific company or brand;
- Projects should develop a new market for a U.S. product, promote a new U.S. product, or promote a new use for a U.S. product, rather than promote the substitution of one established U.S. product for another;
- Sample commodities provided under a QSP project must be in sufficient supply and available on a commercial basis;
- The QSP project must either subject the commodity sample to further processing or substantial transformation in the importing country, or the sample must be used in technical seminars designed to demonstrate to an appropriate target audience the proper preparation or use of the sample in the creation of an end product;
- Samples provided in a QSP project shall not be directly used as part of a retail promotion or supplied directly to consumers. However, the end product, that is, the product resulting from further processing, substantial transformation, or a technical seminar, may be provided to end-use consumers to demonstrate to importers consumer preference for that end product; and,
- Samples shall be in quantities less than a typical commercial sale and limited to the amount sufficient to achieve the project goal (e.g., not more than a full commercial mill run in the destination country).

QSP projects shall target foreign importers and target audiences who:

• Have not previously purchased the U.S. commodity which will be transported under QSP;

• Are unfamiliar with the variety, quality attribute, or end-use characteristic of the U.S. commodity;

• Have been unsuccessful in previous attempts to import, process, and market the U.S. commodity (e.g., because of improper specification, blending, or formulation; or sanitary or phytosanitary issues);

• Are interested in testing or demonstrating the benefits of the U.S. commodity; or,

• Need technical assistance in processing or using the U.S. commodity.

II. Award Information

Under this announcement, the number of projects per participant will not be limited. However, individual projects will be limited to $75,000 of QSP reimbursement. Projects comprised of technical preparation seminars, that is, projects that do not include further processing or substantial transformation, will be limited to $15,000 of QSP reimbursement as these projects require smaller samples. Financial assistance will be made available on a reimbursement basis only; cash advances will not be made available to any QSP participant.

All proposals will be reviewed against the evaluation criteria contained herein and funds will be awarded on a competitive basis. Funding for successful proposals will be provided through specific agreements. These agreements will in corporate the proposal as approved by FAS. FAS must approve in advance any subsequent changes to the project.

III. Eligibility Information

1. *Eligible Applicants.* Any United States private or government entity with a demonstrated role or interest in exporting U.S. agricultural commodities may apply to the program. Government organizations consist of federal, state, or local agencies. Private organizations include non-trade associations, universities, agricultural cooperatives, state regional trade groups, and profit-making entities.

2. *Cost Sharing.* FAS considers the applicant's willingness to contribute resources, including cash and goods and services of the U.S. industry and foreign third parties, when determining which proposals are approved for funding.

IV. Application and Submission Information

1. *Address to Request Application Package.* Organizations are encouraged to submit applications to FAS through the Unified Export Strategy (UES) application Internet Web site. Applicants also have the option of submitting electronic versions in the UES format (along with two paper copies) of their applications to FAS on diskette. However, UES format is not required.

Applicants planning to use the UES Internet-based system must contact the FAS Program Policy Staff on (202) 720–4327 to obtain site access information including a user ID and password. The UES Internet-based application, including a Help file containing step-by-step instructions for its use, may be found at the following URL address: *http://www.fas.usda.gov/cooperators.html.*

Applicants who choose to submit applications on diskette can obtain an application format at the following URL address: *http://www.fas.usda.gov/mos/programs/qsp_appl.html.*

2. *Content and Form of Application Submission.* To be considered for QSP, an applicant must submit to FAS information detailed in this notice. In addition, in accordance with the Office of Management and Budget's issuance of a final policy (68 FR 38402) regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711. Incomplete applications and applications which do not otherwise conform to this announcement will not be accepted for review.

FAS recommends that proposals contain, a a minimum, the following (a) Organizational information, including:

• Organization's name, address, Chief Executive Officer (or designee), Federal Tax Identification Number (TIN), and DUNS number;

• Type of organization;

• Name, telephone number, fax number, and e-mail address of the primary contact person;

• A description of the organization and its membership;

• A description of the organization's prior export promotion experience; and

• A description of the organization's experience in implementing an appropriate trade/technical assistance component.

(b) Market information, including:

• An assessment of the market;

• A long-term strategy in the market; and

• U.S. export value/volume and market share (historic and goals) for 2002–2007;

(c) Project information, including:

• A brief project title;

• Amount of funding requested;

• A brief description of the specific market development trade constraint or opportunity to be addressed by the project, performance measures for the years 2007–2009 which will be used to measure the effectiveness of the project, a benchmark performance measure for 2005, the viability of long term sales to this market, the goals of the project, and the expected benefits to the represented industry;

• A description of the activities planned to address the constraint or opportunity, including how the sample will be used in the end-use performance trial, the attributes of the sample to be demonstrated and its end-use benefit, and details of the trade/technical servicing component (including who will provide and who will fund this component);

• A sample description (i.e., commodity, quantity, quality, type, and grade), including a justification for selecting a sample with such characteristics (this justification should explain in detail why the project could not be effective with a smaller sample);

• An itemized list of all estimated costs associated with the project for which reimbursement will be sought; and

• The importer's rule in the project regarding handling and processing the commodity sample; and

(d) Information indicating all funding sources and amounts to be contributed by each entity that will supplement implementation of the proposed project. This may include the organization that submitted the proposal, private industry entities, host governments, foreign third parties, CCC, FAS, or other Federal agencies. Contributed resources may include cash or goods and services.

3. *Submission Dates and Times.* All applications must be received by 5 p.m. Eastern Standard Time, February 12, 2007. Applications received after this date will be considered only if funds are still available.

4. *Funding Restrictions.* Proposals which request more than $75,000 of CCC funding for individual projects will not be considered. Projects comprised of technical preparation seminars will be limited to $15,000 in QSP funding. CCC will not reimburse expenditures made prior to approval of a proposal or unreasonable expenditures.

5. *Other Submission Requirements.* All applications on diskette (with two accompanying paper copies) and any other form of application must be received by 5 p.m. Eastern Standard

Time, February 12, 2007, at one of the following addresses:

Hand Delivery (including FedEx, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Program Policy Staff, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024.

U.S. Postal Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Program Policy Staff, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250-1042.

V. Application Review Information

1. *Criteria.* FAS will use the following criteria in evaluating proposals:

- The ability of the organization to provide an experienced staff with the requisite technical and trade experience to execute the proposal;
- The extent to which the proposal is targeted to a market in which the United States is generally competitive;
- The potential for expanding commercial sales in the proposed market;
- The nature of the specific market constraint or opportunity involved and how well it is addressed by the proposal;
- The extent to which the importer's contribution in terms of handling and processing enhances the potential outcome of the project;
- The amount of reimbursement requested and the organization's willingness to contribute resources, including cash and goods and services of the U.S. industry and foreign third parties; and
- How well the proposed technical assistance component assures that performance trials will effectively demonstrate the intended end-use benefit.

Highest priority for funding under this announcement will be given to meritorious proposals that target countries meeting either of the following criteria:

- Per capita income less than $10,725 (the ceiling on upper middle income economies as determined by the World Bank [World Development Indicators; July 2006]); and population greater than 1 million. Proposals may address suitable regional groupings, for example, the islands of the Caribbean Basin; or
- U.S. market share of imports of the commodity identified in the proposal of 10 percent or less.

2. *Review and Selection Process.* Proposals will be evaluated by the applicable FAS Commodity Branches in the Market Development and Grants Management Division. The Commodity Branches will review each proposal against the factors described above. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal based upon these factors, and submit the proposals and funding recommendations to the Deputy Administrator, Office of Trade Programs.

3. *Anticipated Announcement Date.* Announcements of funding decisions for QSP are anticipated during May 2007.

VI. Award Administration Information

1. *Award Notices.* FAS will notify each applicant in writing of the final disposition of its application. FAS will send an approval letter and agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the levels of QSP funding and any cost-share contribution requirements.

2. *Administrative and National Policy Requirements.* The agreements will incorporate the details of each project as approved by FAS. Each agreement will identify terms and conditions pursuant to which CCC will reimburse certain costs of each project. Agreements will also outline the responsibilities of the participant, including, but not limited to, procurement (or arranging for procurement) of the commodity sample at a fair market price, arranging for transportation of the commodity sample within the time limit specified in the agreement (organizations should endeavor to ship commodities within 6 months of effective date of agreement), compliance with cargo preference requirements (shipment on United States flag vessels, as required), compliance with the Fly America Act requirements (shipment on United States air carriers, as required), timely and effective implementation of technical assistance, and submission of a written evaluation report within 90 days of expiration of the agreement.

QSP agreements are subject to review and verification by the FAS Compliance, Security and Emergency Planning Division. Upon request, a QSP participant shall provide to CCC the original documents which support the participant's reimbursement claims. CCC may deny a claim for reimbursement if the claim is not supported by adequate documentation.

3. *Reporting.* A written evaluation report must be submitted within 90 days of the expiration of each participant's QSP agreement. Evaluation reports should address all performance measures that were presented in the proposal.

VII. Agency Contact(s)

For additional information and assistance, contact the Program Policy Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Portals Office Building, Suite 400, Stop 1042, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *ppsadmin@fas.usda.gov*.

Signed at Washington, DC on December 28, 2006.

W. Kirk Miller,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 07–57 Filed 1–10–07; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability; Inviting Applications for the Technical Assistance for Specialty Crops Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.604.

SUMMARY: The Commodity Credit Corporation (CCC) announces the availability of funding for the 2007 Technical Assistance for Specialty Crops (TASC) Program. The intended effect of this notice is to solicit applications from the private sector and from government agencies for participation in the FY 2007 TASC Program. The TASC Program is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: See paragraph IV.3 below for a detailed description of relevant dates.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Policy Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Portals Office Building, Suite 400, 1250 Maryland Avenue, Stop 1042, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *ppsadmin@fas.usda.gov.* Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/mos/tasc.asp.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The TASC Program is authorized by section 3205 of Pub. L. 107–171. TASC regulations appear at 7 CFR part 1487.

Purpose: The TASC program is designed to assist U.S. organizations by providing funding for projects that address sanitary, phytosanitary, and technical barriers that prohibit or threaten the export of U.S. specialty crops. U.S. specialty crops, for the purpose of the TASC Program, are defined to include all cultivated plants, or the products thereof, produced in the U.S., except wheat, feed grains, oilseeds, cotton, rice, peanuts, sugar, and tobacco.

As a general matter, TASC Program projects should be designed to accomplish the following goals:

- Projects should address a sanitary, phytosanitary, or related technical barrier that prohibits or threatens the export of U.S. specialty crops;
- Projects should demonstrably benefit the represented industry and not a specific company or brand; and,
- Projects must address barriers to U.S. specialty crops that are currently available on a commercial basis and for which barrier removal would predominately benefit U.S. exports.

Examples of expenses that the CCC may agree to reimburse under the TASC Program include, but are not limited to: Initial pre-clearance programs, export protocol and work plan support, seminars and workshops, study tours, field surveys, development of pest lists, pest and disease research, database development, reasonable logistical and administrative support, and travel and per diem expenses.

II. Award Information

In general, all qualified proposals received before the specified application deadlines will compete for funding. The limited funds and the range of barriers affecting the exports of U.S. specialty crops worldwide preclude CCC from approving large budgets for individual projects. In prior years, the amount of funding per proposal has ranged from $13,000 to $250,000, the maximum allowed.

Applicants may submit multiple proposals, and applicants with previously approved TASC proposals may apply for additional funding. However, no TASC participant may have more than three approved projects underway at any given time.

FAS will consider providing either grant funds as direct assistance to U.S. organizations or providing technical assistance on behalf of U.S. organizations, provided that the organization submits timely and qualified proposals. FAS will review all proposals against the evaluation criteria contained in the program regulations.

Funding for successful proposals will be provided through specific agreements. These agreements will incorporate the proposal as approved by FAS. FAS must approve in advance any subsequent changes to the project. FAS or another Federal agency may be involved in the implementation of approved projects.

III. Eligibility Information

1. *Eligible Applicants:* Any United States organization, private or government, may apply to the program. Government organizations consist of federal, state, and local agencies. Private organizations include non-profit trade associations, universities, agricultural cooperatives, state regional trade groups, and private companies.

Foreign organizations, whether government or private, may participate as third parties in activities carried out by U.S. organizations, but are not eligible for funding assistance from the program.

2. *Cost Sharing or Matching:* Applicants are very strongly encouraged to provide matching funds or cost sharing support in this highly competitive program. Such support may be in the form of cash, goods, or in-kind services which are dedicated to the project by the organization that submitted the proposal, private industry entities, host governments, or foreign third parties.

IV. Application and Submission Information

2. *Application through the UES:* Organizations are strongly encouraged to submit applications to FAS through the Unified Export Strategy (UES) application Internet Web site. Using the UES application process reduces paperwork and expedites FAS processing and review cycle. Applicants planning to use the UES Internet-based system must contact FAS Program Policy Staff on (202) 720–4327 to obtain site access information including a user ID and password. The UES Internet-based application, including a Help file containing step-by-step instructions for its use, may be found at the following URL address: *http://www.fas.usda.gov/cooperators.html.*

2. *Application through electronic and hard copies:* Applicants also have the option of submitting electronic versions in the UES format (along with two paper copies) of their applications to FAS on diskette. Applicants who choose to submit applications on diskette can obtain an application format at the following URL address: *http://www.fas.usda.gov/mos/tasc/proposals.html.*

3. *Content and Form of Application Submission:* All TASC proposals must contain complete information about the proposed projects as described in § 1487.5(b) of the TASC Program regulations. In addition, in accordance with the Office of Management and Budget's issuance of a final policy (68 FR 38402) regarding the use of a universal identifier for all Federal grants and cooperative agreements, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711. Incomplete applications and applications which do not otherwise conform to this announcement will not be accepted for review.

4. *Submission Dates and Times:* TASC funding is limited, and in order to assure sufficient resources are available to meet unanticipated needs during the fiscal year, TASC proposals will, generally, only be evaluated on a semi-annual basis. That is:

- Proposals received prior to, but not later than, 5 p.m. (local time Washington, DC) February 12, 2007, will be considered for funding with other proposals received by that date;
- Proposals not approved for funding during the review period will be reconsidered for funding after the review period only if the applicant specifically requests such reconsideration in writing, and only if funding remains available;
- Proposals received after 5 p.m. (local time, Washington, DC) February 12, 2007, will be considered for funding only if funding remains available.

Notwithstanding the foregoing, a proposal may be submitted for expedited consideration under the TASC Quick Response process if, in addition to meeting all requirements of the TASC program, a proposal clearly identifies a time-sensitive activity. In these cases, a proposal may be submitted at any time for an immediate evaluation.

FAS will track the time and date of receipt of all proposals.

5. *Funding Restrictions:* Proposals which request more than $250,000 of CCC funding in a given year will not be considered. Proposals to fund projects that exceed three years in duration will not be considered. No TASC participant may have more than three approved projects underway at any given time. Although funded projects may take place in the United States, all eligible projects must specifically address sanitary, phytosanitary, or technical barriers to the export of U.S. specialty crops.

Certain types of expenses are not eligible for reimbursement by the program, including the costs of market research, advertising, or other promotional expenses. CCC will not reimburse unreasonable expenditures or any expenditure made prior to approval of a proposal.

6. *Other Submission Requirements:* All Internet-based applications must be properly submitted to 5 p.m. (local time in Washington, DC) on February 12, 2007, to be considered.

All applications on diskette (with two accompanying paper copies) and any other applications must be received by 5 p.m. (local time in Washington, DC) on February 12, 2007, at one of the following addresses:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Program Policy Staff, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024.

U.S. Postal Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Program Policy Staff, 1400 Independence Avenue, SE, Stop Code 1042 South Building, Washington, DC 20250–1042.

V. Application Review Information

1. *Criteria:* FAS follows the evaluation criteria set forth in § 1487.6 of the TASC regulations.

2. *Review and Selection Process:* FAS will review proposals for eligibility and will evaluate each proposal against the factors described above. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal based upon these factors, and submit the proposals and funding recommendations to the Deputy Administrator, Office of Trade Programs. FAS may, when appropriate, request the assistance of other U.S. government subject area experts in evaluating the merits of a proposal.

VI. Award Administration Information

1. *Award Notices:* FAS will notify each applicant in writing of the final disposition of its application. FAS will send an approval letter and agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including levels of funding, timelines for implementation, and written evaluation requirements.

2. *Administrative and National Policy Requirements:* The agreements will incorporate the details of each project as approved by FAS. Each agreement will identify terms and conditions pursuant to which CCC will reimburse certain costs of each project. Agreements will also outline the responsibilities of the participant. Interested parties should review the TASC Program regulations found at 7 CFR part 1487 in addition to this announcement.

3. *Reporting:* TASC participants are subject to the reporting and recordkeeping requirements described in 7 CFR part 3019. In addition, participants are required to submit a written report(s), on no less than an annual basis, and a final report, each of which evaluates their TASC project using the performance measures presented in the approved proposal.

VII. Agency Contact

For additional information or assistance, contact the Program Policy Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *ppsadmin@fas.usda.gov.*

Signed at Washington, DC on December 28, 2006.

W. Kirk Miller,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 07–58 Filed 1–10–07; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by March 12, 2007.

FOR FURTHER INFORMATION CONTACT: Richard C. Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5170 South Building, Washington, DC 20250–1522. Telephone: (202) 720–8818. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Richard C. Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, Room 5170 South Building, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202)720–4120.

Title: Assistance to High Energy Cost Rural Communities.

OMB Control Number: 0572–0136.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Electrification Act of 1936 (RE Act) (7 U.S.C. 901 *et seq.*) was amended in November 2000 to create a new program to help rural communities with extremely high energy costs (Pub. L. 106–472). Under this new section 19 of the RE Act (7 U.S.C. 918a), the Secretary of Agriculture, through the Rural Utilities Service (RUS), is authorized to provide financial assistance through the following three funding streams:

• *High Energy Cost Grants and Loans.* RUS may provide grants and loans for energy generation, transmission and distribution facilities serving communities with average home energy costs in excess of 275 percent of the national average. Many of these communities are in rural Alaska, but there are other eligible areas nationwide. Eligible applicants include persons, State agencies (including

Territories), entities organized under State law, and Indian tribes. Only grant funds have been appropriated to date.

• *Denali Commission Grants and Loans.* RUS may provide grants and loans to the Denali Commission, a Federal agency, for energy generation, transmission, and distribution facilities serving extremely high energy cost rural and remote communities in Alaska. Annual Denali grants are awarded and advanced as soon as funds are available to RUS. The Denali Grants are governed by a Memorandum of Understanding between the two agencies and by individual Grant Agreements. Only grant funds have been appropriated to date.

• *Bulk Fuel Revolving Fund Grants.* RUS may provide grants to State entities in existence as of November 9, 2000 to support revolving loan funds to improve the efficiency of fuel purchases for communities where the fuel cannot be delivered by surface transportation. Only Alaska and a handful of other States are eligible.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4.53 hours per response.

Respondents: Business or other for-Profit, Not-for-profit institutions, State, local or tribal government.

Estimated Number of Respondents: 45.

Estimated Number of Responses per Respondent: 4.11.

Estimated Total Annual Burden on Respondents: 828.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853, FAX: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: January 4, 2007.

Curtis M. Anderson,

Deputy Administrator, Rural Utilities Service.

[FR Doc. E7–204 Filed 1–10–07; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by March 12, 2007.

FOR FURTHER INFORMATION CONTACT: Richard C. Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5170 South Building, Washington, DC 20250–1522. Telephone: (202) 720–8818. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Richard C. Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, Room 5170 South Building, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202)720–4120.

Title: Weather Radio Transmitter Grant Program.

OMB Control Number: 0572–0124.

Type of Request: Extension of a currently approved information collection.

Abstract: The National Weather Service operates an All Hazards Early Warning System that alerts people in areas covered by its transmissions of approaching dangerous weather and other emergencies. The National Weather Service can typically provide warnings of specific weather dangers up to fifteen minutes prior to the event. At present, this system covers all major metropolitan areas and many smaller cities and towns; however, many rural areas lack NOAA Weather Radio coverage. The Rural Development Utilities Programs' Service Weather Radio Transmitter Grant Program finances the installation of new transmitters to extend the coverage of the National Oceanic and Atmospheric Administration's Weather Radio system (NOAA Weather Radio) in rural America thereby promoting public safety and awareness. The President of the United States and the United States Congress have made $5 million in grant funds available to facilitate the expansion of NOAA Weather Radio system coverage into rural areas that are not covered or are poorly covered at this time. This grant program will continue to provide grant funds, on an expedited basis, for use in rural areas and communities of 50,000 or less inhabitants. Grant funds are available immediately and applications will be processed on a first-come, first-served basis until the appropriation is used in its entirety. Grant funds are used to purchase and install NOAA Weather Radio transmitters and antennas that are combined with donated tower space and other site resources to establish new rural NOAA Weather Radio transmitters. Eligible applicants must be non-profit corporations or associations (including Rural Development Utilities Programs electric and telecommunications borrower cooperatives), units of local or state government, or Federally-recognized Indian tribes.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6 hours per response.

Respondents: Not-for-profit institutions, State, local or tribal government.

Estimated Number of Respondents: 113.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 678.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853, FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: January 4, 2007.

Curtis M. Anderson,

Deputy Administrator, Rural Utilities Service.

[FR Doc. E7–205 Filed 1–10–07; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Earth Resources, Inc.: Notice of Availability of an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of an Environmental Assessment for public review.

SUMMARY: The Rural Utilities Service, an agency which administers the U.S. Department of Agriculture's Rural Development Utilities Programs (USDA Rural Development) has prepared an Environmental Assessment (EA) related to possible financial assistance to Earth Resources, Inc. (ERI) for the proposed construction of Plant Carl, a 20-megawatt electric power generation plant proposed to be built by Earth Resources, Inc. (ERI) in Franklin County, Georgia. ERI is requesting the USDA Rural Development to provide financial assistance for the proposed project.

DATES: Written comments on this Notice must be received on or before February 12, 2007.

ADDRESSES: The EA will be available for public review at the USDA Rural Development, Utilities Programs, 1400 Independence Avenue, SW., Mail Stop 1571, Washington, DC 20250–1571; at the USDA Rural Development's Web site—*http://www.usda.gov/rus/water/ees/ea.htm*; at ERI's headquarters office located at 774 Highway 320, Carnesville, Georgia 30521; and two Franklin County Public Library locations:

Lavonia Carnegie Library, 28 Hartwell Road, Lavonia, Georgia 30553.

Royston Public Library, 684 Franklin Springs Street, Royston, Georgia 30662.

Written comments should be sent to: Ms. Stephanie Strength, Environmental Protection Specialist, USDA, Rural Development, Utilities Programs, Engineering and Environmental Staff, 1400 Independence Avenue, SW., Mail Stop 1571, Washington, DC 20250–1571, or e-mail: *Stephanie.strength@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Stephanie Strength, Environmental Protection Specialist, USDA, Rural Development, Utilities Programs, Engineering and Environmental Staff, 1400 Independence Avenue, SW., Mail Stop 1571, Washington, DC 20250–1571, Telephone: (202) 720–0468. Ms. Strength's e-mail address is *stephanie.strength@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The proposed project area is located in Franklin County, Georgia. The proposal will be sited on a previously graded five acre portion of a 139-acre property zoned Commercial and Industrial. The proposal includes the generation plant and accessory structures, fuel storage and handling areas, traffic circulation and parking areas, waste holding areas, and stormwater management features. Approximately ten additional acres will be devoted to a spray application water treatment system for which no new clearing and grading will be required. The remaining acres will be maintained as natural area buffers.

Alternatives considered by the USDA Rural Development and ERI included: (a) No action, (b) alternate locations, (c) alternate methods to provide service, (d) alternate construction methods and materials, (e) alternate designs, (f) load management and energy conservation options, and (g) alternate generation technologies. An Environmental Report that described the proposed project in detail and discussed its anticipated environmental impacts has been accepted by USDA Rural Development as the EA for the proposed project. The EA is available for public review at addresses provided above in this Notice.

Questions and comments should be sent to Ms. Stephanie Strength, USDA Rural Development at the mailing or e-mail addresses provided above in this Notice. The USDA Rural Development should receive comments on the EA in writing by February 12, 2007 to ensure that they are considered in the environmental impact determination.

Should the USDA Rural Development determine, based on the EA, that the impacts of the construction and operation of the project would not have a significant environmental impact, it will prepare a Finding of No Significant Impact. Public notification of a Finding of No Significant Impact would be published in the **Federal Register** and in newspapers with circulation in the project area.

Any final action by the USDA Rural Development related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal, State and local environmental laws and regulations, and completion of the environmental review requirements as prescribed in the USDA Rural Development's Environmental Policies and Procedures (7 CFR part 1794).

Mark S. Plank,

Director, Engineering and Environmental Staff, USDA/Rural Development/Utilities Programs.

[FR Doc. E7–217 Filed 1–10–07; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Norborne Baseload Plant

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of Draft Environmental Impact Statement and notice of public meetings.

SUMMARY: The Rural Utilities Service (RUS), an agency which administers the U.S. Department of Agriculture's Rural Development Utilities Programs (USDA/RD) is issuing a Draft Environmental Impact Statement (EIS) for the Norborne Baseload Plant (Norborne Plant). The Draft EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (U.S.C. 4231 *et seq.*) in accordance with the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508) and USDA Rural Utilities Service (RUS) regulations (7 CFR part 1794). The U.S. Army Corps of Engineers is a cooperating agency for this Draft EIS. The purpose of the EIS is to evaluate the potential environmental impacts of and alternatives to the Associated Electric Cooperative, Inc. (AECI) application for a USDA/RD loan to construct the proposed 660 megawatt (MW) coal-fired power plant in Carroll County, Missouri, near the town of Norborne. AECI is proposing to use a coal combustion technology known as supercritical pulverized coal, along with other proposed pollution controls collectively known as Best Available Control Technology (BACT). The primary components of the Proposed Action include the following:

- Power plant and associated facilities and operations, including the plant cooling system, waste management operations, lighting, and fire protection and other safety systems.
- 345–kV substation with associated transmission line modifications and communications facilities.
- New and modified substations.
- Approximately 134 miles of new 345–kV transmission lines to connect with AECI's existing network.

- Water supply system consisting of groundwater wells and associated pipeline.
- Utility waste landfill.
- New rail access from existing mainline railroads.
- Actions to reduce or prevent environmental impacts.

The Proposed Action has been identified as USDA/RD's Preferred Alternative.

DATES: With this notice, USDA/RD invites any affected Federal, State, and local agencies and other interested persons to comment on the Draft EIS. Written comments on this Draft EIS will be accepted for 45 days following publication of the Environmental Protection Agency's notice of availability for this Draft EIS in the **Federal Register**.

USDA/RD will hold public meetings at three locations in February 2007: February 6 at the Knights of Columbus Building, 311 E. Patterson Avenue, Salisbury, MO; February 7 at the Best Western State Fair Inn, South 65 Highway and 32nd Street, Sedalia, MO; and February 8 at the Rupe Community Center, 710 Harvest Hills Road, Carrollton, MO. The meetings will begin at 6:30 p.m. and will include a presentation summarizing the findings of the Draft EIS and the opportunity for attendees to submit both oral and written comments. In accordance with 40 CFR 1503.1, Inviting Comments, the purpose of the meeting will be to solicit comments from interested parties on the Draft EIS for the Norborne Plant. A copy of the Draft EIS can be obtained or viewed online at *http://www.usda.gov/rus/water/ees/eis.htm.* Copies of the Draft EIS will also be available for public review at the following locations (hours vary; contact individual repositories for available times):

Boonslick Regional Library Sedalia Branch, 219 W. 3rd Street, Sedalia, MO 65301, Phone: 660/827–7323.

Boonslick Regional Library, 950 E. Main Street, Warsaw, MO 65355, Phone: 660/438–5211.

Cameron Public Library, 312 N. Chestnut Street, Cameron, MO 64429, Phone: 816/632–2311.

Carnegie Library, 316 Massachusetts Street, St. Joseph, MO 64504, Phone: 816/238–0526.

Carrollton Public Library, 1 N. Folger Street, Carrollton, MO 64633, Phone: 660/542–0183.

Concordia Library, 709 S. Main Street, Concordia, MO 64020, Phone: 660/463–2277.

DeKalb County Public Library, 105 N. Polk Street, Maysville, MO 64469, Phone: 816/449–5695.

Dulany Memorial Library, 501 S. Broadway, Salisbury, MO 65281, Phone: 660/388–5712.

Downtown Library, 927 Felix Street, St. Joseph, MO 64501, Phone: 816/232–7729.

East Hills Library, 502 N. Woodbine Road, Suite A., St. Joseph, MO 64506, Phone: 816/236–2136.

Hale Library & Museum, 321 Main Street, Hale, MO 64643, Phone: 660/565–2617.

Lexington Library, 1008 Main Street, Lexington, MO 64067, Phone: 660/259–3071.

Little Dixie Regional Library, 111 N. 4th Street, Moberly, MO 65270, Phone: 660/263–4426.

Macon Public Library, 210 N. Rutherford Street, Macon, MO 63552, Phone: 660/385–3314.

Marshall Public Library, 214 N. Lafayette, Marshall, MO 65340, Phone: 660/886–3391.

Maryville Public Library, 509 N. Main Street, Maryville, MO 64468, Phone: 660/582–5281.

Mid-Continent Public Library, Excelsior Springs Branch, 1460 Kearney Road, Excelsior Springs, MO 64024–1746, Phone: 816/630–6721.

Mid-Continent Public Library, Kearney Branch, 100 S. Platte-Clay Way, Kearney, MO 64060–7640, Phone: 816/628–5055.

Mound City Public Library, 205 E. 6th Street, Mound City, MO 64470, Phone: 660/442–5700.

Norborne Public Library, 109 E. Second Street, Norborne, MO 64668, Phone: 660–593–3514.

Oregon Public Library, 103 S. Washington Street, Oregon, MO 64473, Phone: 660/446–3586.

Ray County Library, 215 E. Lexington Street, Richmond, MO 64085, Phone: 816/776–5104.

Rolling Hills Consolidated Library: Eastside, 1904 N. Belt Highway, St. Joseph, MO 64506, Phone: 816/232–5479.

Rolling Hills Consolidated Library: Savannah, 514 W. Main Street, Savannah, MO 64485, Phone: 816/324–4569.

Robertson Memorial Library, 19 W. 20th Street, Higginsville, MO 64037, Phone: 660/584–2880.

Sedalia Public Library, 311 W. Third Street, Sedalia, MO 65301, Phone: 660/826–1314.

Sweet Springs Public Library, 217 Turner Street, Sweet Springs, MO 65351, Phone: 660/335–4314.

Washington Park Library, 1821 N. Third Street, St. Joseph, MO 64505, Phone: 816/232–2052.

ADDRESS FOR FURTHER INFORMATION: To send comments or for more information, contact: Stephanie A. Strength, USDA, Rural Development, Utilities Programs, 1400 Independence Avenue, SW., Mail Stop 1570, Room 2244, Washington, DC 20250–1570, telephone (202) 720–0468, fax (202) 720–0820, or e-mail: *Stephanie.strength@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION: AECI is an electric generation and transmission cooperative, a non-profit utility owned by its members. It provides wholesale electricity and related services to six electric generation and transmission cooperatives that in turn provide electricity to 51 distribution cooperatives. AECI's service area includes most of Missouri outside of urban areas, part of northeast Oklahoma, and a small part of southeast Iowa. AECI is contractually obligated to provide all the electric power needs of the cooperative member systems it serves. AECI does not have the capacity to meet all of its members' power needs beyond 2013.

After considering various ways to meet those future needs, AECI identified the construction of a new coal-fired power plant near Norborne, Missouri as its best course of action. This Draft EIS considered 17 technology alternatives, several alternatives that did not include AECI construction of a new baseload plant, adding capacity at an existing AECI facility, and a number of siting alternatives as means of responding to the identified purpose and need for the project. These alternatives were evaluated in terms of cost-effectiveness, technical feasibility, and environmental soundness. The Draft EIS analyzes in detail the Proposed Action (Norborne Plant and related facilities), essentially the same plant and ancillary facilities at a different location (Big Lake Site), an alternative technology (integrated gasification combined cycle (IGCC), and the No Action Alternative. Under the No Action Alternative, the project would not be constructed.

With actions that have been incorporated into the Proposed Action to reduce or avoid impact, no significant adverse impacts are anticipated. Other adverse but non-significant impacts of the Proposed Action include those on soils, water, air, fisheries and wildlife, noise, transportation, floodplains, wetlands, and farmland. Impacts associated with the use of IGCC are similar.

Use of the Big Lake Site would result in impacts similar to those of the Proposed Action for most resources, but, when compared with the Proposed Action, would likely result in greater adverse impacts on floodplains, recreation and public lands and cultural

resources; and potentially significant impacts on fisheries and wildlife (migratory birds), threatened and endangered species (bald eagles), and environmental justice (Native Americans).

AECI's Proposed Action has been identified as USDA/RD's Preferred Alternative. The Preferred Alternative has the potential to have non-significant impacts on wetlands and floodplains.

Any final action by the USDA Rural Development related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal, state and local environmental laws and regulations, and completion of the environmental review requirements as prescribed in the USDA Rural Utilities Services' Environmental Policies and Procedures (7 CFR part 1794).

Dated: December 29, 2006.

James R. Newby,

Assistant Administrator, USDA/Rural Development/Electric Program.

[FR Doc. E7–226 Filed 1–10–07; 8:45 am]

BILLING CODE 3410–15–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Wednesday, January 10, 2007, 2–3:15 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Carol Booker at (202) 203–4545.

Dated: January 4, 2007.

Carol Booker,

Legal Counsel.

[FR Doc. 07–96 Filed 1–9–07; 11:50 am]

BILLING CODE 8230-01–M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Senior Executive Service Performance Review Board

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Notice.

SUMMARY: This notice announces changes in the membership of the Senior Executive Service Performance Review Board for the Chemical Safety and Hazard Investigation Board (CSB).

DATES: Effective January 11, 2007.

FOR FURTHER INFORMATION CONTACT: Christopher Kirkpatrick, Office of General Counsel, (202) 261–7600.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c)(1) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, a performance review board (PRB). The PRB reviews initial performance ratings of members of the Senior Executive Service (SES) and makes recommendations on performance ratings and awards for senior executives. Because the CSB is a small independent Federal agency, the SES members of the CSB's PRB are being drawn from other Federal agencies.

The Chairperson of the CSB has appointed the following individuals to the CSB Senior Executive Service Performance Review Board:

PRB Member—Lawrence W. Roffee (Executive Director, United States Access Board).

PRB Member—Leon A. Wilson, Jr. (Executive Director, Committee for Purchase From People Who Are Blind or Severely Disabled).

The above-named members of the CSB PRB replace Ronald S. Battocchi (formerly General Counsel, National Transportation Safety Board) and Elizabeth S. Woodruff (formerly General Counsel, Federal Retirement Thrift Investment Board), whose service on the PRB has ended. Their appointments were originally announced in the **Federal Register** of December 3, 2004 (69 FR 70224).

John S. Bresland (CSB Board Member) continues as Chair of the PRB, as announced in the **Federal Register** of October 8, 2003 (68 FR 58063).

This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Dated: January 4, 2007.

Raymond C. Porfiri,

Deputy General Counsel.

[FR Doc. E7–224 Filed 1–10–07; 8:45 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 49–2006]

Foreign-Trade Subzone 133D—Davenport, IA; Expansion of Manufacturing Authority (Articulated Dump Trucks)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Deere & Company (Deere), operator of Subzone 133D, requesting authority for the manufacture of articulated dump trucks under FTZ procedures at the company's construction equipment manufacturing plant in Davenport, Iowa. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 28, 2006.

Subzone 133D (2.2 million square feet, 1,300 employees) was approved by the Board in 2001 at one site located at Highway 61 and Mt. Joy Road in Davenport (Board Order 1180, 66 FR 40673, 8/3/01). Deere's original manufacturing authority was granted for the manufacture of construction equipment (four-wheel-drive loaders, motor graders and wheeled log skidders). Deere is now requesting authority to manufacture up to several hundred articulated dump trucks (also known as haulers) annually under zone procedures. The company indicates that the foreign inputs that may be admitted under FTZ procedures include transmissions, axles, gear boxes, cabs and engines. Duty rates on the proposed imported components currently range from 2.5 to 4.0 percent.

This application requests authority for Deere to conduct the activity under FTZ procedures, which would exempt Deere from Customs duty payments on the foreign components used in export production. Approximately 12 percent of production is exported. On domestic sales, the company could choose the lower duty rate that applies to the finished product (duty free) for the

foreign components noted above. The application indicates that FTZ-related savings would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address listed below. The closing period for their receipt is March 12, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 27, 2007).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: Quad-City Foreign-Trade Zone, Inc., 1830 Second Avenue, Suite 200, Rock Island, Illinois 61201; and, Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2814B, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Dated: December 28, 2006.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–267 Filed 1–10–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 43–2005]

Review of Foreign–Trade Zone Activity, Foreign–Trade Subzone 43D, Perrigo Company, Battle Creek Michigan (Ibuprofen–Pharmaceutical Products)

Pursuant to its review of activity related to certain merchandise at Foreign–Trade Subzone 43D, at the pharmaceutical products manufacturing facilities of the Perrigo Company in the Battle Creek, Michigan, area (FTZ Doc. 43–2005, 70 FR 54521, 9/15/05), the FTZ staff has issued a final report. The Executive Secretary is concluding the review without prejudice to any party because the activity at issue in the review is now being considered in the context of notification of a sourcing change pursuant to 15 CFR Sec. 400.28(a)(3). The above–cited staff report will be available for public inspection at the following location: Office of the Executive Secretary, Foreign–Trade Zones Board, U.S. Department of Commerce, Room 2814B, 1401 Constitution Ave. NW., Washington, DC 20230.

Dated: December 29, 2006.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–218 Filed 1–10–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 50–2006]

Foreign-Trade Zone 51—Duluth, MN Application For Foreign-Trade Subzone Status MAPE USA, Inc. (Crankshafts) Cambridge, MN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Duluth Seaway Port Authority, grantee of FTZ 51, requesting special-purpose subzone status for the quality-control, warehousing and distribution facility (crankshafts) of MAPE USA, Inc. (MAPE), located in Cambridge, Minnesota. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 29, 2006.

The facility for which subzone status is proposed is located at 315 South Garfield Street in Cambridge, Minnesota (1.7 acres; 24,590 sq. ft. of enclosed space). The facility (15 employees) may be used under FTZ procedures for quality control, warehousing and distribution of crankshafts.

Zone procedures would allow MAPE to defer Customs duty payments until merchandise is shipped from its facilities to its customers (including as zone-to-zone transfers). The application indicates that the company also anticipates realizing significant logistical/procedural benefits and that savings from FTZ procedures could help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 12, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 27, 2007.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: Minneapolis Export Assistance Center, 100 North 6th Street, Suite 210–C, Minneapolis, MN 55403; and Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2814B, 1401 Constitution Ave. NW., Washington, DC 20230.

Dated: December 29, 2006.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–268 Filed 1–10–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration, North American Free Trade Agreement, Article 1904 NAFTA Panel Reviews; Notice of Panel Decision

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Panel Decision.

SUMMARY: On January 5, 2007, the binational panel issued its decision in the review of the final results of the affirmative antidumping duty determination made by the International Trade Administration (ITA) respecting Certain Softwood Lumber Products from Canada (Secretariat File No. USA–CDA–2002–1904–02). On October 12, 2006, ITA filed with the panel, a Motion to Dismiss this appeal on the ground that the revocation of the antidumping order had rendered this proceeding moot. On October 13, 2006, the Government of Canada filed a separate motion to dismiss on the same ground. Neither motion was filed with the consent of the other parties of this proceeding. On October 23, 2006, two Canadian trade associations opposed the motions to dismiss, asserting that the revocation of the antidumping order did not render this proceeding moot, and urged the Panel to decide pending motions before it, including motions seeking reconsideration of ITA's most recent remand determination. Because the Panel concluded that the October 12, 2006 revocation of the antidumping order rendered moot this proceeding and all motions pending at the time of revocation, the Panel grants the motion to dismiss. A copy of the complete panel decision is available from the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite

2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent bi-national panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

Panel Decision: On January 5, 2007, the binational panel issued its decision in the review of the final results of the affirmative antidumping duty determination made by the International Trade Administration (ITA) respecting Certain Softwood Lumber Products from Canada (Secretariat File No. USA–CDA–2002–1904–02). Because the Panel concluded that the October 12, 2006 revocation of the antidumping order rendered moot this proceeding and all motions pending at the time of revocation, the Panel grants the motion to dismiss.

The panel has directed the Secretary to issue a Notice of Final Panel Action on the 11th day following the issuance of the decision.

Dated: January 8, 2007.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E7–265 Filed 1–10–07; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010807C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a working meeting, which is open to the public.

DATES: The GMT meeting will be held Tuesday, January 30, 2007, from 8:30 a.m. until business for the day is completed. The GMT meeting will reconvene Wednesday, January 31 2007, through Thursday, February 1, 2007, from 8:30 a.m. until business for the day is completed.

ADDRESSES: The GMT meeting will be held at the National Marine Fisheries Service, NOAA Western Regional Center's Sand Point Facility, Northwest Region Office, Building 1, HR Conference Room, 7600 Sand Point Way NE, Seattle, WA 98115–0070, (206) 526–6150.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, Oregon 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Management Coordinator; telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT working meeting is to elect officers (chair and vice-chair), update commercial bycatch models with new West Coast Groundfish Observer Program data, evaluate recreational impact projection models and consider methodology recommendations, consider recommendations for inseason adjustments to 2007 groundfish fisheries, evaluate the updated whiting fishery bycatch projection model, consider recommendations for implementing regulations for the shoreside whiting fishery for 2008 and beyond, plan 2007 GMT meetings and activities, and consider recommendations for developing a trawl individual quota (TIQ) program. The GMT will elect officers during a closed session at the start of the meeting on Tuesday, January 30 and will convene their open public meeting no later than 10:30 a.m. The GMT will discuss TIQ issues and recommendations on Thursday, February 1 regardless of progress on other agenda issues during the first two days of the meeting. The GMT may also address other assignments relating to groundfish management. No management actions will be decided by the GMT. The GMT's role will be development of recommendations for consideration by the Council at its March meeting in Sacramento, California.

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

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least five days prior to the meeting date. Entry to the NOAA Western Regional Center's Sand Point Facility requires visitors to show a valid picture ID and register with security. A visitor's badge, which must be worn while at the NOAA Western Regional Center's Facility, will be issued to non-Federal employees participating in the meeting.

Dated: January 8, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–237 Filed 1–10–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Publication of Housing Price Inflation Adjustment under 50 U.S.C. App. 531

AGENCY: DoD, Office of the Under Secretary (Personnel and Readiness).

ACTION: Notice.

SUMMARY: The Servicemembers Civil Relief Act, as codified at 50 U.S.C. App. 531, prohibits a landlord from evicting a Service member (or the Service member's family) from a residence during a period of military service except by court order. The law as originally passed by Congress applied to dwellings with monthly rents of $2400 or less. The law requires the Department of Defense to adjust this amount annually to reflect inflation, and to publish the new amount in the **Federal Register.** We have applied the inflation index required by the statute. The maximum monthly rental amount for 50 U.S.C. App. 531(a)(1)(A)(ii) as of January 1, 2007, will be $2720.95.

EFFECTIVE DATE: January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Colonel C. Garcia, Office of the Under

Secretary of Defense for Personnel and Readiness, (703) 697–3387.

Dated: January 5, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–66 Filed 1–10–07; 8:45 am]

BILLING CODE 5001–06–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8267–5]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Denver Regional Landfill South, Weld County, CO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a state operating permit.

SUMMARY: This document announces that the EPA Administrator has responded to a citizen petition asking EPA to object to a Clean Air Act (Act) title V operating permit issued by the Colorado Department of Public Health and Environment (CDPHE). Specifically, the Administrator has denied the March 9, 2006 petition submitted by Rocky Mountain Clean Air Action and Jeremy Nichols (Petitioners) to object to the March 1, 2006 operating permit issued to Denver Regional Landfill South (DRLS).

Pursuant to section 505(b)(2) of the Act, a petitioner may seek judicial review of EPA's denial of a petition in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at the EPA Region 8 Office, 999 18th Street, Suite 200, Denver, Colorado 80202–2466, and following the relocation of Region 8 at 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the copies of the final order, the petition, and other supporting information. You may view the hard copies Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting. Additionally, the final order for Denver Regional Landfill South is available electronically at: *http://www.epa.gov/region7/programs/artd/air/title5/petitiondb/petitiondb2006.htm.*

FOR FURTHER INFORMATION CONTACT: Christopher Razzazian, Office of Partnership and Regulatory Assistance, EPA, Region 8, 999 18th Street, Suite 200, Denver, Colorado 80202–2466, (303) 312–6648, *razzazian.christopher@epa.gov*.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to, as appropriate, a title V operating permit proposed by a state permitting authority. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator, within 60 days after the expiration of the EPA review period, to object to a title V operating permit if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period, or the grounds for the issues arose after this period.

On March 9, 2006, EPA received a petition from Petitioners requesting that EPA object to the title V operating permit for Denver Regional Landfill South. The request was based on various allegations related to permit-specific procedural and substantive issues. The following is a summary of the main objections raised by the Petitioners: (1) Colorado did not respond to significant comments Petitioners raised during a second comment period on the permit, which resulted in deficiencies in the permit; (2) the operating permit fails to ensure compliance with the New Source Performance Standards (NSPS) for municipal solid waste landfills; (3) the operating permit fails to ensure compliance with startup, shutdown, and malfunction plan requirements in relation to the control of hazardous air pollutants; and (4) the operating permit contains an inappropriate exemption from emission limits during upset conditions and thus, fails to ensure compliance with applicable requirements related to NAAQS and PSD increments.

On December 22, 2006, the Administrator issued an order denying the petition. The order explains the reasons behind EPA's conclusion to deny the petition for objection on all grounds.

Dated: December 28, 2006.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. E7–251 Filed 1–10–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–8268–1]

Beaches Environmental Assessment and Coastal Health Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of Grants for Implementation of Coastal Recreation Water Monitoring and Public Notification under the Beaches Environmental Assessment and Coastal Health Act.

SUMMARY: The Beaches Environmental Assessment and Coastal Health (BEACH) Act, signed into law on October 10, 2000, amended the Clean Water Act (CWA), to incorporate provisions to reduce the risk of illness to users of the Nation's recreational waters. Section 406(b) of the CWA, as amended by the BEACH Act, authorizes the U.S. Environmental Protection Agency (EPA) to award program development and implementation grants to eligible States, Territories, Tribes, and local governments to support microbiological monitoring of coastal recreation waters, including the Great Lakes, that are adjacent to beaches or similar points of access used by the public. BEACH Act grants also support development and implementation of programs to notify the public of the potential exposure to disease-causing microorganisms in coastal recreation waters. EPA encourages coastal and Great Lakes States and Territories to apply for BEACH Act grants for program implementation (referred to as implementation grants) to implement effective and comprehensive coastal recreation water monitoring and public notification programs. EPA also encourages coastal and Great Lakes Tribes to apply for BEACH Act grants for program development (referred to as development grants) to develop effective and comprehensive coastal recreation water monitoring and public notification programs.

DATES: States and Territories must submit applications on or before April 11, 2007. Eligible Tribes should notify the relevant Regional BEACH Act grant coordinator of their interest in applying on or before March 12, 2007. Upon receipt of a Tribe's notice of interest,

EPA will establish an appropriate application deadline.

ADDRESSES: You must send your application to the appropriate Regional Grant Coordinator listed in this notice under **SUPPLEMENTARY INFORMATION** Section VI.

FOR FURTHER INFORMATION CONTACT: Rich Healy, 1200 Pennsylvania Ave., NW., (4305T), Washington, DC, 20460, 202–566–0405, *healy.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Grant Program

What Is the Statutory Authority for BEACH Act Grants?

The general statutory authority for BEACH Act grants is section 406(b) of the Clean Water Act, as amended by the BEACH Act, Pub. L. No. 106–284, 114 Stat. 970 (2000). It provides: ''The Administrator may make grants to States and local governments to develop and implement programs for monitoring and notification for coastal recreation waters adjacent to beaches or similar points of access that are used by the public.'' CWA section 406(b)(2)(A), however, limits EPA's ability to award implementation grants only to those States, Tribes and Territories that meet certain requirements (see Section II, Funding and Eligibility, below for information on specific requirements).

What Activities Are Eligible for Funding Under the FY 2007 Grants?

In fiscal year 2007, EPA intends to award grants authorized under CWA section 406(b) to eligible States and Territories to support the implementation of coastal recreation water monitoring and public notification programs that are consistent with EPA's required performance criteria for implementation grants. Also in fiscal year 2007, EPA intends to award development grants to eligible Tribes to support the development of coastal recreation water monitoring and public notification programs that are consistent with EPA's performance criteria for grants. EPA published the required performance criteria for grants in its National Beach Guidance and Required Performance Criteria for Grants (EPA–823–B–02–004), on July 19, 2002. A notice of availability of the document was published in the **Federal Register** (67 FR 47540, July 19, 2002). This document can be found on EPA's Web site at *http://www.epa.gov/waterscience/beaches/grants.* Copies of the document may also be obtained by writing, calling, or e-mailing: Office of Water Resources Center, U.S. Environmental Protection Agency, Mail Code 4100T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. (Phone: 202–566–1731 or e-mail: *center.water-resource@epa.gov*).

II. Funding and Eligibility

Who Is Eligible To Apply for these Implementation Grants?

Coastal and Great Lake States that meet the requirements of CWA section 406(b)(2)(A) are eligible for grants in fiscal year 2007 to implement monitoring and notification programs. The definition of the term ''State'' in CWA section 502 includes the District of Columbia, and current U.S. Territories: the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Are Local Governments Eligible for Funding?

CWA section 406(b)(2)(B) authorizes EPA to make a grant to a local government for implementation of a monitoring and notification program only if, after the one-year period beginning on the date of publication of the performance criteria (July 19, 2002), EPA determines that the State within which the local government has jurisdiction is not implementing a program that meets the requirements of CWA section 406(b), which includes a requirement that the program is consistent with the performance criteria in National Beach Guidance and Required Performance Criteria for Grants. Local governments may contact their EPA Regional office for further information about BEACH Act grants.

How May Tribes Apply for BEACH Act Development Grants and How Much Funding is Available for Tribes?

Section 518(e) of the CWA authorizes EPA to treat eligible Indian Tribes in the same manner as States for the purpose of receiving CWA section 406 grant funding. For fiscal year 2007, EPA will make $50,000 available for development grants to eligible Tribes. In order to be eligible for a CWA section 406 development grant, a Tribe must have coastal recreation waters adjacent to beaches or similar points of access that are used by the public. The phrase ''coastal recreation waters'' is defined in CWA section 502(21) to mean the Great Lakes and marine coastal waters (including coastal estuaries) that are designated under CWA section 303(c) for use for swimming, bathing, surfing, or similar water contact activities. The statute explicitly excludes from the definition inland waters and waters upstream of the mouth of a river or stream having an unimpaired natural connection with the open sea. In addition, a tribe must demonstrate that it meets the ''treatment in the same manner as a State'' (TAS) criteria contained in CWA section 518(e) for purposes of receiving a section 406 beaches grant. To demonstrate TAS, the Tribe must show that it: (1) Is federally recognized; (2) has a governing body carrying out substantial governmental duties and powers; (3) will be exercising functions pertaining to waters within reservation; and (4) is reasonably expected to be capable of carrying out the functions consistent with the CWA and all applicable regulations. EPA encourages those Tribes with coastal recreation waters to contact their regional Beach Act grant coordinator for further information regarding the application process as soon as possible.

Are There Any Additional Eligibility Requirements and Grant Conditions Applicable to States, Tribes, and Territories?

Yes, there are additional eligibility requirements and grant conditions. First, CWA section 406(b)(2)(A) provides that EPA may only award a grant to implement a monitoring and notification program if:

(I) the program is consistent with the performance criteria published by the Administrator under CWA section 406(a);

(ii) the State or local government prioritizes the use of grant funds for particular coastal recreation waters based on the use of the water and the risk to human health presented by pathogens or pathogen indicators;

(iii) the State or local government makes available to the Administrator the factors used to prioritize the use of funds under clause (ii);

(iv) the State or local government provides a list of discrete areas of coastal recreation waters that are subject to the program for monitoring and notification for which the grant is provided that specifies any coastal recreation waters for which fiscal constraints will prevent consistency with the performance criteria under CWA section 406(a); and

(v) the public is provided an opportunity to review the program through a process that provides for public notice and an opportunity for comment.

Second, CWA section 406(c) requires that as a condition of receipt of a CWA section 406 grant, a State or local government program for monitoring and notification must identify:

(1) Lists of coastal recreation waters in the State, including coastal recreation

waters adjacent to beaches or similar points of access that are used by the public;

(2) in the case of a State program for monitoring and notification, the process by which the State may delegate to local governments responsibility for implementing the monitoring and notification program;

(3) the frequency and location of monitoring and assessment of coastal recreation waters based on—

(A) the periods of recreational use of the waters;

(B) the nature and extent of use during certain periods;

(C) The proximity of the waters to known point sources and nonpoint sources of pollution; and

(D) Any effect of storm events on the waters;

(4) (A) The methods to be used for detecting levels of pathogens and pathogen indicators that are harmful to human health; and

(B) The assessment procedures for identifying short-term increases in pathogens and pathogen indicators that are harmful to human health in coastal recreation waters (including increases in relation to storm events);

(5) Measures for prompt communication of the occurrence, nature, location, pollutants involved, and extent of any exceeding of, or likelihood of exceeding, applicable water quality standards for pathogens and pathogen indicators to—

(A) The Administrator, in such form as the Administrator determines to be appropriate; and

(B) A designated official of a local government having jurisdiction over land adjoining the coastal recreation waters for which the failure to meet applicable standards is identified;

(6) Measures for the posting of signs at beaches or similar points of access, or functionally equivalent communication measures that are sufficient to give notice to the public that the coastal recreation waters are not meeting or are not expected to meet applicable water quality standards for pathogens and pathogen indicators; and

(7) Measures that inform the public of the potential risks associated with water contact activities in the coastal recreation waters that do not meet applicable water quality standards.

Third, as required by CWA section 406(b)(3)(A), a State recipient of a CWA section 406 grant must submit to EPA, in such format and at such intervals as EPA determines to be appropriate, a report that describes:

(1) Data collected as part of the program for monitoring and notification as described in section 406(c), and

(2) Actions taken to notify the public when water quality standards are exceeded. States must submit to EPA both the monitoring and notification reports for any beach season by January 31 of the year following the beach season. For the 2007 beach season, the deadline for states to submit these reports is January 31, 2008. EPA first established this report submission deadline in the **Federal Register** notice for the fiscal year 2003 grants (68 FR 15446, 15449 (March 31, 2003)).

Fourth, States are required to report to EPA, latitude, longitude and mileage data on:

(1) The extent of beaches and similar points of public access adjacent to coastal recreation waters, and

(2) The extent of beaches that are monitored.

EPA first established this requirement in the **Federal Register** notice for the fiscal year 2003 grants (68 FR 15446, 15447 (March 31, 2003)). EPA is continuing this requirement in order to capture any changes States may make to their beach monitoring program. States must report to EPA any changes to either the extent of their beaches or similar points of access, or to the extent of their beaches that are monitored.

How Much Funding Is Available?

For fiscal year 2007, the total available for BEACH Act grants is expected to be $9,900,000 subject to the availability of funds. EPA expects to award $9,850,000 in implementation and development grants to eligible States and Territories. In addition, EPA intends to award $50,000 in development grants to eligible Tribes.

How Will the Funding for States and Territories Be Allocated?

For fiscal year 2007, EPA expects to award grants to all eligible States and Territories who apply for funding based on an allocation formula that the Agency developed for allocating BEACH Act grant funds in 2002. EPA consulted with various States, the Coastal States Organization, and the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) to develop this formula. It uses three factors: (1) Beach season length, (2) beach miles, and (3) beach use. As discussed in more detail below, EPA is reviewing the allocation formula in an effort to improve it.

(1) Beach Season Length

EPA selected beach season length as a factor because it determines the part of the year when a government would conduct its monitoring program. The longer the beach season, the more resources a government would need to conduct monitoring. The Agency obtained the information on the length of a beach season from the National Health Protection Survey of Beaches for the States or Territories that submitted a completed survey. EPA estimated the beach season length for Alaska based on air and water temperature, available information on recreation activities, and data from the 1993 National Water Based Recreation Survey. EPA grouped the States and U.S. Territories into four categories of beach season lengths:

For beaches in:	The beach season category is:
Alaska	< 3 months.
Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Virginia, Washington, Wisconsin.	3–4 months.
Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina.	5–6 months.
American Samoa, California, Florida, Guam, Hawaii, Northern Mariana, Puerto Rico, Texas, U.S. Virgin Islands.	9–12 months.

(2) Beach Miles

EPA selected miles of beach as a factor because it determines the geographical extent over which a government would conduct monitoring. The more miles of beaches, the more resources a government would need to conduct monitoring. EPA does not have beach mileage data in a format that can be used for the allocation formula at this time. Therefore, in the interim, EPA is using shoreline miles as a surrogate for beach miles in the allocation formula. Shoreline miles data overestimates beach miles in some States and Territories; however, EPA and States agreed that this is the best way to estimate beach miles available at this time. EPA used the National Oceanic and Atmospheric Administration (NOAA) publication, The Coastline of the United States, to quantify shoreline miles. EPA is in the process of reviewing the appropriateness of shoreline and beach miles data as factors in the allocation formula.

(3) Beach Use

EPA selected beach use as a factor because it reflects the magnitude of potential human exposure to pathogens at recreational beaches. Greater use of

beaches makes it more likely that a government would need to increase monitoring frequency due to the larger number of people potentially exposed to pathogens. EPA continues to use the coastal population of counties (based on the 2000 Census data) to quantify the coastal population that is wholly or partially within the State's or Territory's legally defined coastal zone, as a surrogate for actual beach usage. EPA is reviewing the appropriateness of coastal county population and beach use data as factors in the allocation formula.

The grants allocation formula sums three parts. The first part is a base amount for all States and Territories that varies with the length of the beach season. The second part distributes 50% of the total remaining funds based on the ratio of shoreline miles in a State or Territory to the total length of shoreline miles. For example, if a State has 4% of the total coastal and Great Lakes shoreline, that State would receive 4% of 50% (or 2%) of total funds remaining after the Agency distributed the funds for part one. The third part distributes the remaining 50% based on the ratio of coastal population in a State or Territory to the total coastal population. For example, if a State has 2% of the total coastal and Great Lakes population, that State would receive 2% of 50% (or 1%) of the total funds remaining after the Agency distributes the funds for the first two parts. The following table summarizes the allocation formula:

	The part of the allocation is:
Beach season length	< 3 months: $150,000 (States and Territories with a season <3 months receive season-based funding only.) 3–4 months: $200,000 5–6 months: $250,000 >6 months: $300,000
Shoreline miles.	50% of funds remaining after allocation of season-based funding.
Coastal population.	50% of funds remaining after allocation of season-based funding.

For 2007, the total available for BEACH Act grants to States and Territories is expected to be $9,850,000 million. This is an estimate pending the Agency's fiscal year 2007 appropriation. EPA will announce on its Web site any changes to the total amount available for BEACH Act grants, at *http://www.epa.gov/waterscience/beaches/grants/.* Assuming all 35 States and Territories with coastal recreation waters apply and meet the statutory eligibility requirements for implementation grants (and have met the statutory grant conditions applicable to previously awarded section 406 grants), the distribution of the funds for year 2007 is expected to be:

For the State or Territory of:	The year 2007 allocation is expected to be:
Alabama	$262,510
Alaska	$150,000
American Samoa	$302,200
California	$522,920
Connecticut	$224,010
Delaware	$211,040
Florida	$534,700
Georgia	$287,200
Guam	$302,680
Hawaii	$323,660
Illinois	$244,120
Indiana	$205,960
Louisiana	$325,370
Maine	$256,240
Maryland	$271,150
Massachusetts	$255,940
Michigan	$280,610
Minnesota	$204,390
Mississippi	$257,720
New Hampshire	$204,660
New Jersey	$279,870
New York	$352,830
North Carolina	$303,920
Northern Marianas	$303,430
Ohio	$224,300
Oregon	$229,570
Pennsylvania	$223,150
Puerto Rico	$329,240
Rhode Island	$212,990
South Carolina	$297,940
Texas	$385,180
U.S. Virgin Islands	$303,270
Virginia	$279,020
Washington	$272,250
Wisconsin	$225,960

In the **Federal Register** notice announcing the availability of fiscal year 2006 grants EPA declared its intention to consider revising the grant allocation formula (71 FR 1744, 1746 (January 11, 2006)). EPA began this process on February 15, 2006, when it convened a State/EPA workgroup to evaluate the current allocation formula. In order to garner input from the widest available audience, EPA intends to propose for broad input a revised allocation formula in calendar year 2008. Although the planning for this proposal is still in the early stages, EPA expects that one component of any revised allocation formula will include an incentive to encourage more timely expenditure of grant funds by individual States and Territories. EPA intends to consult further with interested stakeholders before making any changes to improve the allocation formula in the future. At this time, EPA expects that any change would be implemented when EPA awards BEACH Act grants for fiscal year 2010.

What if a State Does Not Apply or Does Not Qualify for Funding?

EPA expects that all 35 States and Territories will apply. If fewer than 35 States and Territories apply for the allocated amount, or if any applicant fails to meet the statutory eligibility requirements (or the statutory conditions applicable to previously awarded section 406 grants), then EPA will distribute available grant funds to eligible States and Territories in the following order:

(1) States that meet the eligibility requirements for implementation grants and that have met the statutory conditions applicable to previously awarded section 406 grants will be awarded the full amount of funds allocated to the State under the formula described above.

(2) States that have not met the requirements for implementation grants but have met the statutory requirements and grant conditions applicable to previously awarded section 406 grants may receive grants for continued program development. Any program development grants that the Agency awards will be for the limited purpose of completing work needed to qualify for implementation grants. Therefore, we expect that funding levels for continued program development grants will be lower than the amount allocated for program implementation grants.

(3) EPA may award program implementation grants to local governments in States that the Agency determines have not met the requirements for implementation grants.

(4) Should there be any remaining funds, EPA may award these funds to those States that have met the statutory requirements for implementation grants, as well as the statutory grant conditions of previous section 406 grants, using the criteria in the allocation formula.

What if a State Cannot Use All of its Allocation?

If a State, Tribe, or Territory cannot use all of its allocation, the Regional Administrator may award the unused funds to any eligible coastal or Great Lake grant recipient in the Region for the continued development or implementation of their coastal recreation water monitoring and notification program(s). If, after re-allocations, there are still unused funds within the Region, EPA Headquarters will redistribute these funds to any eligible coastal or Great Lake BEACH Act grant recipient.

How Will the Funding for Tribes Be Allocated?

EPA expects to apportion the funds set aside for tribal grants evenly among all eligible Tribes that apply for funding.

What Is the Expected Duration of Funding and Projects?

The expected funding and project periods for implementation grants awarded in fiscal year 2007 is one year.

Does EPA Require Matching Funds?

Recipients do not have to provide matching funds for BEACH Act grants. EPA may establish a match requirement in the future based on a review of State program activity and funding levels.

III. Eligible Activities

Recipients of implementation grants may use funds for activities to support implementing a beach monitoring and notification program that is consistent with the required performance criteria for grants specified in the document, National Beach Guidance and Required Performance Criteria for Grants, (document number: EPA–823–B–02–004). Recipients of development grants may use the funds to develop a beach monitoring and notification program consistent with the performance criteria.

IV. Selection Process

EPA Regional offices will award CWA section 406 grants through a non-competitive process. EPA expects to award grants to all eligible State, Tribe, and Territory applicants that meet the applicable requirements described in this notice.

Who Has the Authority To Award BEACH Act Grants?

The Administrator has delegated the authority to award BEACH Act grants to the Regional Administrators.

V. Application Procedure

What Is the Catalog of Federal Domestic Assistance (CFDA) Number for the BEACH Monitoring and Notification Program Implementation Grants?

The number assigned to the BEACH Act Grants is 66.472, Program Code CU.

Can BEACH Act Grant Funds Be Included in a Performance Partnership Grant?

For fiscal year 2007, BEACH Act Grants cannot be included in a Performance Partnership Grant.

What Is the Application Process for States and Territories?

Your application package should contain completed: EPA SF–424 Application for Federal Assistance, Program Summary, and Data Submission Plan.

In order for EPA to determine that a State or local government is eligible for an implementation grant, the applicant must submit documentation with its application to demonstrate that its program is consistent with the performance criteria. The Program Summary must contain sufficient technical detail for EPA to confirm that your program meets the statutory eligibility requirements and statutory grant conditions for previously awarded CWA section 406 grants listed in section II (Funding and Eligibility) of this notice. The Program Summary must also describe how the State used BEACH Act Grant funds to develop the beach monitoring and notification program, and how the program is consistent with the nine performance criteria in National Beach Guidance and Required Performance Criteria for Grants, (EPA–823–B–02–004). The Program Summary should also describe the state or territory program's objectives for the next year.

The Data Submission Plan describes the State data infrastructure and how the State plans to submit beach monitoring and notification data to EPA. States may submit a new Data Submission Plan, or they may submit updates and amendments to their current Plan. More information on both the Program Summary and Data Submission Plan is available at *http://www.epa.gov/waterscience/beaches/grants/*.

States and territories must submit application packages to the appropriate EPA Regional Office by April 11, 2007. EPA will make an award after the Agency reviews the documentation and confirms that the program meets the applicable requirements. The Office of Management and Budget has authorized EPA to collect this information (BEACH Act Grant Information Collection Request, OMB control number 2040–0244). Please contact the appropriate EPA Regional Office for a complete application package. See Section VI for a list of EPA Regional Grant Coordinators or visit the EPA Beach Watch Web site at *www.epa.gov/waterscience/beaches/contact.html* on the Internet.

What Should a Tribe's Notice of Interest Contain?

The Notice of Intent should include the Tribe's name and the name and telephone number of a contact person.

Are Quality Assurance and Quality Control (QA/QC) Required for Application?

Yes. Three specific QA/QC requirements must be met to comply with EPA's performance criteria for grants:

(1) Applicants must submit documentation that describes the quality system implemented by the State, Tribe, or local government. Documentation may be in the form of a Quality Management Plan or equivalent documentation.

(2) Applicants must submit a quality assurance project plan (QAPP) or equivalent documentation.

(3) Applicants are responsible for submitting documentation of the quality system and QAPP for review and approval by the EPA Quality Assurance Officer or his designee before they take primary or secondary environmental measurements. More information about the required QA/QC procedures is available in Chapter Four and Appendix H of National Beach Guidance and Required Performance Criteria for Grants (EPA–823–B–02–004).

Are There Reporting Requirements?

Recipients must submit annual performance reports and financial reports as required in 40 CFR 31.40 and 31.41. The annual performance report explains changes to the beach monitoring and notification program during the grant year. It also describes how the grant funds were used to implement the program to meet the performance criteria listed in National Beach Guidance and Required Performance Criteria for Grants (EPA–823–B–02–004). The annual performance report required under 40 CFR 31.40 is due no later than 90 days after the grant year. Recipients must also submit annual monitoring and notification reports required under by the National Beach Guidance and Required Performance Criteria for Grants; (EPA–823–B–02–004). Sections 2.2.3 and 4.3 of the document contain the performance criterion requiring an annual monitoring report, and sections 2.2.8 and 5.4 contain the performance criterion requiring an annual notification report. This document can be found at *http://www.epa.gov/waterscience/beaches/grants/*. These reports, required to be submitted to EPA by States, Tribes and Territories under CWA section 406(b)(3)(A), include data collected as part of a monitoring and notification program. As a condition of award of an implementation grant, EPA requires that the monitoring report and the notification report for any beach

season be submitted not later than January 31 of the year following the beach season. (See Section II, Funding and Eligibility, above.)

What Regulations and OMB Cost Circular Apply to the Award and Administration of These Grants?

The regulations at 40 CFR Part 31 govern the award and administration of grants to States, Tribes, local governments, and Territories under CWA sections 406(b). Allowable costs will be determined according to the cost principles outlined in OMB Cost Circular A–87.

VI. Grant Coordinators

Headquarters—Washington, DC

Rich Healy USEPA, 1200 Pennsylvania Ave., NW—4305, Washington, DC 20460; T: 202–566–0405; F: 202–566–0409; *healy.richard@epa.gov.*

Region I—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island

Matt Liebman USEPA Region I, One Congress St., Ste. 1100–CWQ, Boston, MA 02114–2023; T: 617–918–1626; F: 617–918–1505; *liebman.matt@epa.gov.*

Region II—New Jersey, New York, Puerto Rico, U.S. Virgin Islands

Helen Grebe USEPA Region II, 2890 Woodbridge Ave., MS220, Edison, NJ 08837–3679; T: 732–321–6797; F: 732–321–6616; *grebe.helen@epa.gov.*

Region III—Delaware, Maryland, Pennsylvania, Virginia

Tiffany Crawford USEPA Region III, 1650 Arch Street, 3ES10, Philadelphia, PA 19103–2029; T: 215–814–5776; F: 215–814–2301; *crawford.tiffany@epa.gov.*

Region IV—Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina

Joel Hansel USEPA Region IV, 61 Forsyth St., 15th Floor, Atlanta, GA 30303–3415; T: 404–562–9274; F: 404–562–9224; *hansel.joel@epa.gov.*

Region V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Holly Wirick USEPA Region V, 77 West Jackson Blvd., WT–16J, Chicago, IL 60604–3507; T: 312–353–6704; F: 312–886–0168; *wirick.holiday@epa.gov.*

Region VI—Louisiana, Texas

Mike Schaub USEPA Region VI, 1445 Ross Ave., 6WQ–EW, Dallas, TX 75202–2733; T: 214–665–7314; F: 214–665–6689; *schaub.mike@epa.gov.*

Region IX—American Samoa, Commonwealth of the Northern Mariana Islands, California, Guam, Hawaii

Terry Fleming USEPA Region IX, 75 Hawthorne St., WTR–2, San Francisco, CA 94105; T: 415–972–3462; F: 415–947–3537; *fleming.terrence@epa.gov.*

Region X—Alaska, Oregon, Washington

Rob Pedersen USEPA Region X, 120 Sixth Ave., OW–134, Seattle, WA 98101; T: 206–553–1646; F: 206–553–0165; *pedersen.rob@epa.gov.*

Dated: January 4, 2007.

Michael Shapiro,

Acting Assistant Administrator for Water.

[FR Doc. E7–248 Filed 1–10–07; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATE AND TIME: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 11, 2007, from 10 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- December 14, 2006 (Regular Meeting).

B. New Business

- Review of Insurance Premium Rates.

Closed Session

- Audit Plan for the Year Ended December 31, 2006.

Dated: January 5, 2007.

James M. Morris,

Acting Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. E7–213 Filed 1–10–07; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collections,

including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before March 12, 2007.

ADDRESSES: You may submit comments, identified by FR 2069 (OMB No. 7100–0030), FR 2416 and FR 2644 (OMB No. 7100–0075), FR Y–9C (OMB No. 7100–0128), FR Y–11 (OMB No. 7100–0244), FR 2314 (OMB No. 7100–0073), or FR 3036 (OMB No. 7100–0285) by any of the following methods:

• Agency Web Site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

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

• E–mail: *regs.comments#64;federalreserve.gov.* Include the OMB control number in the subject line of the message.

• FAX: 202–452–3819 or 202–452–3102.

• Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission, supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following reports:

1. Report title: Weekly Report of Assets and Liabilities for Large Banks and Weekly Report of Selected Assets

Agency form numbers: FR 2416 and FR 2644

OMB control number: 7100–0075

Frequency: Weekly

Reporters: U.S.–chartered commercial banks

Annual reporting hours: FR 2416: 22,386 hours; FR 2644: 80,652 hours

Estimated average hours per response: FR 2416: 8.61 hours; FR 2644: 1.41 hours

Number of respondents: FR 2416: 50; FR 2644: 1,100

General description of reports: These information collections are voluntary (12 U.S.C. § 225(a) and 248(a)(2)). Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. § 552(b)(4)).

Abstract: The FR 2416, FR 2644, and the Weekly Report of Assets and Liabilities for Large U.S. Branches and Agencies of Foreign Banks (FR 2069; OMB No. 7100–0030) are referred to collectively as the bank credit reports. The FR 2416 is a detailed balance sheet that covers domestic offices of large U.S.–chartered commercial banks. The FR 2644 collects less–detailed information on investments, loans, total assets, and several memoranda items, covering domestic offices of small U.S.–chartered commercial banks. The bank credit reports are collected as of each Wednesday.

These three voluntary reports are mainstays of the Federal Reserve's reporting system from which data for analysis of current banking developments are derived. The FR 2416 is used on a stand–alone basis as the large domestic bank series. The FR 2644 collects sample data, which are used to estimate universe levels using data from the quarterly commercial bank Consolidated Reports of Condition and Income (FFIEC 031 and 041; OMB No. 7100–0036) (Call Report). Data from the bank credit reports, together with data from other sources, are used for constructing weekly estimates of bank credit, of sources and uses of bank funds, and of a balance sheet for the banking system as a whole.

The Federal Reserve publishes the data in aggregate form in the weekly H.8 statistical release, Assets and Liabilities of Commercial Banks in the United States, which is followed closely by other government agencies, the banking industry, the financial press, and other users. This release provides a balance sheet for the banking industry as a whole and data disaggregated by its large domestic, small domestic, and foreign–related components.

Current actions: The Federal Reserve proposes to reduce reporting burden by eliminating data items that are no longer useful beyond data already available from Call Reports, to collect information on real estate loan securitization activity, and to improve the detailed information associated with data on security loans. The Federal Reserve proposes to make the following modifications to the FR 2416: (1) delete data item 5.d, Loans to finance agricultural production and other loans to farmers; (2) delete data item 5.h, Loans to states and political subdivisions in the U.S.; (3) delete memorandum item M.8, Commercial and industrial loans: Outstanding principal balance of assets sold and securitized; (4) add a memorandum item, Real estate loans: Outstanding principal balance of assets sold and securitized; and (5) rename memoranda items M.1 and M.5 on revaluation gains and losses, respectively. The Federal Reserve proposes to make the following modifications to the FR 2644: (1) add a memorandum item, Real estate loans: Outstanding principal balance of assets sold and securitized, (the same data item proposed for the FR 2416 reporting form) and (2) renumber memoranda items M.4 and M.5 on net due from and net due to, respectively, to allow for the addition of the new data item on securitized real estate loans. The proposed revisions discussed above would be implemented as of June 2007. The Federal Reserve would like to reevaluate the bank credit data in coming quarters to determine whether changes consistent with the proposed March 2007 Call Report revisions would be necessary for the bank credit series. Therefore, another proposal to revise the reporting forms may be presented for review before the three–year extension expires.

2. Report title: Weekly Report of Assets and Liabilities for Large U.S. Branches and Agencies of Foreign Banks

Agency form number: FR 2069

OMB control number: 7100–0030

Frequency: Weekly

Reporters: U.S. branches and agencies of foreign banks

Annual reporting hours: 14,560 hours

Estimated average hours per response: 4.00 hours

Number of respondents: 70

General description of report: This information collection is voluntary (12 U.S.C. § 248(a)(2) and 3105(a)(2)). Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. § 552(b)(4)).

Abstract: The FR 2069 is a detailed balance sheet that covers large U.S. branches and agencies of foreign banks. This report, along with the FR 2416 and FR 2644, is collected as of each Wednesday.

These three voluntary reports are mainstays of the Federal Reserve's reporting system from which data for analysis of current banking developments are derived. The FR2069 collects sample data, which are used to estimate universe levels using data from the quarterly Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002; OMB No. 7100–0032). Data from the bank credit reports, together with data from other sources, are used for constructing weekly estimates of bank credit, of sources and uses of bank funds, and of a balance sheet for the banking system as a whole.

The Federal Reserve publishes the data in aggregate form in the weekly H.8 statistical release, Assets and Liabilities of Commercial Banks in the United States, which is followed closely by other government agencies, the banking industry, the financial press, and other users. This release provides a balance sheet for the banking industry as a whole and data disaggregated by its large domestic, small domestic, and foreign–related components.

Current actions: The Federal Reserve proposes to make the following modifications to the FR 2069: (1) split data item 4.b, Federal funds sold and securities purchased under agreements to resell: With others, into two data items; (2) delete memorandum item M.3, Commercial and industrial loans: Outstanding principal balance of assets sold and securitized; and (3) rename memoranda items M.1 and M.2 on revaluation gains and losses, respectively. The proposed revisions discussed above would be implemented as of June 2007. The Federal Reserve would like to reevaluate the bank credit data in coming quarters to determine whether changes consistent with the proposed March 2007 Call Report revisions would be necessary for the bank credit series. Therefore, another proposal to revise the reporting forms may be presented for review before the three–year extension expires.

Proposal to approve under OMB delegated authority the revision, without extension, of the following reports:

1. Report title: Consolidated Financial Statements for Bank Holding Companies.

Agency form number: FR Y–9C.

OMB control number: 7100–0128.

Frequency: Quarterly.

Reporters: Bank holding companies (BHCs).

Annual reporting hours: 117,504

Estimated average hours per response: 38.35

Number of respondents: 766

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in this report. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to section (b)(4) of the Freedom of Information Act (5 U.S.C. §§522(b)(4).

Abstract: The FR Y–9 family of reports historically has been, and continues to be, the primary source of financial information on BHCs between on–site inspections. Financial information from these reports is used to detect emerging financial problems, to review performance and conduct pre–inspection analysis, to monitor and evaluate capital adequacy, to evaluate BHC mergers and acquisitions, and to analyze a BHC's overall financial condition to ensure safe and sound operations.

The FR Y–9C consists of standardized financial statements similar to the Consolidated Reports of Condition and Income (Call Report) (FFIEC 031 & 041; OMB No. 7100–0036) filed by commercial banks. The FR Y–9C collects consolidated data from the BHC and is generally filed by top–tier BHCs with total consolidated assets of $500 million or more.

Current actions: The Federal Reserve proposes to make the following revisions to the FR Y–9C to parallel proposed changes to the Call Report. BHCs have commented that changes should be made to the FR Y–9C in a manner consistent with changes to the Call Report. Comments received on the Call Report proposal will also be taken into consideration for this proposal.

Reporting on Fair Value Measurements and the Use of the Fair Value Option

On September 15, 2006, the Financial Accounting Standards Board (FASB) issued Statement No. 157, Fair Value Measurements (FAS 157), which is effective for BHCs and other entities for fiscal years beginning after November 15, 2007. Earlier adoption of FAS 157 is permitted as of the beginning of an earlier fiscal year, provided the BHC has not yet issued a financial statement or submitted FR Y–9C data for any period of that fiscal year. Thus, a BHC with a calendar year fiscal year may voluntarily adopt FAS 157 as of January 1, 2007. The fair value measurements standard provides guidance on how to measure fair value and would require BHCs and other entities to disclose the inputs used to measure fair value based on a three–level hierarchy for all assets and liabilities that are re–measured at fair value on a recurring basis.[1]

The FASB plans to issue a final standard, The Fair Value Option for Financial Assets and Financial Liabilitiesduring the first quarter of 2007, which would be effective for BHCs and other entities for fiscal years beginning after December 15, 2006. The FASB's Fair Value Option standard would allow BHCs and other entities to report certain financial assets and liabilities at fair value with the changes in fair value included in earnings. The Federal Reserve anticipates that relatively few BHCs will elect to use the fair value option for a significant portion of their financial assets and liabilities.

The Federal Reserve proposes to add a new Schedule HC–Q to the FR Y–9C to collect data, by major asset and liability category, on the amount of assets and liabilities to which the fair value option has been applied along with separate disclosure of the amount of such assets and liabilities whose fair values were estimated under level two and under level three of the FASB's fair value hierarchy. The categories are:

• Securities held for purposes other than trading with changes in fair value reported in current earnings,

• Loans and leases,

[1] The FASB's three–level fair value hierarchy gives the highest priority to quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). Level 1 inputs are quoted prices in active markets for identical assets or liabilities that the reporting BHC has the ability to access at the measurement date (e.g., the FR Y–9C reporting date). Level 2 inputs are inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly. Level 3 inputs are unobservable inputs for the asset or liability.

• All other financial assets and servicing assets,
• Deposit liabilities,
• All other financial liabilities and servicing liabilities, and
• Loan commitments (not accounted for as derivatives).

In addition, the Federal Reserve proposes to collect data on trading assets and trading liabilities in the new schedule from those BHCs that complete Schedule HC–D, Trading Assets and Liabilities, that is, BHCs that reported average trading assets of $2 million or more for any quarter of the preceding calendar year. In the proposed new schedule, such BHCs would report the carrying amount of trading assets and trading liabilities whose fair values were estimated under level two and under level three of the FASB's fair value hierarchy. Trading assets and trading liabilities are required to be reported at fair value and thus are not covered under the fair value option.

The Federal Reserve anticipates using this fair value information to make appropriate risk assessments for on–site examinations and off–site surveillance. The addition of these data items should result in minimal additional reporting burden for BHCs because FAS 157 requires disclosure of amounts under all three levels of the fair value hierarchy on a quarterly and annual basis in financial statements.

The FASB's fair value measurements standard requires BHCs and other entities to consider the effect of a change in their own creditworthiness when determining the fair value of a financial liability. The Federal Reserve proposes to add one new data item to Schedule HC–R, Regulatory Capital, for the cumulative change in the fair value of all financial liabilities accounted for under the fair value option that is attributable to changes in the BHC's own creditworthiness. This amount would be excluded from the BHC's retained earnings for purposes of determining Tier 1 capital under the Federal Reserve's regulatory capital standards.

The Federal Reserve plans to clarify the instructions to Schedule HI for the treatment of interest income on financial assets and interest expense on financial liabilities measured under a fair value option. The instructions would be modified to instruct BHCs to separate the contractual year–to–date amount of interest earned on financial assets and interest incurred on financial liabilities that are reported under a fair value option from the overall year–to–date fair value adjustment and report these contractual amounts in the appropriate interest income or interest expense items on Schedule HI. In addition, the Federal Reserve proposes to modify memoranda item 6, Other noninterest income, by adding data item 6.i, Net change in the fair values of financial instruments accounted for under a fair value option.

Reporting of Certain Data on 1–4 Family Residential Mortgage Loans withTermsthat Allow for Negative Amortization

Recently, the volume of 1–4 family residential mortgage loan products whose terms allow for negative amortization and the number of institutions providing borrowers with such loans has increased significantly. Loans with this feature are structured in a manner that may result in an increase in the loan's principal balance even when the borrower's payments are technically current. When loans with negative amortization are not prudently underwritten and not properly monitored, they raise safety and soundness concerns. However, due to the classification of these loans with all other 1–4 family residential mortgage loans in the FR Y–9C, the Federal Reserve has no readily available means of identifying the industry's exposure to such loans. Therefore, the Federal Reserve proposes to collect four data items to monitor the extension of negatively amortizing residential mortgage loans in the industry.

The Federal Reserve proposes to collect one memorandum item from all BHCs on Schedule HC–C, Loans and Leases, for the total amount of closed–end loans with negative amortization features secured by 1–4 family residential properties in order to obtain an overall measure of this potentially higher risk lending activity. In addition, the Federal Reserve proposes to collect two memoranda items on Schedule HC–C and one memorandum item on Schedule HI, Income Statement, from BHCs with a significant volume of negatively amortizing 1–4 family residential mortgage loans. The determination of the threshold for significant volume would be based on the aggregate carrying amount of negatively amortizing loans in excess of a certain dollar amount, for example, $100 million or $250 million, or in excess of a certain percentage of the total loans and leases (in domestic offices) reported on Schedule HC–C, for example, 5 percent or 10 percent. A BHC with negatively amortizing loans would determine whether it met the size threshold for reporting the three additional memoranda items based on data reported from the previous year–end FR Y–9C report. The Federal Reserve requests public comment on the specific dollar amount and percentage of loans that should be used in setting the size threshold for additional reporting on negatively amortizing loans.

The two additional Schedule HC–C memoranda items are (1) the total maximum remaining amount of negative amortization contractually permitted on closed–end loans secured by 1–4 family residential properties and (2) the total amount of negative amortization on closed–end loans secured by 1–4 family residential properties that is included in the carrying amount of these loans. The first memorandum item would provide a measure of the maximum exposure that could be incurred for negative amortization loans in the current 1–4 family residential property loan portfolio. The second memorandum item would then identify what component of 1–4 family mortgage loans is comprised of negative amortization loans. The Schedule HI memorandum item is year–to–date non–cash income on closed–end loans with a negative amortization feature secured by 1–4 family residential properties. This memorandum item would identify the amount and extent of interest revenue accrued and uncollected to ascertain the degree this potentially higher risk lending activity supports the BHC's overall net income. BHCs with negatively amortizing 1–4 family residential loans in excess of the reporting threshold for these data items would report these three data items for the entire calendar year following the end of any calendar year when this threshold was exceeded.

Reporting of Certain Brokered Time Deposit Information

The FFIEC is proposing to revise the reporting treatment of brokered time deposits on Call Report Schedule RC–E, Deposit Liabilities. Memorandum item 2.b, Total time deposits of less than $100,000, would be revised to include brokered time deposits issued in denominations of $100,000 or more that are participated out by the broker in shares of less than $100,000, as well as brokered certificates of deposit issued in $1,000 amounts under a master certificate of deposit. Memorandum item 2.c, Total time deposits of $100,000 or more, would be revised to exclude such brokered deposits.

The Federal Reserve proposes to make similar instructional changes to seven data items on Schedule HC–E, Deposit Liabilities, to retain consistent definitions with the Call Report and to accommodate the consolidation of subsidiary bank information into the FR

Y–9C report. The Federal Reserve proposes to revise the instructions for data item 1.d, Time deposits of less than $100,000 held in domestic offices of commercial bank subsidiaries; data item 2.d, Time deposits of less than $100,000 held in domestic offices of other depository institution subsidiaries; Memorandum item 1, Brokered deposits less than $100,000 with a remaining maturity of one year or less; and Memorandum item 2, Brokered deposits less than $100,000 with a remaining maturity of more than one year, to include brokered time deposits issued in denominations of $100,000 or more that are participated out by the broker in shares of less than $100,000 and brokered certificates of deposit issued in $1,000 amounts under a master certificate of deposit. Data item 1.e, Time deposits of $100,000 or more held in domestic offices of commercial bank subsidiaries; data item 2.e, Time deposits of $100,000 or more held in domestic offices of other depository institution subsidiaries; and Memorandum item 3, Time deposits of $100,000 or more with a remaining maturity of one year or less, would be revised to exclude such brokered time deposits.

Instructional Clarifications

Servicing of Loan Participations

BHCs report the outstanding principal balance of assets serviced for others in Memorandum item 2 of Schedule HC–S, Servicing, Securitization, and Asset Sale Activities. In Memoranda items 2.a and 2.b, BHCs report the amounts of 1–4 family residential mortgages serviced with recourse and without recourse, respectively. Memorandum item 2.c covers all other loans and financial assets serviced for others, but BHCs are required to report the amount of such servicing only if the servicing volume is more than $10 million. The instructions for Memorandum item 2 do not explicitly state whether a bank holding company that has sold a participation in a 1–4 family residential mortgage or other loan or financial asset, which it continues to service, should include the servicing in Memorandum item 2.a, 2.b, or 2.c, as appropriate. The absence of clear instructional guidance has resulted in questions from banking institutions and has produced diversity in practice among BHCs.

Subject to the reporting threshold that applies to Memorandum item 2.c, Memorandum item 2 was intended to cover the entire volume of loans and other financial assets for which BHCs perform the servicing function, regardless of whether the servicing involves whole loans and other financial assets or only portions thereof, as is typically the case with loan participations. The risks and responsibilities inherent in servicing are present whether all or part of a loan or financial asset is serviced for the benefit of another party. Accordingly, the Federal Reserve proposes to clarify the instructions to Memorandum item 2 of Schedule HC–S to explicitly state that the amount of loan participations serviced for others should be included in this data item.

2. Report title: Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies.

Agency form number: FR Y–11.

OMB control number: 7100–0244.

Frequency: Quarterly and annually.

Reporters: Bank holding companies (BHCs).

Annual reporting hours: FR Y–11 (quarterly): 32,690; FR Y–11 (annually): 1,911.

Estimated average hours per response: FR Y–11 (quarterly): 6.35; FR Y–11 (annually): 6.35.

Number of respondents: FR Y–11 (quarterly): 1,287; FR Y–11 (annually): 301.

General description of report: This information collection is mandatory (12 U.S.C. §§1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to section (b)(4) of the Freedom of Information Act [5 U.S.C. §§522(b)(4)].

Abstract: The FR Y–11 reports collect financial information for individual U.S. nonbank subsidiaries of domestic BHCs. BHCs file the FR Y–11 on a quarterly or annual basis according to filing criteria. The FR Y–11 data are used with other BHC data to assess the condition of BHCs that are heavily engaged in nonbanking activities and to monitor the volume, nature, and condition of their nonbanking operations.

Current actions: Recently, the volume of 1–4 family residential mortgage loan products whose terms allow for negative amortization and the number of institutions providing borrowers with such loans has increased significantly. Loans with this feature are structured in a manner that may result in an increase in the loan's principal balance even when the borrower's payments are technically current. When loans with negative amortization are not prudently underwritten and not properly monitored, they raise safety and soundness concerns. Currently the Federal Reserve has no readily available means of identifying the industry's exposure to such loans. Therefore, the Federal Reserve proposes to collect four data items at the nonbank subsidiary level to monitor the extension of negatively amortizing residential mortgage loans in the industry and to parallel the data items being proposed for inclusion on the FR Y–9C.

The Federal Reserve proposes to collect one memorandum item from all nonbank subsidiaries on Schedule BS–A, Loan and Leases Financing Receivables, for the total amount of closed–end loans with negative amortization features secured by 1–4 family residential properties in order to obtain an overall measure of this potentially higher risk lending activity. In addition, the Federal Reserve proposes to collect two memorandum items on Schedule BS–A and one memorandum item on Schedule IS, Income Statement, from nonbank subsidiaries with a significant volume of negatively amortizing 1–4 family residential mortgage loans. The Federal Reserve's determination of the threshold for significant volume would be based on the aggregate carrying amount of negatively amortizing loans in excess of a certain percentage of the total loans and leases reported on Schedule BS–A, for example, 5 percent or 10 percent. A nonbank with negatively amortizing loans would determine whether it met the size threshold for reporting the three additional memorandum items based on data reported from the previous year–end FR Y–11. The Federal Reserve requests public comment on the percentage of loans that should be used in setting the size threshold for additional reporting on negatively amortizing loans. In addition, the Federal Reserve seeks comment as to whether the percentage threshold established for the nonbank subsidiary reports should be consistent with or differ from the percentage threshold established for the FR Y–9C.

The Federal Reserve also proposes two additional Schedule BS–A memorandum items to collect (1) the total maximum remaining amount of negative amortization contractually permitted on closed–end loans secured by 1–4 family residential properties and (2) the total amount of negative amortization on closed–end loans secured by 1–4 family residential properties that is included in the carrying amount of these loans. The first memorandum item would provide a measure of the maximum exposure that could be incurred for negative amortization loans in the current 1–4 family residential property loan portfolio. The second memorandum item would then identify what

component of 1–4 family mortgage loans is comprised of negative amortization loans. The Schedule IS memorandum item is year–to–date non–cash income on closed–end loans with a negative amortization feature secured by 1–4 family residential properties. This memorandum item would identify the amount and extent of interest revenue accrued and uncollected to ascertain the degree this potentially higher risk lending activity supports the BHC's overall net income. All nonbank subsidiaries with negatively amortizing 1–4 family residential loans in excess of the reporting threshold would report these data items for the entire calendar year following the end of any calendar year when the threshold was exceeded.

3. Report title: Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations.

Agency form number: FR 2314.

OMB control number: 7100–0073.

Frequency: Quarterly and annually.

Reporters: Foreign subsidiaries of U.S. state member banks (SMBs), bank holding companies (BHCs), and Edge or agreement corporations.

Annual reporting hours: FR 2314 (quarterly): 5,402; FR 2314 (annually): 966.

Estimated average hours per response: FR 2314 (quarterly): 6.40; FR 2314 (annually): 6.40.

Number of respondents: FR 2314 (quarterly): 211; FR 2314 (annually): 151.

General description of report: This information collection is mandatory (12 U.S.C. §§324, 602, 625, and 1844(c). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to section (b)(4) of the Freedom of Information Act [5 U.S.C. §§522(b)(4)].

Abstract: The FR 2314 reports collect financial information for direct or indirect foreign subsidiaries of U.S. SMBs, Edge and agreement corporations, and BHCs. Parent organizations (SMBs, Edge and agreement corporations, or BHCs) file the FR 2314 on a quarterly or annual basis according to filing criteria. The FR 2314 data are used to identify current and potential problems at the foreign subsidiaries of U.S. parent companies, to monitor the activities of U.S. banking organizations in specific countries, and to develop a better understanding of activities within the industry, in general, and of individual institutions, in particular.

Current actions: Recently, the volume of 1–4 family residential mortgage loan products whose terms allow for negative amortization and the number of institutions providing borrowers with such loans has increased significantly. Loans with this feature are structured in a manner that may result in an increase in the loan's principal balance even when the borrower's payments are technically current. When loans with negative amortization are not prudently underwritten and not properly monitored, they raise safety and soundness concerns. Currently the Federal Reserve has no readily available means of identifying the industry's exposure to such loans. Therefore, the Federal Reserve proposes to collect four data items at the nonbank subsidiary level to monitor the extension of negatively amortizing residential mortgage loans in the industry and to parallel the data items being proposed for inclusion on the FR Y–9C.

The Federal Reserve proposes to collect one memorandum item from all nonbank subsidiaries on Schedule BS–A, Loan and Leases Financing Receivables, for the total amount of closed–end loans with negative amortization features secured by 1–4 family residential properties in order to obtain an overall measure of this potentially higher risk lending activity. In addition, the Federal Reserve proposes to collect two memorandum items on Schedule BS–A and one memorandum item on Schedule IS, Income Statement, from nonbank subsidiaries with a significant volume of negatively amortizing 1–4 family residential mortgage loans. The Federal Reserve's determination of the threshold for significant volume would be based on the aggregate carrying amount of negatively amortizing loans in excess of a certain percentage of the total loans and leases reported on Schedule BS–A, for example, 5 percent or 10 percent. A nonbank with negatively amortizing loans would determine whether it met the size threshold for reporting the three additional memorandum items based on data reported from the previous year–end FR 2314. The Federal Reserve requests public comment on the percentage of loans that should be used in setting the size threshold for additional reporting on negatively amortizing loans. In addition, the Federal Reserve seeks comment as to whether the percentage threshold established for the nonbank subsidiary reports should be consistent with or differ from the percentage threshold established for the FR Y–9C.

The Federal Reserve also proposes two additional Schedule BS–A memorandum items to collect (1) the total maximum remaining amount of negative amortization contractually permitted on closed–end loans secured by 1–4 family residential properties and (2) the total amount of negative amortization on closed–end loans secured by 1–4 family residential properties that is included in the carrying amount of these loans. The first memorandum item would provide a measure of the maximum exposure that could be incurred for negative amortization loans in the current 1–4 family residential property loan portfolio. The second memorandum item would then identify what component of 1–4 family mortgage loans is comprised of negative amortization loans. The Schedule IS memorandum item is year–to–date non–cash income on closed–end loans with a negative amortization feature secured by 1–4 family residential properties. This memorandum item would identify the amount and extent of interest revenue accrued and uncollected to ascertain the degree this potentially higher risk lending activity supports the BHC's overall net income. All nonbank subsidiaries with negatively amortizing 1–4 family residential loans in excess of the reporting threshold would report these data items for the entire calendar year following the end of any calendar year when the threshold was exceeded.

The Federal Reserve proposes to add the section Notes to the Financial Statements to allow respondents the opportunity to provide, at their option, any material information included in specific data items on the financial statements that the parent U.S. banking organization wishes to explain. The addition of this section would enable the Federal Reserve to automate information that respondents may want to report as footnotes to various reported data items and provide for release of this information to the public. This section is currently included on the FR Y–11.

Proposal to approve under OMB delegated authority the implementation of the following survey:

Report title: Central Bank Survey of Foreign Exchange and Derivatives Market Activity

Agency form number: FR 3036

OMB control number: 7100–0285

Frequency: One–time

Reporters: Financial institutions that serve as intermediaries in the wholesale foreign exchange and derivatives market and dealers.

Annual reporting hours: 3,150

Estimated average hours per response: Turnover survey: 51 hours; outstandings survey: 60 hours

Number of respondents: 60

General description of report: This information collection is voluntary (12 U.S.C. 225a, 248(a)(2), 358, and 3105(c)) and is given confidential treatment (5 U.S.C. '552(b)(4)).

Abstract: The FR 3036 is the U.S. part of a global data collection that is conducted by central banks every three years. More than fifty central banks plan to conduct the survey in 2007. The Bank for International Settlements compiles national data from each central bank to produce global market statistics.

The Federal Reserve System and other government agencies use the survey to monitor activity in the foreign exchange and derivatives markets. Respondents use the published data to gauge their market share.

Current actions: The proposed survey would collect information on the size and structure of the foreign exchange and over–the–counter derivatives markets. The survey would cover the turnover in the foreign exchange spot market, the foreign exchange derivatives market, and interest rate derivatives markets (forwards, swaps, and options). In addition, the survey would gather data on the notional amounts and gross positive and negative market values of outstanding derivatives contracts for over–the–counter foreign exchange, interest rates, equities, and commodities.

To reduce reporting burden, the Derivatives Outstanding part of the survey is coordinated with the Semiannual Report of Derivatives Activity (FR 2436; OMB No. 7100–0286). Those firms that submit FR 2436 data would not complete the Derivatives Outstanding part of the survey.

Differences between the proposed survey and the 2004 survey are as follows:

1. The abbreviated report for FR 2436 reporters has been eliminated from the Outstanding survey. Data on credit derivatives are now submitted on the FR 2436.

2. Data items to capture credit default swaps have been added to the Outstanding survey to be consistent with the FR 2436. Given the growth in the credit derivative market, these data are important component of understanding the structure and activity of the overall over–the–counter derivatives market.

3. Additional currencies have been identified in tables on interest rate derivatives and on foreign exchange transactions on both the Outstanding and Turnover surveys. This change will facilitate reporting and ensure comprehensive identification of turnover in all participating countries' currencies. Reporting central banks will retain discretion to customize this list.

4. The section on electronic trading and identification of execution method has been simplified and adjusted in order to better distinguish between categories on the Turnover survey.

5. The definition of internal and related party trades has been clarified on the Turnover survey in order to improve consistency of data reporting.

6. The two data items in the memorandum section concerning trading activity trends on the Turnover survey have been split into four data items to provide detail on derivative contracts markets since these markets behave very differently.

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

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–246 Filed 1–10–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Agency information collection activities: Announcement of Board approval under delegated authority and submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background

Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer —Michelle Shore—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e–mail to mmenchik@omb.eop.gov

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

(1) Report title: Disclosure and Reporting Requirements of CRA–Related Agreements

Agency form number: Reg G

OMB control number: 7100–0299

Frequency: On occasion, annual

Reporters: Insured depository institutions (IDIs) and nongovernmental entities or persons (NGEPs)

Annual reporting hours: 78 hours

Number of respondents: 3 IDI; 6 NGEPs

Estimated average hours per response: 1 hour (7 disclosure requirements); 4 hours (2 annual reports)

General description of report: This information collection is required pursuant the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1831y(b) and (c). The FDI Act authorizes the Federal Reserve to require the disclosure and reporting requirements of Regulation G (12 C.F.R. 207). In general, the Federal Reserve does not consider individual respondent commercial and financial information collected by the Federal Reserve pursuant to Regulation G as confidential. However, a respondent may request confidential treatment pursuant to section (b)(4) of Freedom of Information Act, 5 U.S.C 552(b)(4).

Abstract: Section 48 of the FDI Act imposes disclosure and reporting requirements on IDIs, their affiliates, and NGEPs that enter into written agreements that meet certain criteria. The written agreements must (1) be made in fulfillment of the Community Reinvestment Act of 1977 (CRA) and (2) involve funds or other resources of an IDI or affiliate with an aggregate value of more than $10,000 in a year, or loans with an aggregate principal value of more than $50,000 in a year. Section 48 excludes from the disclosure and reporting requirements any agreement between an IDI or its affiliate and an NGEP if the NGEP has not contacted the IDI or its affiliate, or a banking agency, concerning the CRA performance of the IDI.

Regulation G contains four disclosure requirements and two reporting requirements for IDIs and affiliates and three disclosure requirements and one reporting requirement for NGEPs. Please see the agency's OMB supporting statement for a summary of the

disclosure and reporting requirements of Regulation G, *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm.*

The disclosure and reporting requirements in connection with Regulation G are mandatory and apply to state member banks and their subsidiaries; bank holding companies; affiliates of bank holding companies, other than banks, savings associations, and subsidiaries of banks and savings associations; and NGEPs that enter into covered agreements with any of the aforementioned companies.

Current Actions: On October 18, 2006, the Federal Reserve published a notice in the Federal Register (71 FR 61473) requesting public comment for 60 days on the extension, without revision, of the Disclosure and Reporting Requirements of CRA–Related Agreements. The comment period for this notice expired on December 18, 2006. The Federal Reserve did not receive any comments.

(2) Report title: Disclosure Requirements in Connection With Regulation H (Consumer Protections in Sales of Insurance)

Agency form number: Reg H–7

OMB control number: 7100–0298

Frequency: On occasion

Reporters: State member banks

Annual reporting hours: 14,159 hours

Number of respondents: 899

Estimated average hours per response: 1.5 minutes

General description of report: This information collection is mandatory pursuant the Federal Deposit Insurance Act, 12 U.S.C. 1831x. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises.

Abstract: Section 305 of the Gramm-Leach-Bliley Act requires financial institutions to provide written and oral disclosures to consumers in connection with the initial sale of an insurance product or annuity concerning its uninsured nature and the existence of the investment risk, if appropriate, and the fact that insurance sales and credit may not be tied.

Covered persons must make insurance disclosures before the completion of the initial sale of an insurance product or annuity to a consumer. The disclosure must be made orally and in writing to the consumer that: (1) the insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the financial institution or an affiliate of the financial institution; (2) the insurance product or annuity is not insured by the FDIC or any other agency of the United States, the financial institution, or (if applicable) an affiliate of the financial institution; and (3) in the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value.

Covered persons must make a credit disclosure at the time a consumer applies for an extension of credit in connection with which an insurance product or annuity is solicited, offered, or sold. The disclosure must be made orally and in writing that the financial institution may not condition an extension of credit on either: (1) the consumer's purchase of an insurance product or annuity from the financial institution or any of its affiliates; or (2) the consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

Current Actions: On October 18, 2006, the Federal Reserve published a notice in the Federal Register (71 FR 61473) requesting public comment for 60 days on the extension, without revision, of the Disclosure Requirements in Connection With Regulation H. The comment period for this notice expired on December 18, 2006. The Federal Reserve did not receive any comments.

(3) Report title: Domestic Branch Notification

Agency form number: FR 4001

OMB Control number: 7100–0097

Frequency: On occasion

Reporters: State member banks

Annual reporting hours: 2,244 hours

Estimated average hours per response: 30 minutes for expedited notifications; 1 hour for nonexpedited notifications

Number of respondents: 382 expedited; 2,053 nonexpedited

General description of report: This information collection is mandatory per Section 9(3) of the Federal Reserve Act (12 U.S.C. § 321) and is not given confidential treatment.

Abstract: The Federal Reserve Act and Regulation H require a state member bank to seek prior approval of the Federal Reserve System before establishing or acquiring a domestic branch. Such requests for approval must be filed as notifications at the appropriate Reserve Bank for the state member bank. Due to the limited information that a state member bank generally has to provide for branch proposals, there is no formal reporting form for a domestic branch notification. A state member bank is required to notify the Federal Reserve by letter of its intent to establish one or more new branches, and provide with the letter evidence that public notice of the proposed branch(es) has been published by the state member bank in the appropriate newspaper(s). The Federal Reserve uses the information provided to fulfill its statutory obligation to review any public comment on proposed branches before acting on the proposals, and otherwise to supervise state member banks.

Current Actions: On October 18, 2006, the Federal Reserve published a notice in the Federal Register (71 FR 61472) requesting public comment for 60 days on the extension, without revision, of the Domestic Branch Notification. The comment period for this notice expired on December 18, 2006. The Federal Reserve did not receive any comments.

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

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–247 Filed 1–10–07 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

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

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

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *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 February 5, 2007.

A. Federal Reserve Bank of Cleveland (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Middlefield Banc Corp, Middlefield, Ohio;, to acquire 100 percent of the voting shares of Emerald Bank and EB Interim Bank, both of Dublin, Ohio.

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

1. Grant County State Bancshares, Inc. Employee Stock Ownership Plan, Swayzee, Indiana;, to increase its ownership to 42 percent of the outstanding voting shares of Grant County State Bancshares, Inc., Swayzee, Indiana, as a result of a stock redemption, and thereby increase its indirect ownership of Grant County State Bank, Swayzee, Indiana.

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

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–243 Filed 1–10–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

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

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

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

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 26, 2007.

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

1. State Center Financial, Inc., State Center, Iowa, to engage *de novo* in extending credit and servicing loans, pursuant to section 225.28 (b)(1) of Regulation Y.

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

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–244 Filed 1–10–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 042 3127]

Goen Technologies Corp., et al.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 5, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Goen Technologies Corp., *et al.*, File No. 042 3127,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Matthew Daynard (202/326–3291), Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 4, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/01/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Goen Technologies Corp., Nutramerica Corp., TrimSpa, Inc., and Alexander Szynalski a/k/a Alexander Goen (together, ''respondents'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves the advertising and promotion of TrimSpa® Completely Ephedra Free Formula X32 (''TrimSpa X32''), a dietary supplement that, according to its label, contains, among other ingredients, Hoodia gordonii, chromium, vanadium, glucomannan, citrus naringine, glucosamine HCI, cocoa extract, and green tea extract. According to the FTC complaint, respondents represented that TrimSpa X32 causes rapid and substantial weight loss; and that Hoodia gordonii—an African appetite suppressant—in TrimSpa X32 enables users to lose substantial amounts of weight by suppressing their appetite. The complaint alleges that respondents failed to have substantiation for these claims. The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondents to have competent and reliable scientific evidence substantiating any claims that a covered product or service causes rapid and substantial weight loss or that the Hoodia gordonii, or any other appetite suppressant, in a covered product enables users to lose substantial amounts of weight by suppressing their appetite. The provision further requires that any such claim be true. A ''covered product or service'' is defined as ''any dietary supplement, food, drug, or device, or any health-related service or program.'' Part I.C. further requires that future claims about the health benefits, performance, efficacy, safety, or side effects of any covered product or service be truthful and supported by competent and reliable scientific evidence.

Part II of the proposed order provides that the order does not prohibit respondents from making representations for any drug that are permitted in labeling for the drug under any tentative final or final Food and Drug Administration (''FDA'') standard or under any new drug application approved by the FDA; representations for any medical device that are permitted in labeling under any new medical device application approved by the FDA; and representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Part III provides for the payment of $1,500,000 to the Commission.

Part IV of the proposed order requires respondents to provide the Commission with a list of all consumers who respondents know purchased TrimSpa X32 from March 1, 2003 through the date of entry of this Order.

Parts V through IX require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of their personnel; to notify the Commission of changes in corporate structure (for the corporate respondents) and changes in employment (for the individual respondent) that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part X provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission, with Commissioner Rosch recused.

Donald S. Clark,

Secretary.

[FR Doc. E7–206 Filed 1–10–07; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel: Musculoskeletal Research on Occupational Safety, Program Announcement (PA) 04–038

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 a meeting of the aforementioned Special Emphasis Panel.

Time and Date: 1 p.m.–2 p.m., January 29, 2007 (Closed).

Place: National Institute for Occupational Safety and Health (NIOSH), CDC, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of a research grant application in response to ''Musculoskeletal Research on Occupational Safety,'' PA 04–038.

For Further Information Contact: George Bokosh, Scientific Review Administrator, NIOSH, 626 Cochrans Mill Road, Pittsburgh, PA 15236, telephone (412) 386–6465.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: January 4, 2007.

Elaine Baker,

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

[FR Doc. E7–215 Filed 1–10–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Organ Transplantation

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

ACTION: Notice of ACOT Meeting to be held by Conference Call.

SUMMARY: The Advisory Committee on Organ Transplantation (ACOT) will be conducting a conference call to discuss

the revision of the Uniform Anatomical Gift Act (UAGA).

DATES: The conference call will be held on January 26, 2007, at 12 noon to 1 p.m. EST. Participants must dial: (888) 946–7610 and enter the corresponding pass code 30431. For security reasons, the pass code 30431 and Remy Aronoff's name, as call leader, are required to join the call. Participants should call no later than 11:50 a.m. EST in order for the logistics to be set up. Participants are asked to register for the conference by contacting Diane Cheslosky at (301) 443–6839 or e-mail *diane.cheslosky@hrsa.hhs.gov.* The registration deadline is January 24, 2007. The Department will try to accommodate those wishing to participate in the call.

Any member of the public can submit written materials that will be distributed to Committee members prior to the conference call. Parties wishing to submit written comments should ensure that the comments are postmarked or e-mailed no later than January 24, 2007, for consideration. Comments should be submitted to Remy Aronoff, Executive Secretary, ACOT, Healthcare Systems Bureau, HRSA, Parklawn Building, Room 12C–06, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–3264; fax (301) 594–6095; or e-mail: *remy.aronoff@hrsa.hhs.gov.*

Members of the public can present oral comments during the conference call during the public comment period. If a member of the public wishes to speak, the Department should be notified at the time the participant registers. Other members of the public will be allocated time if time permits.

FOR FURTHER INFORMATION CONTACT: Remy Aronoff, Executive Secretary, ACOT, Healthcare Systems Bureau, HRSA, Parklawn Building, Room 12C–06, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–3264; fax (301) 594–6095; or e-mail: *remy.aronoff@hrsa.hhs.gov.*

SUPPLEMENTARY INFORMATION: The UAGA is a model law drafted by the National Conference of Commissioners on Uniform State Laws in an effort to achieve uniformity among the anatomical gift laws of the States. Three ACOT recommendations provided a stimulus for revising the UAGA. In particular, recommendation number 10 (recommendation to engage in legislative strategies to encourage medical examiners not to withhold life-saving organs); recommendation number 19 (recommendation to take steps to ensure that the donors' wishes are fulfilled); and recommendation number 20 (recommendation that the State update the law governing anatomical gifts). The initial UAGA was written in 1968.

The purpose of this call is to hear discussion from the ACOT members and, if the Committee chooses, to develop a recommendation from the ACOT to the Secretary concerning the revised UAGA.

Dated: January 3, 2007.

Elizabeth M. Duke,

Administrator.

[FR Doc. E7–212 Filed 1–10–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of 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 meeting of the President's Cancer Panel.

The meeting will be open to the public as indicated below, 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.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended, because the premature disclosure of information and the discussions would be likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: February 12, 2007.

Open: February 12, 2007, 8 a.m.–4 p.m.

Agenda: Promoting Healthy Lifestyles to Reduce the Risk of Cancer.

Place: University of Mississippi Medical Center, 2500 North State Street, Jackson, MS 39216.

Closed: February 12, 2007, 4 p.m.–6 p.m.

Agenda: The Panel will discuss the Promoting Healthy Lifestyles to Reduce the Risk of Cancer and discuss potential topics for the 2007/2008 series.

Place: University of Mississippi Medical Center, 2500 North State Street, Jackson, MS 39216.

Contact Person: Abby Sandler, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, Building 6116, Room 212, 6116 Executive Boulevard, Bethesda, MD 20892, 301/451–9399.

Any interested person may file written comments with the committee by forwarding the comments to the Contact Person listed on this notice. The comments 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's home page: *deainfo.nci.nih.gov/advisory/pcp/pcp.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 4, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–68 Filed 1–10–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 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 Cancer Institute Special Emphasis Panel CA 07–503, ''Advanced Technology Radiation Therapy Clinical Trials Support (ATC) (U24).''

Name: March 5, 2007.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6130 Executive Blvd., Conference Room D, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer

Institute, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892, (301) 496–7576, *bielatka@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 4, 2007,

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–69 Filed 1–10–07; 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 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Behavior and CVD Risk.

Date: February 8, 2007.

Time: 9 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points Sheraton BWI Airport Hotel, 7032 Elm Road, Baltimore, MD 21240.

Contact Person: Valerie L. Prenger, PhD, Scientific Review Administrator, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7214, Bethesda, MD 20892–7924, 301–435–0270, *pregerv@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Clinical Network Research Projects.

Date: February 8, 2007.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points Sheraton BWI Airport Hotel, 7032 Elm Road, Baltimore, MD 21240.

Contact Person: Charles Joyce, PhD, Scientific Review Administrator, Review Branch, NHLBI, National Institutes of Health, Division of Extramural Research Activities, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–435–0288, *cjoyce@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Academic/Teacher Award (K07's).

Date: February 9, 2007.

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

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Keary A. Cope, PhD, Scientific Review Administrator, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892, 301–435–2222, *copeka@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Genetics Research Project.

Date: February 20, 2007.

Time: 3 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: Mark Roltsch, PhD, Scientific Review Administrator, Review Branch, NHLBI, National Institutes of Health, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892, (301) 435–0285, *roltschm@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Clinical Investigator and Research Scientist Development Awards (K02 & K08's).

Date: February 22–23, 2007.

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

Agenda: To review and evaluate grant applications.

Place: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Rina Das, PhD, Scientific Review Administrator, Review Branch, NHLBI, National Institutes of Health, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892, 301–435–0297, *dasr2@nhlbi.nih.gov.*

(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: January 3, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–74 Filed 1–10–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

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

The meetings 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Gene Expression and Molecular Imaging to Identify Early Biomarkers and Staging of Lung Cancer Following Environmental Exposures.

Date: February 6, 2007.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

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

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Quantitative Analysis of Protein Expression in Rodent Tissues.

Date: February 6, 2007.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

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

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS

Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 4, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–70 Filed 1–10–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Third Generation Anthrax Vaccine.

Date: January 11–12 2007.

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

Agenda: To review and evaluate contract proposals.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Brenda Lange-Gustafson, PhD, Scientific Review Administrator, NIAID, DEA, Scientific Review Program, Room 3122, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–451–3684, *bgustafson@niaid.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. 93.855, Allergy, Immunology, and Transplantation Research, 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 3, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–71 Filed 1–10–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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: NIDCR Special Grants Review Committee, 07–42, Review R03s, Fs, Ks.

Date: February 15–16, 2007.

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

Agenda: To review and evaluable grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Raj K. Krishnaraju, PhD, MS, Scientific Review Administrator, Scientific Review Branch, National Institute of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Rm 4AN 32J, Bethesda, MD 20892, 301–594–4864, *kkrishna@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 3, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–72 Filed 1–10–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 Dental and Craniofacial Research Special Emphasis Panel 07–28, Review R21s & R01.

Date: February 9, 2007.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–32F, National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–594–5006, *lynn.king@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 07–24, Review R25s.

Date: February 21, 2007.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sooyoun (Sonia) Kim, MS, 45 Center Dr., 4An 32B, Division of Extramural Research, National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–4827, *kims@nidr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 07–25, Review R21.

Date: February 28, 2007.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sooyoun (Sonia) Kim, MS, 45 Center Dr., 4An 32B, Division of Extramural Research, National Institute of

Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–4827, *kims@email.nidr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 07–40, Review R21.

Date: March 6, 2007.

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

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–32F, National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–594–5006, *lynn.king@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 07–29, Review R21s.

Date: March 9, 2007.

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

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–32F, National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–594–5006, *lynn.king@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 3, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–73 Filed 1–10–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse, Notice of Closed Meetings

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

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

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Centers Review Committee.

Date: February 19, 2007.

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

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Rita Liu, PhD, Associate Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301.435.1388, *rliu@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Program Projects.

Date: February 20, 2007.

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

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Rita Liu, PhD, Associate Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301.435.1388, *rliu@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Initial Review Group, Medication Development Research Subcommittee.

Date: March 5, 2007.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott at Metro Center, 775 12th Street, NW., Washington, DC 20005.

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd, Bethesda, MD 20892–8401, 301–402–6626, *gm145a@nih.gov.*

Name of Committee: National Institute on Drug Abuse Initial Review Group, Health Services Research Subcommittee.

Date: March 6–7, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Meenaxi Hiremath, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Blvd., Suite 220, MSC 8401, Bethesda, MD 20892, 301–402–7964, *mh392g@nih.gov.*

Name of Committee: National Institute on Drug Abuse Initial Review Group, Treatment Research Subcommittee.

Date: March 6–7, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, Md 20892–8401, (301) 435–1432.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Training and Career Development Subcommittee.

Date: March 13–15, 2007.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Eliane Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Room 220, MS 8401, Bethesda, MD 20892–8401, 301–451–4530, *el6r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 3, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–76 Filed 1–10–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

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

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

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Technical Support for Constituency Outreach and Research Dissemination.

Date: February 1, 2007.

Time: 9:30 a.m. to 11:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439, *lf33c.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 3, 2007.

Anna M. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–77 Filed 1–10–07; 8:45 am]

BILLING CODE 4140–01–M

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 Surgery, Anesthesiology and Trauma Study Section, January 24, 2007, 8 a.m. to January 25, 2007, 5 p.m., Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007 which was published in the **Federal Register** on December 5, 2006, 71 FR 70522–70523.

The meeting will be held January 24, 2007, 1 p.m. to January 25, 2007, 1 p.m. The meeting dates and location remain the same. The meeting is closed to the public.

Dated: January 3, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–75 Filed 1–10–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

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

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or 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, Gene Regulation in Cell Death and Psychiatric Disorders.

Date: January 8, 2007.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carol Hamelink, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5040H, MSC 7850, Bethesda, MD 20892, (301) 451–1328, *hamelinc@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, Computational Anatomy and Multidimensional Modeling.

Date: January 21–23, 2007.

Time: 7 p.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: The Westwood on Wilshire Hotel, 10740 Wilshire Boulevard, Los Angeles, CA 90024.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Wound Healing.

Date: January 25, 2007.

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

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Weihua Luo, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Parasites.

Date: January 26, 2007.

Time: 1:30 p.m. to 2 p.m.

Agenda: To review and evaluate grant application, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Fouad A. el-Zaatari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20814–9692, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Basic Mechanisms of Cancer Therapeutics Study Section.

Date: January 29–30, 2007.

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

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Suzanne L. Forry-Schaudies, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, (301) 451–0131, *forryscs@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Biomaterials and Biointerfaces Study Section.

Date: February 1–2, 2007.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alexander Gubin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, (301) 435–2902, *gubina@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Biology Structure and Regeneration Study Section.

Date: February 4–7, 2007.

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

Agenda: To review and evaluate grant applications.

Place: The Watergate. 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Mehrdad M. Tondravi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 435–1173, *tondravm@csr.nih.gov.*

Name of Committee: Digestive Sciences Integrated Review Group, Gastrointestinal Mucosal Pathobiology Study Section.

Date: February 5, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott—Embassy Row, 1600 Rhode Island Ave, NW., Washington, DC 20036.

Contact Person: Peter J. Perrin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Cognitive Neuroscience Study Section.

Date: February 6–7, 2007.

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

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center

for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, 301–435–1247, *steinmem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pilot and Feasibility Studies in Digestive Diseases and Nutrition (R21).

Date: February 6, 2007.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott—Embassy Row, 1600 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Peter J. Perrin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov.*

Name of Committee: Respiratory Sciences Integrated Review Group, Respiratory Integrative Biology and Translational Research Study Section.

Date: February 6–7, 2007.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, *sinnett@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Research Integrity.

Date: February 8, 2007.

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

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Steven H. Krosnick, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028A, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *krosnics@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Biomarkers Study Section.

Date: February 8–9, 2007.

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

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mary Bell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7804, Bethesda, MD 20892, 301–451–8754, *bellmar@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section.

Date: February 8–9, 2007.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Tera Bounds, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7808, Bethesda, MD 20892, 301–435–2306, *boundst@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Health Services Organization and Delivery Study Section.

Date: February 8–9, 2007.

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

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Reston, 1800 Presidents Street, Reston, VA 20190.

Contact Person: Kathy Salaita, SCD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7770, Bethesda, MD 20892, 301–451–8504, *salaitak@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Gene and Drug Delivery Systems Study Section.

Date: February 8–9, 2007.

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

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Steven J. Zullo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7849, Bethesda, MD 20892, 301–435–2810, *zullost@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Immunity and Host Defense Study Section.

Date: February 8–9, 2007.

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

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1515 Rhode Island Ave., NW.,Washington, DC 20005.

Contact Person: Patrick K. Lai, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, 301–435–1052, *laip@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Modeling and Analysis of Biological Systems Study Section.

Date: February 11–12, 2007.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Malgorzata Klosek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC ,7849 Bethesda, MD 20892, (301) 435–2211, *klosekm@mail.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: February 12–13, 2007.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Maribeth Champoux , PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7759, Bethesda, MD 20892, 301 594–3163, *champoum@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Genetics Study Section.

Date: February 12–13, 2007.

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

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavillion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Zhiqiang Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, 301–451–0132, *zouzhiq@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, Cellular Mechanisms in Aging and Development Study Section.

Date: February 13–14, 2007.

Time: 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Los Angeles Airport Hotel, 5400 West Century Boulevard, Kennedy Conference Room, Los Angeles, CA 90045.

Contact Person: James P. Harwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, 301–435–1256, *harwoodj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93,306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 3, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–78 Filed 1–10–07; 8:45 am]

BILLING CODE 4140–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–364 (Second Review)]

Oil Country Tubular Goods From Italy

AGENCY: United States International Trade Commission.

ACTION: Termination of review.

SUMMARY: On December 26, 2006, the Department of Commerce (''Commerce'')

published notice in the **Federal Register** of its determination that revocation of the countervailing duty (''CVD'') order on oil country tubular goods (''OCTG'') from Italy would not be likely to lead to continuation or recurrence of a countervailable subsidy. Commerce further stated that it was revoking the CVD order on OCTG from Italy (71 FR 77383) effective July 25, 2006. Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the five-year review of the countervailing duty order concerning OCTG from Italy (investigation No. 701–TA–364 (Second Review)) is terminated.

DATES: *Effective Date:* December 26, 2006.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187 or *fruggles@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. 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 (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

Authority: This five-year review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: January 8, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–260 Filed 1–10–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1104 (Final)]

Certain Polyester Staple Fiber From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1104 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of Certain Polyester Staple Fiber, provided for in subheading 5503.20.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* December 26, 2006.

FOR FURTHER INFORMATION CONTACT: Nathanael Comly (202–205–3174), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of Certain Polyester Staple Fiber from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on June 23, 2006, by DAK Americas, LLC, Charlotte, NC; Nan Ya Plastics Corporation, America, Lake City, SC; and Wellman, Inc., Shrewsbury, NJ.

Participation in the investigation and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on February 27, 2007, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on March 13, 2007, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 2, 2007. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as ''synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127mm). The subject merchandise may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture.''

to be held at 9:30 a.m. on March 6, 2007, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions. Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is March 6, 2007. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 20, 2007; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before March 20, 2007. On April 5, 2007, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 9, 2007, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 8, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–259 Filed 1–10–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act and the Clean Water Act

Notice is hereby given that on December 20, 2006 a proposed Consent Decree ''Consent Decree'' in *United States* v. *EnTire Recycling, Inc.,* Civil Action No. 8:06–CV–766 was lodged with the United States District Court for the District of Nebraska.

In this action the United States sought recovery of costs incurred by the National Pollution Funds Center and the Environmental Protection Agency in responding to the release, discharge and threat of release of oil and hazardous substances at a tire recycling facility owned and operated by Defendants EnTire Recycling, Inc., Brock Grain Company, Inc. and James D. Gerking in Nebraska City, Nebraska. Under the Consent Decree, the Defendants will reimburse the United States $201,000.00.

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. *EnTire Recycling, Inc.* D.J. Ref. 90–5–1–1–08431. The Consent Decree may be examined at the Office of the United States Attorney, District of Nebraska, 1620 Dodge Street, Suite 1400, Omaha, Nebraska 68102 and at U.S. EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66025. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.00 (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.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–49 Filed 1–10–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the ''National Longitudinal Survey of Youth 1979.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual

listed in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section below on or before March 12, 2007.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, 202–691–7628. (See Addresses section.)

SUPPLEMENTARY INFORMATION:

I. Background

The National Longitudinal Survey of Youth 1979 (NLSY79) is a nationally representative survey of people who were born in the years 1957 to 1964 and lived in the U.S. when the survey began in 1979. NLSY79 participants were interviewed annually from 1979 to 1994 and have been interviewed every two years since 1994. The focus of the survey is labor market experiences, but the survey also covers topics that affect or are affected by labor market activity. These topics include education, training, marital and family relationships, fertility, childcare, health, substance use, and others.

The Bureau of Labor Statistics (BLS) contracts with the National Opinion Research Center (NORC) of the University of Chicago to conduct the NLSY79. Prior to each round of the NLSY79, a pretest has been conducted with a separate, smaller sample to help ensure the proper functioning of questionnaires, procedures, and systems and to rectify any problems before the main fielding of the NLSY79. Over time, the size of the pretest sample has declined significantly, and the characteristics of pretest participants now differ so sharply from the characteristics of most NLSY79 participants that the pretest no longer is a useful tool to detect and remedy problems with the survey. For this reason, the BLS and its contractors have decided to replenish the pretest sample.

One of the goals of the Department of Labor (DOL) is to produce and disseminate timely, accurate, and relevant information about the U.S. labor force. The BLS contributes to this goal by gathering information about the labor force and labor market and disseminating it to policymakers and the public so that participants in those markets can make more informed, and thus more efficient, choices. Research based on the NLSY79 contributes to the formation of national policy in the areas of education, training, employment programs, and school-to-work transitions. In addition to the reports that the BLS produces based on data from the NLSY79, members of the academic community publish articles and reports based on NLSY79 data for the DOL and other funding agencies. The survey design provides data gathered from the same respondents over time to form the only data set that contains this type of intergenerational information for these important population groups. Without the collection of these data, an accurate longitudinal data set could not be provided to researchers and policymakers, thus adversely affecting the DOL's ability to perform its policy- and report-making activities.

II. Current Action

The BLS seeks approval to conduct interviews to replenish the pretest sample of the NLSY79. The process of replenishing the sample requires new sample members to be interviewed during the summer of 2007. The information obtained from this interview will be used for an input file during the NLSY79 Round 23 pretest that is planned for October 2007. Because the NLSY79 is longitudinal, the questions that respondents are asked in one round sometimes depend on the responses they provided in previous rounds. The summer 2007 interview is necessary to obtain information that will enable all questions to function properly in the October 2007 pretest. At an appropriate later date, the BLS will request approval to conduct the regular pretest and main fielding for Round 23 of the NLSY79.

The expanded pretest sample will add 100 cooperative respondents born in the years 1957 to 1964. The sample will be selected from a targeted telephone list of approximately 1,000 numbers that is maintained in the NORC telephone center system. To make the dialing effort more efficient, NORC will screen its list for phone numbers that are no longer working or that are associated with businesses. The new sample members will be dispersed across rural, suburban, and urban tracts within 40 miles of Chicago. The sample will be targeted across these different types of tracts based on the area codes selected for the replenishment effort.

By design, the replenished pretest sample will be one of convenience rather than one used to produce nationally representative estimates. The sample characteristics will be constrained only by the birth year, but the BLS and its contractors will seek a diverse mix of men and women across racial and ethnic groups. Employed individuals also will be targeted so that the pretest can effectively examine the most critical NLSY79 questionnaire paths, which relate to employment.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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 submissions of responses.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: National Longitudinal Survey of Youth 1979.

OMB Number: 1220–0109.

Affected Public: Individuals or households.

Form	Total respondents	Frequency	Total responses	Average time per response	Estimated total burden
NLSY79 Pretest Sample Replenishment Screener	1,000	Once	1,000	3 minutes	50 hours.
NLSY79 Pretest Sample Replenishment Interview	100	Once	100	15 minutes	25 hours.

Form	Total respondents	Frequency	Total responses	Average time per response	Estimated total burden
Totals	1,100		1,100		75 hours.

Note: In some cases, the respondents for the replenishment interview will be the same people who responded to the screener. These respondents could be different people, however. For example, one spouse who was not born in the years 1957 to 1964 and therefore is ineligible for the pretest sample may respond to the screener questions, while the other spouse who is eligible for the pretest sample responds to the replenishment interview.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 5th day of January 2007.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E7–162 Filed 1–10–07; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office; Public Interest Declassification Board (PIDB); Notice of Meeting

Pursuant to Section 1102 of the Intelligence Reform and Terrorism Prevention Act of 2004 which extended and modified the Public Interest Declassification Board (PIDB) as established by the Public Interest Declassification Act of 2000 (Pub. L. 106–567, title VII, December 27, 2000, 114 Stat. 2856), announcement is made for the following committee meeting:

Name of Committee: Public Interest Declassification Board (PIDB).

Date of Meeting: Friday, January 19, 2007.

Time of Meeting: 9 a.m. to 12:30 p.m.

Place of Meeting: National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Archivist's Reception Room, Room 105, Washington, DC 20408.

Purpose: To discuss declassification program issues.

This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than Monday, January 15, 2007. ISOO will provide additional instructions for gaining access to the location of the meeting.

For Further Information Contact: J. William Leonard, Director Information Security Oversight Office, National Archives Building, 700 Pennsylvania Avenue, NW., Washington, DC 20408, telephone number (202) 357–5250.

Dated: January 9, 2007.

J. William Leonard,

Director, Information Security Oversight Office.

[FR Doc. E7–254 Filed 1–10–07; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–008–ESP; ASLBP No. 04–822–02–ESP]

Atomic Safety and Licensing Board; In the Matter of Dominion Nuclear North Anna, LLC (Early Site Permit for North Anna ESP Site); Order (Notice of Opportunity To Make Oral or Written Limited Appearance Statements)

January 5, 2007.

Before Administrative Judges: Alex S. Karlin, Chairman, Dr. Thomas S. Elleman, Dr. Richard F. Cole.

This proceeding concerns the September 25, 2003 application of Dominion Nuclear North Anna LLC for an early site permit (ESP) for the possible construction of two nuclear power reactors on the site of two existing nuclear reactors in Mineral, Virginia.

This Atomic Safety and Licensing Board hereby gives notice that, pursuant to 10 CFR 2.315(a), the Board will entertain oral limited appearance statements from members of the public regarding the North Anna ESP application. The limited appearance statement session will be held on February 8, 2007 from 6 p.m. to 11 p.m. EST at the Louisa County High School auditorium, 757 Davis Highway, Mineral, Virginia 23117.

I. Background and Scope of Proceeding

The Nuclear Regulatory Commission (Commission) has defined an ESP as ''Commission approval * * * for a site or sites for one or more nuclear power facilities.'' 10 CFR 52.3(b). If an ESP application is approved, then, if the holder applies for a later construction permit, ''the Commission shall treat as resolved those matters resolved in the proceeding on the application for issuance or renewal of the early site permit.'' 10 CFR 52.39(a)(2). The North Anna ESP application also includes a site redress plan, which, if approved, would allow the ESP holder to prepare the site for construction of the plant, as long as the activities will not result in any significant adverse environmental impact which cannot be redressed, and the applicant commits to redress the site if a construction permit is not issued. 10 CFR 52.25. *See* North Anna ESP Application, Revision 9, 4–1–1 (September 2006). The applicant may not undertake any other construction activities on the site, however, without having applied for and received a construction or combined operating license from the NRC. 10 CFR 52.3. On December 2, 2003, the Commission published a notice of hearing with regard to Dominion's North Anna ESP application, notifying the public of the mandatory hearing on certain uncontested safety and environmental issues, and of the right to petition for leave to intervene to contest the application. 68 FR 67489 (Dec. 2, 2003). On January 2, 2004, Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, and Public Citizen filed a petition to intervene. The predecessor Board admitted two of the Intervenors' contentions. *See Dominion Nuclear North Anna LLC* (North Anna ESP), LBP–04–18, 60 NRC 253, 274 (2004).

On January 13, 2006, Dominion submitted a supplement to its application, proposing to change the cooling system for proposed Unit 3 and to increase the power level of each proposed unit (Units 3 and 4) from 4300 MWt to 4500 MWt. As a consequence, the application process was delayed by a year. The Staff issued a supplemental Final Safety Evaluation Report (FSER) on November 15, 2006, and a supplemental Final Environmental Impact Statement (FEIS) on December 14, 2006, addressing the changed application.

Both of the admitted contentions were resolved, one by a settlement and the

other by summary disposition. Licensing Board Order (Approving Settlement and Dismissal of Contention EC 3.3.4) (Jan. 6, 2005) (unpublished); *Dominion Nuclear North Anna LLC* (North Anna ESP), LBP–06–24, 64 NRC (2006). This is now an uncontested proceeding mandated by Section 189a(1)(A) of the Atomic Energy Act, 42 U.S.C. 2239(a)(1)(A), and 10 CFR 52.21.

In an uncontested proceeding for an ESP, the Board must make findings on six issues. See 68 FR 67489, 67489 (December 2, 2003). They are as follows:

1. *Safety Issue 1:* The Director of the Office of New Reactors (NRR) is obligated to propose a finding as to whether issuance of the ESP will be inimical to the common defense and security or to the health and safety of the public. The Board must decide whether the application and the record of the proceeding contain sufficient information, and the review of application by the NRC Staff has been adequate to support a finding that the issuance of the ESP will NOT be inimical to the common defense and security or to the health and safety of the public.

2. *Safety Issue 2:* The Director of NRR is obligated to propose a finding as to whether, taking into consideration the site criteria contained in 10 CFR Part 100, a reactor, or reactors, having the characteristics that fall within the parameters for the site, can be constructed without undue risk to the health and safety of the public. The Board must decide whether the application and the record of the proceeding contain sufficient information, and the review of application by the NRC Staff has been adequate to support a finding that, taking into consideration the site criteria contained in 10 CFR Part 100, a reactor, or reactors, having the characteristics that fall within the parameters for the site, can be constructed without undue risk to the health and safety of the public.

3. *NEPA Issue:* The Director of NRR is obligated to propose a finding as to whether, in accordance with the requirements of subpart A of 10 CFR Part 51, the ESP should be issued as proposed. The Board must decide whether the review conducted by the Commission pursuant to NEPA has been adequate.

4. *NEPA Baseline Issue 1:* The Board must decide whether the requirements of Section 102(2)(A), (C) and (E) of NEPA and Subpart A of 10 CFR Part 51 have been complied with in the proceeding.

5. *NEPA Baseline Issue 2:* The Board must independently consider the final balance among the conflicting factors contained in the record of the proceeding and must determine the appropriate action to be taken.

6. *NEPA Baseline Issue 3:* The Board must determine, after considering reasonable alternatives, whether the ESP should be issued, denied, or appropriately conditioned to protect environmental values.

II. Notice of Limited Appearance Statement Session

A. Date, Time, and Location of Oral Limited Appearance Statement Session

The oral limited appearance statement session will be from 6:00 PM to 11:00 PM EST on February 8, 2007, at the Louisa County High School auditorium, 757 Davis Highway, Mineral, Virginia 23117.

B. Participation Guidelines for Oral Limited Appearance Statements

Any person who is not currently a party will be permitted to make an oral statement setting forth his or her position on matters of concern related to this ESP application. The jurisdiction of this Board and the scope of this proceeding is limited to the six issues, listed above, that the Board must decide regarding the ESP application. Limited appearance statements will be transcribed, but are not under oath or affirmation and do not constitute testimony or evidence. The purpose of limited appearance statements is to allow members of the public to alert the Board and the parties to areas of concern relating to the ESP application and to assist the Board in its consideration of the six issues.

Members of the public who plan to attend the limited appearance session are advised that security measures may be employed at the entrance to the hearing facility, including searches of hand-carried items such as briefcases or backpacks. Signs can be no larger than 18 inches by 18 inches and may not be attached to sticks, held up, or moved about in the rooms. Policy Statement on Enhancing Public Participation in NRC Meetings, 67 FR 36920, 36923 (May 28, 2002).

In order to allow the maximum number of interested persons an opportunity to address the Board, the time allotted for each oral limited appearance statement normally will be no more than five minutes, and the allocated time may be further limited, depending on the number of written requests to make an oral statement that are submitted in accordance with section C below and/or the number of persons present at the designated time. At the outset of each statement, the speaker should identify himself or herself and specify any affiliation (such as employment, consultancy, or membership) with any of the parties.

C. Submitting a Request To Make an Oral Limited Appearance Statement

Persons who have submitted a timely written request to make an oral limited appearance statement will be given priority over those who have not filed such a request or who sign up to speak on the date of the session. To be considered timely, a written request to make an oral statement must either be mailed, faxed, or sent by e-mail so as to be received by 5 p.m. Eastern Daylight Time on Monday, February 5, 2007. Written requests to make an oral statement should be submitted to:

Mail: Office of the Secretary, Rulemakings and Adjudications Staff U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–1101 (verification (301) 415–1966).

E-mail: hearingdocket@nrc.gov.

In addition, using the same method of service, a copy of the written request to make an oral statement should be sent to the Chairman of this Licensing Board as follows:

Mail: Alex S. Karlin, Chairman, c/o: Margaret Parish, Esq., Law Clerk, Atomic Safety and Licensing Board Panel, Mail Stop T–3 E2C, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–5599 (verification (301) 415–6094).

E-mail: *ksv@nrc.gov* and *map4@nrc.gov*.

D. Written Limited Appearance Statements (In Lieu of Oral Statements)

A written limited appearance statement may be submitted to the Board regarding this proceeding. Such statements should be submitted by April 19, 2007, and should be sent to the Office of the Secretary using the methods prescribed above, with a copy to the Licensing Board Chairman.

III. Availability of Documentary Information Regarding the Proceeding

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room (One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852) or electronically from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic

Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC public document room reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

IV. Scheduling Information Updates

Any updated/revised scheduling information regarding the limited appearance session can be found by calling (800) 368–5642 or (301) 415–8200 or on the NRC Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm.*

It is so ordered.

The Atomic Safety and Licensing Board.

Dated in Rockville, Maryland, on January 5, 2007.

Alex S. Karlin,

Chairman, Administrative Judge.

[FR Doc. E7–258 Filed 1–10–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27655; 812–13279]

NexBank Securities, Inc. and NexBank Series; Notice of Application

January 4, 2007.

AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of an application under (a) section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 2(a)(35), 14(a), 19(b), 22(d) and 26(a)(2)(C) of the Act and rules 19b–1 and rule 22c–1 thereunder and (b) sections 11(a) and 11(c) of the Act for approval of certain exchange and rollover privileges.

APPLICANTS: NexBank Securities, Inc. (''NexBank Securities'') and NexBank Series (''Nexbank'').[1]

SUMMARY OF APPLICATION: Applicants request an order to permit certain UITs to: (a) Impose sales charges on a deferred basis and waive the deferred sales charge in certain cases; (b) offer unitholders certain exchange and rollover options; (c) publicly offer units without requiring the Depositor to take for its own account or place with others $100,000 worth of units; and (d) distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt.

FILING DATES: The application was filed on April 17, 2006. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 29, 2007, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer'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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o Felice R. Foundos, Chapman and Cutler LLP, 111 West Monroe Street, Chicago, IL 60603.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, at (202) 551–6990, or Stacy L. Fuller, Branch Chief, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. Nexbank is a UIT registered under the Act. Each Series will be a series of a Trust, each a UIT which is or will be registered under the Act. NexBank Securities, a Delaware corporation, is registered under the Securities Exchange Act of 1934 as a broker-dealer and is the depositor of NexBank. Each Trust will be sponsored by a Depositor. Each Series will be created by a trust indenture between the Depositor and a banking institution or trust company as trustee (''Trustee'').

2. The Depositor acquires a portfolio of securities, which it deposits with the Trustee in exchange for certificates representing units of fractional undivided interest in the Series' portfolio (''Units''). The Units are offered to the public through the Depositor and dealers at a price which, during the initial offering period, is based upon the aggregate market value of the underlying securities plus a front-end sales charge. The Depositor may reduce the sales charge in compliance with rule 22d–1 under the Act in certain circumstances, which are disclosed in the Series' prospectus.

3. The Depositor does not currently intend to maintain a secondary market for Units of outstanding Series, but may seek to do so in the future. Other broker-dealers may or may not maintain a secondary market for Units of a Series. If a secondary market is maintained, investors will be able to purchase Units on the secondary market at the current public offering price plus a front-end sales charge. If such a market is not maintained at any time for any Series, holders of the Units (''Unitholders'') of that Series may redeem their Units through the Trustee.

A. Deferred Sales Charge and Waiver of Deferred Sales Charge Under Certain Circumstances

1. Applicants request an order to the extent necessary to permit one or more Series to impose a sales charge on a deferred basis (''DSC''). For each Series, the Depositor would set a maximum sales charge per Unit, a portion of which may be collected ''up front'' (i.e., at the time an investor purchases the Units). The DSC would be collected subsequently in installments (''Installment Payments'') as described in the application. The Depositor would not add any amount for interest or any similar or related charge to adjust for such deferral.

2. When a Unitholder redeems or sells Units, the Depositor intends to deduct any unpaid DSC from the redemption or sale proceeds. When calculating the amount due, the Depositor will assume that Units on which the DSC has been paid in full are redeemed or sold first. With respect to Units on which the DSC has not been paid in full, the Depositor will assume that the Units held for the longest time are redeemed or sold first. Applicants represent that the DSC collected at the time of redemption or sale, together with the Installment Payments and any amount collected up front, will not exceed the maximum sales charge per Unit. Under certain circumstances, the Depositor may waive the collection of any unpaid DSC in connection with redemptions or sales of Units. These circumstances will be disclosed in the prospectus for the

[1] Applicants also request relief for existing and future series (''Series'') of NexBank and of other unit investment trusts (''UITs'') sponsored by a Depositor (''Trusts''). The ''Depositors'' are NexBank Securities and any entity controlling, controlled by or under common control with NexBank Securities. Any future Series that relies on the requested order will comply with the terms and conditions of the application. All presently existing Trusts that currently intend to rely on the requested order are named as applicants.

relevant Series and implemented in accordance with rule 22d–1 under the Act.

3. Each Series offering Units subject to a DSC will state the maximum charge per Unit in its prospectus. In addition, the prospectus for such Series will include the table required by Form N–1A (modified as appropriate to reflect the difference between UITs and open-end management investment companies) and a schedule setting forth the number and date of each Installment Payment, along with the duration of the collection period. The prospectus also will disclose that portfolio securities may be sold to pay an Installment Payment if distribution income is insufficient and that securities will be sold pro rata or a specific security will be designated for sale.

B. Exchange Option and Rollover Option

1. Applicants request an order to the extent necessary to permit Unitholders of a Series to exchange their Units for Units of another Series (''Exchange Option'') and Unitholders of a Series that is terminating to exchange their Units for Units of a new Series of the same type (''Rollover Option''). The Exchange Option and Rollover Option would apply to all exchanges of Units sold with a front-end sales charge or DSC.

2. A Unitholder who purchases Units under the Exchange Option or Rollover Option would pay a lower sales charge than that which would be paid for the Units by a new investor. The reduced sales charge will be reasonably related to the expenses incurred in connection with the administration of the DSC program, which may include an amount that will fairly and adequately compensate the Depositor and participating underwriters and brokers for their services in providing the DSC program.

3. Pursuant to the Exchange Option, an adjustment would be made if Units of any Series are exchanged within five months of their acquisition for Units of a Series with a higher sales charge (''Five Months Adjustment''). An adjustment also would be made if Units on which a DSC is collected are exchanged for Units of a Series that imposes a front-end sales charge and the exchange occurs before the DSC collected (plus any amount collected up front on the exchanged Units) at least equals the per Unit sales charge on the acquired Units (''DSC Front-End Exchange Adjustment''). If an exchange involves either the Five Months Adjustment or the DSC Front-End Exchange Adjustment, the Unitholder would pay the greater of the reduced sales charge or an amount which, together with the sales charge already paid on the exchanged Units, equals the normal sales charge on the acquired Units on the date of the exchange. With appropriate disclosures, the Depositor may waive such payment. Further, the Depositor would reserve the right to vary the sales charge normally applicable to a Series and the charge applicable to exchanges, as well as to modify, suspend, or terminate the Exchange Option as set forth in the conditions to the application.

Applicants' Legal Analysis

A. DSC and Waiver of DSC

1. Section 4(2) of the Act defines a ''unit investment trust'' as an investment company that issues only redeemable securities. Section 2(a)(32) of the Act defines a ''redeemable security'' as a security that, upon its presentation to the issuer, entitles the holder to receive approximately his or her proportionate share of the issuer's current net assets or the cash equivalent of those assets. Rule 22c–1 under the Act requires that the price of a redeemable security issued by a registered investment company for purposes of sale, redemption or repurchase be based on the security's current net asset value (''NAV''). Because the collection of any unpaid DSC may cause a redeeming Unitholder to receive an amount less than the NAV of the redeemed Units, applicants request relief from section 2(a)(32) and rule 22c–1.

2. Section 22(d) of the Act and rule 22d–1 under the Act require a registered investment company and its principal underwriter and dealers to sell securities only at the current public offering price described in the investment company's prospectus, with the exception of sales of redeemable securities at prices that reflect scheduled variations in the sales load. Section 2(a)(35) of the Act defines the term ''sales load'' as the difference between the sales price and the portion of the proceeds invested by the depositor or trustee. Applicants request relief from section 2(a)(35) and section 22(d) to permit waivers, deferrals or other scheduled variations of the sales load.

3. Under section 6(c) of the Act, the Commission may exempt classes of transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their proposal meets the standards of section 6(c). Applicants state that the provisions of section 22(d) are intended to prevent (a) riskless trading in investment company securities due to backward pricing, (b) disruption of orderly distribution by dealers selling shares at a discount, and (c) discrimination among investors resulting from different prices charged to different investors. Applicants assert that the proposed DSC program will present none of these abuses. Applicants further state that all scheduled variations in the sales load will be disclosed in the prospectus of each Series and applied uniformly to all investors, and that applicants will comply with all the conditions set forth in rule 22d–1.

4. Section 26(a)(2)(C) of the Act, in relevant part, prohibits a trustee or custodian of a UIT from collecting from the trust as an expense any payment to the trust's depositor or principal underwriter. Because the Trustee's payment of the DSC to the Depositor may be deemed to be an expense under section 26(a)(2)(C), applicants request relief under section 6(c) from section 26(a)(2)(C) to the extent necessary to permit the Trustee to collect Installment Payments and disburse them to the Depositor. Applicants submit that the relief is appropriate because the DSC is more properly characterized as a sales load.

B. Exchange Option and Rollover Option

1. Sections 11(a) and 11(c) of the Act prohibit any offer of exchange by a UIT for the securities of another investment company unless the terms of the offer have been approved in advance by the Commission. Applicants request an order under sections 11(a) and 11(c) for Commission approval of the Exchange Option and the Rollover Option. Applicants state that the Five Months Adjustment and the DSC Front-End Exchange Adjustment in certain circumstances are appropriate to maintain the equitable treatment of various investors in each Series.

C. Net Worth Requirement

1. Section 14(a) of the Act requires that a registered investment company have $100,000 of net worth prior to making a public offering. Applicants state that each Series will comply with this requirement because the Depositor will deposit substantially more than $100,000 of debt and/or equity securities, depending on the objective of the particular Series. Applicants assert, however, that the Commission has interpreted section 14(a) as requiring

that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Series would not satisfy section 14(a) because of the Depositor's intention to sell all the Units of the Series.

2. Rule 14a–3 under the Act exempts UITs from section 14(a) if certain conditions are met, one of which is that the UIT invest only in ''eligible trust securities,'' as defined in the rule. Applicants state that they may not rely on rule 14a–3 because certain future Series (collectively, ''Equity Series'') will invest all or a portion of their assets in equity securities or registered investment company securities pursuant to an exemptive order, which do not satisfy the definition of eligible trust securities.

3. Applicants request an exemption under section 6(c) of the Act to the extent necessary to exempt the Equity Series from the net worth requirement in section 14(a). Applicants state that the Series and the Depositor will comply in all respects with the requirements of rule 14a–3, except that the Equity Series will not restrict their portfolio investments to ''eligible trust securities.''

D. Capital Gains Distribution

1. Section 19(b) of the Act and rule 19b–1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b–1(c), under certain circumstances, exempts a UIT investing in eligible trust securities (as defined in rule 14a–3) from the requirements of rule 19b–1. Because the Equity Series do not limit their investments to eligible trust securities, however, the Equity Series will not qualify for the exemption in paragraph (c) of rule 19b–1. Applicants therefore request an exemption under section 6(c) from section 19(b) and rule 19b–1 to the extent necessary to permit capital gains earned in connection with the sale of portfolio securities to be distributed to Unitholders along with the Equity Series' regular distributions. In all other respects, applicants will comply with section 19(b) and rule 19b–1.

2. Applicants state that their proposal meets the standards of section 6(c). Applicants assert that any sale of portfolio securities would be triggered by the need to meet Trust expenses, Installment Payments, or by redemption requests, events over which the Depositor and the Equity Series do not have control. Applicants further state that, because principal distributions must be clearly indicated in accompanying reports to Unitholders as a return of principal and will be relatively small in comparison to normal dividend distributions, there is little danger of confusion from failure to differentiate among distributions.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

A. DSC Relief and Exchange and Rollover Options

1. Whenever the Exchange Option or the Rollover Option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the Exchange Option or the Rollover Option, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of the Series under section 22(e) of the Act and the rules and regulations promulgated thereunder, or (ii) a Series temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. An investor who purchases Units under the Exchange Option or the Rollover Option will pay a lower sales charge than that which would be paid for the Units by a new investor.

3. The prospectus of each Series offering exchanges or rollovers and any sales literature or advertising that mentions the existence of the Exchange Option or Rollover Option will disclose that the Exchange Option and the Rollover Option are subject to modification, termination or suspension without notice, except in certain limited cases.

4. Any DSC imposed on a Series' Units will comply with the requirements of subparagraphs (1), (2) and (3) of rule 6c–10(a) under the Act.

5. Each Series offering Units subject to a DSC will include in its prospectus the disclosure required by Form N–1A relating to deferred sales charges (modified as appropriate to reflect the differences between UITs and open-end management investment companies) and a schedule setting forth the number and date of each Installment Payment.

B. Net Worth Requirement

1. Applicants will comply in all respects with the requirements of rule 14a–3, except that the Equity Series will not restrict their portfolio investments to ''eligible trust securities.''

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E7–209 Filed 1–10–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55040; File No. SR–Amex–2007–01]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Extension of the Pilot Period Applicable to the Listing and Trading of Options on the iShares MSCI Emerging Markets Index

January 3, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 3, 2007, the American Stock Exchange LLC (''Amex'' 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 Amex has filed the proposed rule change, pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the 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 proposes to extend the pilot period applicable to the listing and trading of options on the iShares MSCI Emerging Markets Index Fund (''Fund

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange requested the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay, as specified in Rule 19b(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

Options''). The Amex is not proposing any changes to the rule text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex 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 Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 17, 2006, the Commission approved the Amex proposal [6] to list and trade the Fund Options for a sixty-day pilot period that expired July 2, 2006 (the ''Pilot'').[7] On June 30, 2006 the Commission approved a 90-day extension to the Pilot that was due to expire October 1, 2006 [8] and on September 29, 2006 the Commission approved a 90-day extension to the Pilot that expired on January 2, 2007.[9] The Fund Options will continue to meet substantially all of the listing and maintenance standards in Commentary .06 to Amex Rule 915 and Commentary .07 to Amex Rule 916. For the requirements that are not satisfied, the Exchange continues to represent that sufficient mechanisms exist that would provide the Exchange with adequate surveillance and regulatory information with respect to the Fund Options. Continuation of the Pilot would permit the Exchange to continue to work with the Bolsa Mexicana de Valores (''Bolsa'') to develop a surveillance sharing agreement.

Accordingly, the Exchange proposes to extend the Pilot for an additional 180-days, until June 30, 2007.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purpose of the Act or the administration of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) [13] thereunder because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to Section 19(b)(3)(A)(iii) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15]

Amex has requested that the Commission waive both the five-day pre-filing requirement and the 30-day delayed operative delay.[16] The Commission is exercising its authority to waive the five-day pre-filing notice requirement and believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the five-day pre-filing and 30-day operative periods will extend the Pilot, which expired on January 2, 2007, and allow the Amex to continue in its efforts to obtain a surveillance agreement with Bolsa. The Commission notes that another self-regulatory organization recently adopted a substantially similar rule change that was effective upon filing.[17] Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[18]

At any time within sixty (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.[19]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2007–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–01. This file number should be included on the subject line if e-mail is used. To help the

[6] *See* SR–Amex–2006–43.

[7] *See* Securities Exchange Act Release No. 53824 (May 17, 2006), 71 FR 30003 (May 24, 2006).

[8] *See* Securities Exchange Act Release No. 54081 (June 30, 2006), 70 FR 131 (July 10, 2006).

[9] *See* Securities Exchange Act Release No. 54553 (September 29, 2006), 71 FR 59561 (October 10, 2006). The Commission notes that the Amex inadvertently stated in its filing that the Pilot was to expire on December 31, 2006. Rather, the Pilot was to expire on January 2, 2007. Telephone conference between Jeffrey Burns, Vice President and Associate General Counsel, Amex and Geoffrey Pemble, Special Counsel, Commission, on January 3, 2007.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] *See* Securities Exchange Act Release No. 54876 (December 5, 2006), 71 FR 74968 (December 13, 2006) (order approving File No. SR–CBOE 2006–103).

[18] 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).

[19] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–01 and should be submitted on or before February 1, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–233 Filed 1–10–07; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55034; File No. SR–CBOE–2006–112]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to Its Non-option Security Trading Rules

December 29, 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 December 29, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange submits this rule change filing to modify its non-option security trading rules. The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and *www.cboe.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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 September 2006, the Commission approved Exchange Chapters 50–55 governing the trading of non-option securities on the Exchange.[3] Also in September 2006, the Commission approved modifications[4] to the Exchange's non-option trading rules to conform those rules to aspects of Regulation NMS.[5] Thus, the Exchange currently operates a purely electronic stock trading platform that has in place certain rules required by Regulation NMS in order to qualify as a market center with protected quotations. The Exchange now proposes to further modify Chapters 50–55 in connection with the establishment of the CBOE Stock Exchange (''CBSX''). CBSX would be a facility of the Exchange and serve as the Exchange's vehicle for trading non-option securities. CBSX would be a separate legal entity (a Delaware Limited Liability Company) owned by the Exchange and several strategic partners (the Exchange owns roughly half of CBSX). The Exchange has submitted a separate rule filing proposing to establish CBSX as a facility of the Exchange.[6] This filing changes certain portions of the Exchange's non-option trading rules to fit the market model envisioned for CBSX. These changes are described below.

[3] *See* Securities Exchange Act Release No. 54422 (September 11, 2006), 71 FR 54537 (September 15, 2006) (approving SR–CBOE–2004–21).

[4] *See* Securities Exchange Act Release No. 54526 (September 27, 2006), 71 FR 58646 (October 4, 2006) (approving SR–CBOE–2006–70).

[5] 17 CFR 242.600 *et seq.*

a. Agency Function

Under the current rules, DPMs on the system serve as agent for certain orders that must be processed ''manually.'' More specifically, in the event the Exchange is not the NBBO at the time a marketable order is received and no market-makers on the Exchange step up to match the NBBO price, the order is routed to the DPM for manual handling. As part of this manual handling, the DPM determines whether to provide price improvement for the order or whether to route it to the NBBO market for execution. During this time, and during any time that the order is routed, the DPM acts as agent for the order. The other instance in which DPMs perform an agency function is in the execution of pre-opening orders at the opening price of the primary market for stocks in which the Exchange is not the primary market. The Exchange now proposes to eliminate all agency functions for CBSX DPMs.

The Exchange intends for the CBSX system (it's the same system as the current system—just a new name) to automatically route marketable non-IOC orders to other market centers when CBSX is not the NBBO and no market-makers have stepped up to match the NBBO. This routing logic is contained in the CBSX trade engine, and CBSX would use an unaffiliated routing broker pursuant to an agreement to transmit orders on CBSX's behalf to better-priced protected quotations consistent with Regulation NMS. The handling and routing would all be done electronically by the CBSX system without any manual intervention. As far as the opening, the Exchange proposes to eliminate a DPM's agency obligation to manually execute orders in connection with the opening print on the primary market by changing the time in which CBSX will open. CBSX would enter an open state at 8:15 a.m. Chicago time (before the primary market openings). The opening would be automatically performed by the system. That is, the CBSX system would automatically execute pre-opening orders at a price that allows the greatest number of pre-opening shares to trade. This would allow customers that are interested in an

[6] *See* SR–CBOE–2006–110 (filed December 26, 2006).

opening execution on CBSX to obtain one without CBSX needing to obligate DPMs to guarantee the opening price on the primary market.

b. CBSX Floor Post

The current stock trading system is purely electronic. CBSX also would be purely electronic in that all trades on CBSX must be effected electronically; however, CBSX would utilize a space on the Exchange's trading floor for price discovery purposes (the ''CBSX Floor Post''). CBSX DPMs will be required to staff the CBSX Floor Post and respond to price discovery inquiries from brokers. All orders entered at the CBSX Floor Post would be handled and executed in the exact same manner as orders entered from any other location. The CBSX Floor Post would be located near the Exchange's index options pits in a location that is generally isolated from the equity options trading posts. The Exchange is hopeful that the CBSX Floor Post would be a valuable resource for CBOE floor brokers to inquire about depth of liquidity on CBSX (*e.g.*, CBOE brokers often represent complex orders that contain a stock component and could seek to execute the stock component on CBSX).

c. Order Types

The Exchange also proposes to adopt several new order types in connection with the CBSX launch. Specifically, CBSX would offer Reserve Orders, Middle Market Cross Orders, Cross Only Orders, and Cross and Sweep Orders.

A Reserve Order is a limit order in which the order originator designates a portion of the order for display and dissemination (the ''display amount'') and designates a portion of the order in ''reserve.'' A reserve portion is not displayed but is available for execution against incoming orders. Reserve Orders would be last in priority (except that most contingency orders are behind Reserve Orders in priority). Between Reserve Orders at the same price, priority would be afforded utilizing the matching algorithm in effect for the stock. If, after an execution against a Reserve Order, a quantity remains on the Reserve Order, the quote would be refreshed to disseminate the display amount while any remaining balance would be retained in reserve.

A Middle Market Cross Order is an order submitted to trade at the midpoint of the NBBO. It must always be submitted with a contra order for the same size and could be entered only when the bid price for the stock is $1 or greater. Further, these orders could be executed in increments as small as ½ the minimum quoting increment established under CBSX rules. If a Middle Market Cross Order is submitted after CBSX is open but before other markets are open (*e.g.*, 8:20 a.m. Chicago time) the order would execute at the midpoint of the best bid and offer among market centers that are open and disseminating quotes (or just the CBSX midpoint if CBSX were the only market center open). A member would be prohibited from entering a Middle Market Cross Order as principal buyer (seller) if the NBBO spread is one cent wide and that member was an agent for any customer order resting at the prevailing NBBO bid (offer). This provision is meant to preclude a member from trading as principal at a price that is less than one cent better than a price expressed by a customer of that member to which the member has a fiduciary obligation.

A Cross Only Order is an order that may only be executed against another Cross Only Order for the same size and price. These orders could be entered only at or between the NBBO, and when entered at the CBSX BBO, only when the terms of the orders meet the crossing parameters set forth in proposed CBSX Rule 52.11 relating to priority for crosses at the CBSX's disseminated market price.

A Cross and Sweep Order is an order that is priced outside of the NBBO and/or the BBO where the applicable side of the CBSX Book is satisfied by the Cross and Sweep Order and any disseminated better priced protected quotations at away market centers are swept with ISOs by the CBSX System. Any remaining balance on a partially executed Cross and Sweep Order would be cancelled by the CBSX System.

CBOE also proposes to modify the manner in which Stop Orders (including Stop Limit Orders) are handled. Current rules provide that a stop buy (sell) order is elected when the stock trades or is bid (offered) at or above (below) the stop price. As proposed, CBSX would handle stop orders so that a stop buy (sell) order is elected only when the stock trades at or above (below) the stop price on the primary market for the stock. The change is consistent with the desires of CBSX customers.

d. Order Routing

Rule 52.6 (Processing of Round-Lot Orders) is being modified to add additional descriptive language regarding transmission of ISOs to other market centers on behalf of marketable orders received by CBSX. This language compliments language already in place regarding ISO routing in Rule 52.7.

e. Odd Lots

CBSX would process odd lots differently than provided for under current rules. More specifically, CBSX proposes to execute odd lots at the best price being quoted by CBSX Market-Makers at the time of receipt. A limit odd-lot order would execute only once it became marketable against a CBSX Market-Maker quote/order. Further, the odd-lot portion of a mixed lot would execute as described above while the round-lot portion of the mixed lot would execute as if it were received by the system as a round lot.

f. Market-Makers

CBSX Market-Makers will function in a manner similar to what is provided by the current rules with a few changes. First, because CBSX would have a location on the Exchange trading floor for price discovery, CBSX DPMs (LMMs) would be required to maintain staffing at that post in order to handle price discovery inquiries. CBSX Remote Market-Makers, however, would be expected to operate in a remote capacity (thus the name Remote Market-Maker).

Second, CBSX anticipates adopting a fee structure that would contemplate discounted fees for CBSX Market-Makers that meet certain competitive quoting thresholds. These parameters would be set forth in a separate rule filing. In connection with these parameters, CBOE proposes to adopt a provision in Rule 53.55 stating that routine failure to qualify for the thresholds set forth in the fee incentive program could subject a CBSX DPM to remedial action by CBSX under that rule.

Lastly, CBOE has submitted as separate rule filings changes to Rules 53.53 and 53.54 to allow CBSX to allocate securities to anticipated CBSX DPMs in advance of the launch of the CBSX platform.[7]

g. Section 11(a)

Section 11(a) of the Act[8] prohibits a member of a national securities exchange from effecting transactions on that exchange for his own account, the account of an associated person, or an account over which he or his associated persons exercise investment discretion (collectively, the ''covered accounts'') unless an exception applies. Congress intended Section 11(a) to address concerns about special time and place advantages that floor-based members of

[7] *See* Securities Exchange Act Releases No. 54792 (November 20, 2006), 71 FR 68659 (November 27, 2006), and 54831 (November 29, 2006), 71 FR 70814 (December 6, 2006).

[8] 15 U.S.C. 78k(a).

an exchange might have over persons who were not on the floor—such as the ability to ''execute decisions faster than public investors.'' [9] Rule 11a2–2(T) under the Act [10] provides exchange members with an exception to the trading prohibition.[11]

The Exchange believes that most orders entered into CBSX would qualify for Rule 11a2–2(T) for the same reasons that orders submitted to all-electronic exchanges typically qualify for Rule 11a2–2(T)—namely, because as an electronic marketplace where all orders must be entered into the system for execution and handling, there really is no ''floor.'' However, to the extent members seeking to electronically enter orders while positioned at the CBSX Floor Post might not qualify under Rule 11a2–2(T), the Exchange believes that such members will, by default, qualify for the exemption contained in paragraph (g) of Section 11(a), which exemption essentially provides that members must yield priority to all non-members. Orders entered at the CBSX Floor Post based on price discovery discussions with the CBSX DPM would certainly be entered as cross orders. The Exchange believes that all of the CBSX cross-order types would be consistent with the notion of yielding to existing interest at the crossing price. As described above, Middle Market Cross Orders are priced where there is no existing interest and therefore no interest to yield to. Cross Only orders would cancel if any interest in the system could trade with any part of the cross transaction, and Cross and Sweep Orders would satisfy all interest at the cross price prior to effecting the cross trade.

The Exchange notes that a feature contained in proposed Rule 52.11 that would allow a qualifying cross transaction to establish priority over existing bids/offers on the CBSX Book would not be enabled until functionality is developed that would allow the member a choice as to whether to apply the priority feature of Rule 52.11 in connection with any of the CBSX cross-order types.[12] Once that choice is in place, a member seeking to qualify under paragraph (g) of Rule 11a2–2(T) could effect a cross without the priority feature of Rule 52.11 and a member that is exempt from Section 11(a) for reasons other than paragraph (g) could effect a cross with the priority feature of Rule 52.11.

h. ITS

All rules regarding the Intermarket Trading System are being deleted as the Exchange anticipates using private linkages under the CBSX platform and because the ITS Plan will terminate at the commencement of the compliance date for Regulation NMS in February 2007.

i. Elimination of Unnecessary Rules

Certain existing rules are being eliminated because the Exchange does not believe that they are necessary or relevant to the operation and regulation of the CBSX platform. Paragraph (a) of Rule 52.5 is being eliminated because it merely describes order maintenance functionality available to users and that sort of descriptive language is not normally contained in exchange rules. Paragraph (b) of Rule 52.5 is being eliminated because the Exchange does not want to prohibit market participants from resting buy and sell orders simultaneously in the same security. Rule 53.3(a)(2) is being eliminated because the Exchange does not believe it is necessary to limit a member's ability to fill a customer order only pursuant to the CBSX crossing rule (Rule 52.11). Rule 53.7 is being eliminated because the Exchange does not contemplate trading SuperShares at this time. Rule 53.52 is being eliminated because CBSX would not utilize (and does not need) the concept of individual DPM Designees (DPM firms are the recognized traders). Finally, Rule 53.70 is being eliminated because CBSX would not utilize (and does not need) the concept of Clearing Firm Brokers.

j. Inserting ''CBSX''

The proposed rule change replaces all references to the ''STOC'' system or platform with ''CBSX'' and also replaces references to various Exchange committees with ''CBSX.''

k. Conclusion

In conclusion, the Exchange believes that CBSX would provide a fast and competitive stock trading platform that would be attractive to customers. The Exchange anticipates launching CBSX concurrent with the start of the compliance date for Regulation NMS. Accordingly, the Exchange requests that the proposed rule change not take effect or become operative until February 5, 2007. The Exchange notes that existing Chapters 50–55 are approved as a pilot which terminates in connection with the compliance dates for Regulation NMS. The Exchange hopes approval of these rule changes would allow a seamless migration to CBSX at that time.

2. Statutory Basis

CBOE believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[13] Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) [14] that the rules of an exchange be designed to promote just and equitable principles of trade, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that this proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

[9] *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (''1978 Release I''); Securities Exchange Act Release No. 14713 (April 27, 1978), 43 FR 18557, 18588 (May 1, 1978) (''1978 Release II''); Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084, 6092 (January 31, 1979) (''1979 Release''). The 1978 and 1979 Releases cite the House Report at 54–57.

[10] 17 CFR 240.11a2–2(T).

[11] Known as the ''effect versus execute'' rule, Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect a transaction for a covered account by arranging for an unaffiliated member to execute the transaction on the exchange floor. To comply with the rule's conditions, a member: (1) Must transmit the order from off the exchange floor; (2) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution; (3) may not be affiliated with the executing member; and (4) with respect to an account over which the member has investment discretion, neither the member nor his associated person may retain any compensation in connection with effecting the transaction without express written consent from the person authorized to transact business for the account in accordance with the rule.

[12] Rule 52.11 provides that a CBSX Trader that wishes to cross two original orders or to facilitate an original order at the established bid or offer irrespective of existing interest at such bid/offer may do so provided the cross transaction: (1) Is for at least 5,000 shares; (2) is for a principal amount of at least $100,000; and (3) is greater in size than any single public customer order resting on the CBSX Book at the proposed cross price.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2006–112 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–112. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–112 and should be submitted on or before February 1, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–208 Filed 1–10–07; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55038; File No. SR–NASD–2005–079]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4 to Revise Rule 10322 of the NASD Code of Arbitration Procedure Pertaining to Subpoenas and the Power to Direct Appearances

January 3, 2007.

I. Introduction

On June 17, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise Rule 10322 of the NASD Code of Arbitration Procedure (the ''Code''), which pertains to subpoenas and the power to direct appearances. On July 13, 2005, the Commission published for comment the proposed rule change in the **Federal Register.**[3] The Commission received twelve comments on the proposal.[4] On March 29, 2006, May 12, 2006, and July 7, 2006, NASD submitted Amendment Nos. 1, 2, and 3, respectively, to the proposed rule change. The Commission published the proposed rule change, as amended, for comment in the **Federal Register** on July 18, 2006.[5] The Commission received twenty-six comment letters on the proposal, as amended.[6] On November 30, 2006, NASD submitted Amendment No. 4 to the proposed rule change.[7] This notice and order solicits comments from interested persons on Amendment No. 4 and approves the proposal, as amended, on an accelerated basis. The text of the proposed rule change is available at www.nasd.com, at the principal offices of NASD, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51981 (July 6, 2005), 70 FR 40411 (July 13, 2005).

[4] Comment letters were submitted by Richard Skora, dated July 12, 2005; Seth E. Lipner, Deutsch & Lipner, dated July 13, 2005; Steve Buchwalter, Law Offices of Steve A. Buchwalter, P.C., dated July 13, 2005; Steven B. Caruso, Maddox Hargett & Caruso, P.C., dated July 19, 2005; Dennis M. Pape, dated July 20, 2005; Al Van Kampen, Rohde & Van Kampen PLLC, dated July 25, 2005; Phil Cutler, Cutler Nylander & Hayton, dated August 1, 2005; Avery B. Goodman, A.B. Goodman Law Firm, Ltd., dated August 1, 2005 and August 2, 2005; Jill Gross, Director, Barbara Black, Director, and Richard Downey, Student Intern, Pace Investor Rights Project, dated August 2, 2005; Tim Canning, dated August 3, 2005; and Rosemary J. Shockman, President, Public Investors Arbitration Bar Association, dated August 4, 2005.

[5] *See* Securities Exchange Act Release No. 54134 (July 12, 2006), 71 FR 40762 (July 18, 2006).

[6] Comment letters were submitted by Gary M. Berne, Stoll Stoll Berne Lokting & Shlachter P.C., dated April 13, 2006 (''Berne''); Robert S. Banks, Jr., President, Public Investors Arbitration Bar Association, dated April 28, 2006 (''PIABA 1''); Bryan Lantagne, Chair, Broker-Dealer Arbitration Project Group, North American Securities Administrators Association, Inc., dated May 1, 2006 (''NASAA''); Martin L. Feinberg, dated May 5, 2006 (''Feinberg 1''); Seth E. Lipner, Deutsch Lipner, dated July 17, 2006 (''Lipner 1''); Philip M. Aidikoff, Aidikoff, Uhl & Bakhtiari, dated July 19, 2006 (''Aidikoff''); Martin L. Feinberg, dated July 19, 2006 (''Feinberg 2''); Thomas C. Wagner, VanDeusen & Wagner LLC, dated July 19, 2006 (''Wagner 1''); Steven B. Caruso, Maddox Hargett Caruso, P.C., dated July 21, 2006 (''Caruso''); Joseph C. Korsak, dated July 21, 2006 (''Korsak''); Herbert E. Pounds, Jr., dated July 21, 2006 (''Pounds''); John Miller, dated July 21, 2006 (''Miller''); Richard M. Layne, Layne Lewis LLP, dated July 21, 2006 (''Layne''); Sarah G. Anderson, dated July 21, 2006 (''Anderson''); Jay Salamon, dated July 21, 2006 (''Salamon''); Steph D. M [sic], dated July 21, 2006 (''Steph M''); Thomas C. Wagner, VanDeusen Wagner LLC, dated July 21, 2006 (''Wagner 2''); W. Scott Greco, Greco & Greco, P.C., dated July 21, 2006 (''Greco''); Carl J. Carlson, Carlson & Dennett, P.S., dated July 24, 2006 (''Carlson''); Laurence S. Schultz, Driggers, Schultz & Herbst, P.C., dated July 28, 2006 (''Schultz''); Ryan P. Smith, Vice President, Wachovia Securities, dated August 7, 2006 (''Wachovia''); Robert S. Banks, Jr., President, Public Investors Arbitration Bar Association, dated August 14, 2006 (''PIABA 2''); Jim Parker, Johnson, Rial & Parker, P.C., dated September 7, 2006 (''Parker''); Alan S. Brodherson, Law Offices of Alan S. Brodherson, dated November 20, 2006 (''Brodherson''); Seth E. Lipner, Deutsch Lipner, dated December 6, 2006 (''Lipner 2''); and Steven B. Caruso, President, Public Investors Arbitration Bar Association, dated December 7, 2006 (''PIABA 3'').

[7] The PIABA 3 and Lipner 2 letters were received by the Commission after the submission of Amendment No. 4 by NASD. Both commenters noted NASD's submission of Amendment No. 4 and recommended expedited approval of the proposal, with one commenter stating ''the proposed revisions will both protect public investors and represent a significant step toward reducing the discovery abuses that permeate the arbitration process.'' (PIABA 3).

II. Description of the Proposed Rule Change

In the initial rule filing, NASD proposed to revise Rule 10322 of the Code to provide for a 10-day notice requirement before a party issues a subpoena to a non-party for pre-hearing discovery.[8] In addition, NASD proposed clarifying the requirements regarding the service of subpoenas by specifying that a party that issues a subpoena must serve a copy of the subpoena to all parties and the entity receiving the subpoena on the same day.

In Amendment No. 1, NASD proposed to allow only arbitrators to issue subpoenas for both parties and non-parties, whether for discovery or for appearance at a hearing. In Amendment No. 2, NASD clarified the process for issuing a subpoena to both parties and non-parties. In Amendment No. 3, NASD clarified that, in most cases, a public arbitrator will rule on all motions requesting a subpoena.[9]

In Amendment No. 4, NASD responded to comments on Amendment Nos. 1, 2, and 3 and amended the proposed rule change to authorize the arbitration panel to determine the amount of costs incurred as a result of subpoenaed documents and by whom such costs should be borne. NASD also amended the proposed rule change to provide that the party requesting the subpoena may respond to objections within 10 calendar days of receipt of the objections. In addition, NASD clarified that certain references to days are references to calendar days.

III. Summary of Comments Received and NASD Response

In Amendment No. 4, NASD responded to comments on the amended proposal.

Who Should Pay for Subpoenaed Documents

NASD noted that more than half of the comments discussed which party should be responsible for the costs associated with the production of documents obtained in response to a subpoena.[10] Specifically, NASD stated that commenters: (1) Expressed the view that the proposal would inappropriately require a party requesting documents from another party to be responsible for the costs associated with the document production, (2) argued that the costs associated with the production of any documents, including subpoenaed documents, should be determined and assessed by the panel in its award, (3) stated that treating subpoenaed documents differently from other discovery-related documents could lead to gamesmanship, confusion, and delay in the discovery process, and (4) indicated that this aspect of the proposal would pose a considerable burden on public customers and could prevent them from adequately preparing their cases if they are unable to reimburse the other party for copies of subpoenaed documents.

NASD agreed that the panel should have the authority to determine the amount of costs incurred as a result of subpoenaed documents and by whom such costs should be borne. Therefore, NASD proposed in Amendment No. 4 to delete the following sentence from proposed Rule 10322(e): ''The party requesting the documents shall be responsible for the reasonable costs associated with the production of the copies.'' NASD noted that because Rules 10205(c) and 10332(c) of the Code already provide arbitrators with authority to make cost determinations, it is NASD's belief that this issue does not need to be further addressed by the proposal.

Whether Counsel Should be Able to Issue Subpoenas

NASD noted that four commenters objected to the proposal to limit the power to issue subpoenas to arbitrators.[11] Specifically, NASD stated commenters: (1) Noted that they had not experienced any significant problems with the current rule (which also allows counsel of record to issue subpoenas as provided by law), and stated that there was no reason to revise the rule, (2) expressed the view that limiting to arbitrators the authority to issue subpoenas would result in additional delays, costs, and gamesmanship in the discovery process, and (3) speculated that arbitrators who tire of counsel making numerous requests for subpoenas may capriciously deny the issuance of a subpoena merely to limit the amount of time spent on discovery issues.

NASD disagreed with these comments, stating it believes that providing arbitrators with greater control over the issuance of subpoenas will help to protect investors, associated persons, and other parties from abuse in the discovery process. NASD also stated that the establishment of a uniform, nationwide rule will reduce potential confusion for parties and their counsel regarding whether they have the ability to issue subpoenas, minimize gamesmanship in the subpoena process, and make the rule easier to administer.

Which Arbitrators Should Have Authority to Decide Subpoena Requests

NASD noted that two commenters (1) stated that only public arbitrators should have the authority to decide subpoena requests and that non-public arbitrators should not be involved in resolving discovery issues in those cases where one of the parties is a public customer, and (2) suggested that, at the very least, a non-public arbitrator should be able to decide a subpoena request only if all parties agree.[12]

NASD stated that the rule, as proposed, is in accordance with the suggestions made by these commenters and affirmed that the arbitrator ruling on a motion requesting a subpoena will be a public arbitrator unless a customer previously consented to a non-standard panel composition.[13]

Necessity of Motions for Subpoenas

NASD noted that two commenters asserted that parties should not be required to include a motion as part of a subpoena request, and indicated that this would add unnecessary complexity and delay to the discovery process.[14] NASD disagreed, stating it believes that requiring a motion would not place a significant burden on parties and may provide a benefit to the panel.

Automatic Exchange of Subpoenaed Documents

NASD noted that two commenters suggested revising the proposal to require or allow for the automatic exchange of documents received in response to all subpoenas.[15] NASD disagreed, stating that another party may not want such documents or may not wish to be potentially responsible for the costs associated with the production of such documents. NASD also noted that the proposal does not limit the ability of the parties to agree to automatically exchange all documents received in response to subpoenas.

Time Frame for Ruling on Subpoena Requests

NASD noted that one commenter suggested revising the proposal to require the panel to rule on all subpoena motions within 10 days to ensure that parties are able to conduct discovery in a timely and orderly manner.[16] NASD

[8] *See infra* note 3.

[9] *See infra* note 5.

[10] *See* Anderson, Carlson, Caruso, Feinberg 1 and 2, Greco, Korsak, Layne, Miller, PIABA 2, Pounds, Salamon, Schultz, Steph M, and Wagner 2.

[11] *See* Berne, Brodherson, Parker, and Wachovia.

[12] *See* NASAA and PIABA 1.

[13] *See* Rule 10308(b)(1).

[14] *See* Berne and PIABA 1.

[15] *See* Feinberg 1 and 2, and Salamon.

[16] *See* Wachovia letter.

disagreed, stating that the proposal would require the panel to rule promptly on a motion for a subpoena. NASD also indicated it does not believe that it is appropriate to establish a specific time frame within which the panel must rule on a subpoena request, particularly because there may be occasions when a panel will need to consider several complex motions at the same time.

Clarifications to the Proposed Rule Change

NASD noted that two commenters suggested clarifying revisions to proposed Rule 10322(c).[17] One commenter stated that the rule is potentially ambiguous regarding the time frame during which an arbitrator should rule on the issuance and scope of a subpoena.[18] In this commenter's view the proposal could be read to mean that an arbitrator is required to rule promptly and not consider any objections that have been raised to a subpoena. The other commenter suggested that, to avoid confusion, the rule should contain a time period within which a party must respond to any objections to its proposed subpoena.[19] This commenter also suggested amending paragraphs (c) and (e) of proposed Rule 10322 to clarify whether the time periods in those paragraphs are based on calendar or business days.

To reduce any potential ambiguities in the rule, NASD proposed in Amendment No. 4 to amend the proposed rule change to provide that the party that requested the subpoena may respond to objections within 10 calendar days of receipt of the objections and to clarify certain references to days are references to calendar days.[20]

Conforming the Proposal with the Federal Arbitration Act

NASD noted that one commenter stated that the proposed rule should be revised to conform to the Federal Arbitration Act (FAA), which the commenter states requires a majority of the arbitrators to sign a subpoena.[21] NASD responded that because the proposal would allow only arbitrators to issue subpoenas, it would provide non-parties with more protection than current Rule 103222. NASD also stated it believes that subpoenas issued by a single arbitrator are valid and noted that it has received few, if any, complaints regarding the validity of such subpoenas from participants in the NASD forum.

NASD also noted that commenter expressed the view that the proposal, under the FAA, is unwieldy with respect to the service of subpoenas. The commenter stated that the FAA provides that an arbitration subpoena ''shall be served in the same manner as subpoenas to appear and testify before the court.'' The commenter asserted that federal courts have interpreted this provision to require the personal service of an arbitral subpoena. Consequently, the commenter contended that, under the FAA, the proposal would require personal service of all subpoenas issued in NASD's forum.

In response, NASD pointed out that before a party may participate in NASD's arbitral forum, it must submit a Uniform Submission Agreement in which the party agrees to abide by the Code.[22] NASD stated that under the Code, service can be effectuated by a variety of methods, including mail, overnight mail service, hand delivery, and facsimile.[23] Citing *Volt Information Sciences, Inc.* v. *Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468 (1989), NASD also noted that the Supreme Court has found that the FAA does not prevent the enforcement of arbitration agreements that contain different rules than those set forth in the FAA. NASD indicated it believes that service under the proposal can be accomplished by any of the various methods provided for in the Code rather than personal service exclusively.

Issues Beyond the Scope of the Proposed Rule Change

Finally, NASD noted that two commenters raised issues that are beyond the scope of the proposed rule change. One commenter expressed views related to the composition of arbitration panels and the definition of public arbitrator.[24] The other commenter suggested revisions to the Code regarding the time period within which a panel must be appointed.[25]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4, including whether Amendment No. 4 is consistent with the Exchange 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–079 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2005–079. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–079 and should be submitted on or before February 1, 2007.

V. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is

[17] *See* Caruso and Feinberg 2.

[18] *See* Feinberg 2.

[19] *See* Caruso.

[20] NASD also noted that the pending revisions to the NASD Code of Arbitration Procedure for Customer Disputes and the NASD Code of Arbitration Procedure for Industry Disputes would clarify that the term ''day'' means calendar day, except as otherwise provided. *See* Securities Exchange Act Release Nos. 51856 (June 15, 2005) (SR–NASD–2003–158), 70 FR 36442 (June 23, 2005) and 51857 (June 15, 2005) (SR–NASD–2004–011), 70 FR 36430 (June 23, 2005).

[21] *See* Feinberg 1 and 2.

[22] The Uniform Submission Agreement provides, ''The undersigned parties hereby submit the present matter in controversy, as set forth in the attached statement of claim, answers, and all related counterclaims and/or third-party claims which may be asserted, to arbitration in accordance with the Constitution, By-Laws, Rules, Regulations, and/or Code of Arbitration Procedure of the sponsoring organization.''

[23] *See* NASD Rule 10314(c).

[24] *See* NASAA.

[25] *See* Wachovia.

consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to NASD, and in particular, with the requirements of Section 15A(b)(6)[26] of the Exchange Act.[27] Section 15A(b)(6) requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change is designed to accomplish these ends by permitting only arbitrators to issues subpoenas and by making the arbitration subpoena process more orderly and efficient.

Accelerated Approval of Amendment No. 4

The Commission finds good cause for approving Amendment No. 4 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act. Amendment No. 4 amends the proposed rule change to authorize the arbitration panel to determine the amount of costs incurred as a result of subpoenaed documents and by whom such costs should be borne. Amendment No. 4 also provides that the party that requested the subpoena may respond to objections within 10 calendar days of receipt of the objections. In addition, Amendment No. 4 amends the proposed rule change to clarify that certain references to days are references to calendar days. The Commission anticipates that these changes will provide for greater clarity with respect to the subpoena process and will provide for a more equitable allocation of costs concerning subpoena documents. Accordingly, the Commission finds that accelerated approval of Amendment No. 4 is appropriate.

VI. Conclusions

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change, as amended (SR–NASD–2005–079), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–207 Filed 1–10–07; 8:45 am]

BILLING CODE 8011–01–P

[26] 15 U.S.C. 78o–3(b)(6).

[27] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55041; File No. SR–NSX–2006–17]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify a Fee Schedule for Transactions Executed Through NSX BLADE℠ and To Modify a Fee Schedule for ITS Transactions

January 4, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2006, National Stock Exchange, Inc. (''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to implement a liquidity provider rebate and liquidity taker fee for transactions executed in Tape A and Tape B securities through NSX BLADE℠ (''NSX BLADE''), the Exchange's new trading system, and to modify its Fee Schedule applicable to transactions executed in Tape C securities through NSX BLADE.[5] The Exchange also proposes corresponding changes to the Exchange's ITS Transactions Fee Schedule. The text of the proposed rule change is is available at *www.nsx.com/RulesFilings.asp,* NSX, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has created NSX BLADE, a new trading platform that utilizes a strict price/time priority system as the ultimate replacement for the Exchange's current system, NSTS.[6] In connection with the new trading platform, the Exchange filed a rule change proposing new trading rules for NSX BLADE.[7] The Exchange also amended its rules to add a Chapter XVI to set forth, in its own chapter, rules relating to fees, dues, assessments and a tape rebate program. The rule change adding Chapter XVI was filed pursuant to Section 19(b)(3)(A) of the Act, which rendered it effective upon filing.[8]

In the instant rule filing, the Exchange is filing a proposed Fee Schedule under Rule 16.1(a) and 16.1(c) of Chapter XVI for executions in Tape A, B and C

[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)(2).

[5] Securities are being transitioned from the Exchange's legacy system, National Securities Trading System (''NSTS'') to NSX BLADE. Securities will only be traded on one system; once transitioned, that security will only be traded on NSX BLADE. As of December 22, 2006, all Tape C securities have been transitioned to NSX BLADE, and the Exchange anticipates that all Tape A and Tape B securities will be transitioned to NSX BLADE in mid-January 2007. Until transitioned, Tape A and Tape B securities will continue to be traded on NSTS exclusively. *See* e-mail from Lori A. Ragus, Senior Regulatory Counsel, NSX, to Joseph P. Morra, Special Counsel, SEC, dated December 22, 2006.

[6] *See* footnote 5, *supra.*

[7] *See* Securities Exchange Act Release No. 54391 (August 31, 2006), 71 FR 52836 (September 7, 2006) (SR–NSX–2006–08) (approval order).

[8] *See* Securities Exchange Act Release No. 54194 (July 24, 2006), 71 FR 43258 (July 31, 2006)(SR–NSX–2006–10). SR–NSX–2006–10 was effective upon filing on July 13, 2006. Rule 16.3 provides that the new Chapter XVI would become effective upon written notice by the Exchange to the ETP Holders. Notice was provided declaring Chapter XVI effective on October 2 and 19, 2006 respecting ITS transactions and transactions in NSX BLADE, respectively.

securities through NSX BLADE.[9] The proposed Fee Schedule provides for an execution fee for removing liquidity from NSX BLADE, and a rebate for adding liquidity into NSX BLADE, of $0.0030 per share executed. Thus, ETP Holders taking liquidity against an order in the NSX BLADE System will be charged a fee of $0.0030 per share executed, and ETP Holders providing liquidity into the NSX BLADE System will be paid a rebate of $0.0030 per share executed. The current Fee Schedule provides a rebate and execution fee for transactions only in Tape C securities, whereas this proposed Fee Schedule seeks to expand the rebate and execution fee to include all securities classified as Tape A, B or C securities. In addition, the proposed Fee Schedule modifies the liquidity provider fee paid under the current Fee Schedule from a scaled rebate for Tape C securities of $0.0027 to $0.0028 per share executed to a flat fee of $0.0030 per share executed.

The Exchange also is proposing corresponding changes to the Exchange's ITS Transactions Fee Schedule, which is applicable to transactions pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage or the Intermarket Trading System Plan (hereinafter the ''ITS Plans''). With the implementation of an execution fee for transactions executed through NSX BLADE, the Exchange is proposing to apply the same fee to transactions executed pursuant to the ITS Plans. The Exchange believes that this would eliminate the potential for preferential treatment to those accessing the Exchange pursuant to the ITS Plans, instead of executing transactions directly through NSX BLADE.

Moreover, the Exchange is proposing a technical and corresponding change to the Exchange's ITS Transactions Fee Schedule to delete the liquidity provider rebate fee because the ITS transactions only take liquidity from the Exchange, but cannot provide liquidity. The Exchange states that all orders to NSX BLADE or NSTS pursuant to the ITS Plans are immediate or cancel orders and are not capable of being posted. As such, these orders do not provide liquidity, and cannot earn a liquidity provider fee.

The Exchange is in the process of phasing in NSX BLADE. NSX BLADE was launched on October 23, 2006, with Tape C securities currently being phased into NSX BLADE from NSTS. Once all Tape C securities have been transitioned to NSX BLADE, the Exchange is planning to transition all Tape A and Tape B securities at one time.[10]

During this transitional period of phasing in various securities to NSX BLADE, the Exchange is operating both NSTS and NSX BLADE. Accordingly, the Exchange is operating under two sets of rules during this phase-in period. All transactions in the NSTS System are operating under the rules pertaining to NSTS (old Rule 11.9 (National Securities Trading System) and old Rule 11.10 (National Securities Trading System Fees) and any associated Fee Schedule) while all transactions in NSX BLADE are operating under the NSX BLADE trading rules approved in SR–NSX–2006–08 and the new fee rules in Chapter XVI.[11] When the phase-in system has expired and NSTS is no longer operational, old Rules 11.9 and 11.10 will be extinguished. The Exchange has issued a Notice to ETP Holders to advise them of the different trading systems and rules and fees applicable to each,[12] and will issue a Notice advising them of the new Fee Schedules filed with this rule change.

Pursuant to newly approved CHX Rule 16.1(c), the Exchange will ''provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange.'' The Exchange will advise ETP Holders using the Exchange of these fees through the Exchange's Web site. In addition, the ETP Holders will, simultaneous with the filing, be notified through the issuance of a Regulatory Circular of the new Fee Schedules.

The Exchange believes that the fees have been designed in this manner in order to ensure that the Exchange can continue to fulfill its obligations under Section 6(b) of the Act.[13]

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(4) of the Act,[15] in particular, regarding the equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[16] and subparagraph (f)(2) of Rule 19b–4 thereunder,[17] because it establishes or changes a due, fee, or other charge imposed by NSX. 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 SR–NSX–2006–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2006–17. This file number should be included on the subject line if e-mail is used. To help the

[9] As set forth in SR–NSX–2006–10, the Exchange proposed to maintain a separate fee schedule that contains its current fees, dues and other charges, instead of including all of its specific fees, dues and charges in the text of its rules, as it formerly did prior to the adoption of Chapter XVI.

[10] NSX plans to monitor this implementation and adjust the schedule as needed to maintain an orderly transition.

[11] The ITS Transactions Fee Schedule is applicable to any transaction pursuant to the ITS Plans, regardless whether the transaction was executed through NSTS or NSX BLADE.

[12] *See* NSX Regulatory Circular 06–011 issued on October 19, 2006.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78s(b)(3)(a)(ii).

[17] 17 CFR 240.19b–4(f)(2).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices of NSX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2006–17 and should be submitted on or before February 1, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–236 Filed 1–10–07; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55035; File No. SR–ODD–2006–01]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Accelerated Delivery of Supplement to the Options Disclosure Document Reflecting Certain Changes to Disclosure Regarding U.S. Dollar-Denominated Foreign Currency Options

December 29, 2006.

On December 8, 2006, The Options Clearing Corporation (''OCC'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 (''Act''),[1] five preliminary copies of a supplement to its options disclosure document (''ODD'') reflecting certain changes to disclosure regarding U.S. dollar-denominated foreign currency options (''FCOs'').[2] On December 29, 2006, the OCC submitted to the Commission five definitive copies of the supplement.[3]

The ODD currently contains general disclosures on the characteristics and risks of trading standardized options. Recently, an options exchange amended its rules to permit the listing and trading of FCOs on the British pound and the Euro.[4] The proposed supplement to the ODD accommodates this change by providing additional disclosure regarding FCOs.

Specifically, the proposed supplement to the ODD updates disclosure regarding the calculation of exercise prices and premiums for FCOs. The proposed supplement also enhances disclosure regarding cash-settlement of FCOs, including the calculation of cash settlement amounts and exercise settlement values. Finally, the proposed supplement updates disclosure in the ODD regarding the expiration of FCOs.[5] The proposed supplement is intended to be read in conjunction with the more general ODD, which, as described above, discusses the characteristics and risks of options generally.

Rule 9b–1(b)(2)(i) under the Act[6] provides that an options market must file five copies of an amendment or supplement to the ODD with the Commission at least 30 days prior to the date definitive copies are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of information disclosed and the public interest and protection of investors.[7] In addition, five copies of the definitive ODD, as amended or supplemented, must be filed with the Commission not later than the date the amendment or supplement, or the amended options disclosure document, is furnished to customers. The Commission has reviewed the proposed supplement and finds, having due regard to the adequacy of information disclosed and the public interest and protection of investors, that the proposed supplement may be furnished to customers as of the date of this order.

It is therefore ordered, pursuant to Rule 9b–1 under the Act,[8] that definitive copies of the proposed supplement to the ODD (SR–ODD–2006–01), reflecting changes to disclosure regarding U.S. dollar-denominated foreign currency options, may be furnished to customers as of the date of this order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–231 Filed 1–10–07; 8:45 am]

BILLING CODE 8011–01–P

[1] 17 CFR 240.9b–1.

[2] *See* letter from William H. Navin, Executive Vice President, General Counsel, and Secretary, OCC, to Elizabeth King, Associate Director, and Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated December 7, 2006.

[3] *See* letter from Jean M. Cawley, First Vice President and Deputy General Counsel, OCC, to Elizabeth King, Associate Director, and Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated December 29, 2006.

[4] *See* Securities Exchange Act Release No. 34–54989 (December 21, 2006), 71 FR 78506 (December 29, 2006) (approving File No. SR–Phlx–2006–34).

[5] The Commission notes that the options markets must continue to ensure that the ODD is in compliance with the requirements of Rule 9b–1(b)(2)(i) under the Act, 17 CFR 240.9b–1(b)(2)(i), including when future changes regarding FCOs are made. Any future changes to the rules of the options markets concerning FCOs would need to be submitted to the Commission under Section 19(b) of the Act. 15 U.S.C. 78s(b).

[6] 17 CFR 240.9b–1(b)(2)(i).

[7] This provision permits the Commission to shorten or lengthen the period of time which must elapse before definitive copies may be furnished to customers.

[8] 17 CFR 240.9b–1.

[9] 17 CFR 200.30–3(a)(39).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55027; File No. SR–Phlx–2006–53]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change as Modified by Amendment No. 1 Thereto, Relating to Assignments in Options Based on Root Symbol

December 29, 2006.

I. Introduction

On August 18, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Phlx Rule 507, ''Application for Assignment in Streaming Quote Options.'' Specifically, Phlx proposes to adopt new Commentary .01 to Phlx Rule 507, which would authorize the Exchange's Options Allocation, Evaluation and Securities Committee (''OAESC''),[3] to assign trading privileges in options to Streaming Quote Traders

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Phlx By-Law Article X, Section 10–7(a). *See also* Phlx Rule 500.

(''SQTs'')[4] and Remote Streaming Quote Traders (''RSQTs'')[5] by ''root symbol'' (as defined more fully below), such that an SQT or RSQT may be assigned in only certain series of an option. On November 21, 2006, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on November 29, 2006.[6] The Commission received one comment letter on the proposed rule change.[7] This order approves the proposed rule change as modified by Amendment No. 1.

II. Description of the Proposal

The purpose of the proposed rule change is to mitigate quote traffic and address quote capacity issues by reducing the number of quotations required to be submitted on the Exchange. The proposal would permit the OAESC to assign trading privileges to SQTs and RSQTs, upon their request, only in specific series of a particular option based on the ''root symbol'' of the series, instead of assigning trading privileges in all series of such option. Thus, as described below, SQTs and RSQTs would be required to submit quotations in fewer series.

Phlx Rule 507 currently provides the solicitation, application and review process to be followed by the OAESC when an SQT or RSQT submits an application for assignment in an option. Under Phlx Rule 507, an application for assignment must be submitted in writing to the Exchange's designated staff and would be required to include, at a minimum, the name of the SQT or RSQT applicant and written verification from the Exchange's Membership Services Department that such SQT or RSQT applicant is qualified as a ROT.

The Exchange proposes to permit SQT and RSQT applicants to request assignment in an option by ''root symbol.'' Today, all assignments are by overlying option, meaning the SQT and RSQT applicants that are assigned in a particular option are assigned in all series of such option. Therefore, the calculation of the percentage of series required to be quoted is based on every series listed in such option, thus requiring SQTs and RSQTs to quote most series.

Root symbols are the basic symbols used to identify an option, such as, for example, ''ABQ'' for options on fictitious ''ABC Corporation.'' The various series of options on ABC Corporation are identified with two additional symbols reflecting the expiration month and the strike price, which also indicate whether it is a put or call option. ABC Corporation may have different root symbols other than ABQ because of the number of strike prices (there are not enough letters in the alphabet to capture all potential strike prices), the expiration months available, and whether any mergers or acquisitions have occurred. Thus, an option on the Exchange overlying a single underlying security could have several different root symbols.

The Exchange anticipates that, if options can be assigned by root symbol, SQTs and RSQTs may more carefully tailor their requests to the specific roots in which they are interested. According to the Exchange, SQTs and RSQTs often submit quotes with bid/ask differentials as wide as the Exchange's rules permit in series that they have no interest in quoting.[8] The Exchange believes that, as a result, to meet their quoting continuity requirements,[9] SQTs and RSQTs submit continuous quotations that are not at or even near the best bid or offer on the Exchange, nor the National Best Bid or Offer, resulting in unnecessary quote traffic on the Exchange.

III. Discussion

After careful review of the proposal and consideration of the comment letter, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the Exchange's proposal to, upon request, assign trading privileges in options to SQTs and RSQTs by ''root symbol'' would permit the Phlx's traders to select the series of options that they are most interested in quoting. This should not only reduce the number of series assigned to SQTs and RSQTs by the OAESC, but should also reduce the number of quotes submitted by SQTs and RSQTs, and therefore should help to mitigate the Exchange's quote message traffic and capacity.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–2006–53), as modified by Amendment No. 1, be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–232 Filed 1–10–07; 8:45 am]

BILLING CODE 8011–01–P

[4] *See* Phlx Rule 1014(b)(ii)(A).

[5] *See* Phlx Rule 1014(b)(ii)(B).

[6] *See* Securities Exchange Act Release No. 54807 (November 21, 2006), 71 FR 69173.

[7] *See* letter to Nancy Morris, Secretary, Commission, from Christopher Nagy, Chair, SIFMA Options Committee (''SIFMA''), dated December 20, 2006. SIFMA does not directly oppose Phlx's quote mitigation proposal discussed herein, but instead favors the adoption of a comprehensive industry-wide quote mitigation strategy. Specifically, SIFMA believes that the adoption of an industry-wide, uniform ''holdback timer'' proposal would provide the most effective means of quote mitigation. Although, SIFMA expressed concern that a lack of uniformity among quote mitigation strategies implemented by the various options exchanges may impose a burden on member firms and result in confusion among market participants, SIFMA does not specifically oppose the adoption of the quote mitigation proposal approved by this order. Additional concerns raised in SIFMA's December 20, 2006 comment letter relating to other proposed rule changes filed by the options exchanges will be more fully addressed in any subsequent releases issued by the Commission.

[8] Streaming Quote Options trading on the Exchange's fully electronic trading platform for options, Phlx XL, may be quoted electronically with a difference not to exceed $5 between the bid and offer regardless of the price of the bid. The $5 bid/ask differentials only apply to Streaming Quote Options trading on Phlx XL and only following the opening rotation in each security. *See* Phlx Rule 1014(c)(i)(A)(2).

[9] *See* Phlx Rule 1014(b)(ii)(D)(1).

[10] In approving this proposed rule change the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55028; File No. SR–Phlx–2006–90]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate Certain License Fees

December 29, 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 December 26, 2006, the Philadelphia Stock

Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Phlx has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Phlx under Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to modify its fee schedule to eliminate the license fees assessed on the following products: Russell 1000 Growth iShares (''IWF''); Russell 2000 iShares (''IWM''); Russell 2000 Value iShares (''IWN''); Russell 2000 Growth iShares (''IWO''); Russell Midcap Growth iShares (''IWP''); and Russell Midcap Value iShares (''IWS''). This proposal is scheduled to become effective for trades settling on or after January 2, 2007.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.Phlx.com,* at the principal office of the Phlx, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx 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 Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Exchange imposes a license fee of $0.10 per contract side for equity option and index option ''firm'' transactions on certain licensed products after a cap of $60,000 per member organization is reached.[5] The Exchange also assesses a license fee of $0.10 per contract side after a 14,000 cap is reached on Registered Options Traders (''ROT'') comparison charges and ROT and specialist transaction charges in connection with non-AUTOM delivered equity option contracts on those products that carry a license fee.[6] Additionally, the Exchange imposes a license fee of $0.05 per contract side for dividend and short stock interest strategies in connection with certain products that carry license fees, if applicable.[7] The list of product symbols that are assessed a license fee are listed on the Exchange's $60,000 ''Firm-Related'' Equity Option and Index Option Cap Fee Schedule.

The Exchange is proposing to eliminate the $0.10 per contract side and $0.05 per contract side license fees described above on the following products: IWF; IWM; IWN; IWO, IWP; and IWS.[8]

The proposed rule change would remove references to the product symbols listed above from the Exchange's $60,000 ''Firm Related'' Equity Option and Index Option Cap because the Exchange no longer pays a license fee in connection with the trading of these products. Accordingly, there is no need to assess a license fee. Therefore, for trades settling on or after January 2, 2007, the Exchange will eliminate the $0.10 and $0.05 license fees for the above-referenced products.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and paragraph (f)(2) of Rule 19b–4[12] thereunder. 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 SR–Phlx–2006–90 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2006–90. 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

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The $60,000 cap applies to all ''firm-related'' equity option and index option comparison and transaction charges combined. ''Firm-related'' charges include equity option firm/proprietary comparison charges, equity option firm/proprietary transaction charges, equity option firm/proprietary facilitation transaction charges, index option firm/proprietary comparison charges, index option firm/proprietary transaction charges, and index option firm/proprietary facilitation transaction charges (collectively ''firm-related'' charges). *See e.g.,* Securities Exchange Act Release No. 53287 (February 14, 2006), 71 FR 9186 (February 22, 2006) (SR–Phlx–2006–10).

[6] *See* Securities Exchange Act Release No. 54659 (October 27, 2006), 71 FR 64603 (November 2, 2006) (SR–Phlx–2006–67).

[7] *See e.g.,* Securities Exchange Act Release No. 54424 (September 11, 2006), 71 FR 54699 (September 18, 2006) (SR–Phlx–2006–55).

[8] The Exchange recently eliminated additional license fees from its fee schedule. *See* Securities Exchange Act Release No. 54874 (December 5, 2006), 71 FR 75604 (December 15, 2006) (SR–Phlx–2006–78).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2006–90 and should be submitted on or before February 1, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–234 Filed 1–10–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55044; File No. SR–Phlx–2006–92]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Use of Benchmark and Qualified Contingent Trades in Nasdaq Securities Before the Trading Phase Date of Regulation NMS

January 5, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 28, 2006 the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been substantially prepared by the Phlx. 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 rendered the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rule 185A to add two paragraphs reflecting that Phlx will accept Immediate-or-Cancel (''IOC'') Cross Orders marked as Benchmark and IOC Cross Orders marked as Qualified Contingent Trade, both for Nasdaq Global Market Securities and Nasdaq Capital Market Securities (''Nasdaq Securities'') before Rule 611 of Regulation NMS is operative on the Exchange (the ''Trading Phase Date'').[5] In addition, the modified rule clarifies the requirements for IOC Cross Orders marked as Benchmark and IOC Cross Orders marked as Qualified Contingent Trade for Nasdaq Securities before the Trading Phase Date. In addition, the title of Phlx Rule 185A is amended to reflect the subject matter of the rule. Finally, the paragraphs of the rule are being individually identified. The text of the proposed rule change is available at Phlx, the Commission's Public Reference Room, and www.phlx.com.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify the requirements for IOC Cross Orders marked Benchmark or Qualified Contingent Trade in Nasdaq Securities on XLE before the Trading Phase Date. Currently, Phlx Rule 185(c)(3) states ''[a]n IOC Cross Order may be marked Benchmark if it meets the requirements of Reg NMS Rule 611(b)(7). An IOC Cross Order may be marked Qualified Contingent Trade if it meets the requirements of an exemption to Reg NMS Rule 611.'' Also, Phlx Rule 185(c)(2)(D) states that IOC Cross Orders marked Benchmark or Qualified Contingent Trade are permitted to trade through the price of the Protected NBBO.[6] In addition, IOC Cross Orders marked Benchmark may be entered[7] and executed[8] in sub-penny increments.[9] However, the reference to ''Reg NMS Rule 611'' in Phlx Rule 185(c)(3) may be unclear in light of the fact that Rule 611 of Regulation NMS is effective, but not operative until the Trading Phase Date. Phlx also notes that the use of these orders in Nasdaq Securities does not require any relief from any National Market System Plans because there is no intermarket trade through prohibition in Nasdaq Securities before the Trading Phase Date.

Pursuant to this filing, a XLE Participant could submit an IOC Cross Order marked Benchmark in Nasdaq Securities if it is an order: (1) At a price that was not based, directly or indirectly, on the quoted price of the NMS Stock at the time of the execution; and (2) for which the material terms were not reasonably determinable at the time the commitment to execute the order was made. This definition is identical to the exemption to the trade through rule in Rule 611(b)(7) of Regulation NMS, which is not effective until the Trading Phase Date. Phlx believes that this will allow XLE Participants to gain valuable experience with this order type in Nasdaq Securities prior to the Trading Phase Date.

In addition, a XLE Participant could submit an IOC Cross Order marked Qualified Contingent Trade in Nasdaq Securities if it meets the seven requirements listed in new Phlx Rule 185A(d).[10] These requirements are

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[13] 17 CFR 200.30–3(a)(12).

[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 Trading Phase Date is currently February 5, 2007. *See* Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006).

[6] *See* Phlx Rule 185(c)(2)(D). *See also* Phlx Rule 1(dd) (defining ''Protected NBBO'' as the best Protected Bid and the best Protected Offer in a stock).

[7] *See* Phlx Rule 125(b)(2).

[8] *See* Phlx Rule 125(d)(3).

[9] *See* Securities Exchange Act Release No. 54678 (October 31, 2006), 71 FR 65018 (November 6, 2006).

[10] These seven requirements are taken from the exemption to Rule 611 issued by the Commission for Qualified Contingent Trades. *See* Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006).

meant to encompass a trade in Nasdaq Securities that ''is a multi-component trade involving orders for a security and a related derivative, or, in the alternative, orders for related securities, that are executed at or near the same time.'' [11] The Exchange notes that the economics of a Qualified Contingent Trade are based on the relationship between the prices of the security and the related derivative or security, and that the execution of one order is contingent upon the execution of the other order. The Exchange also notes that the sought-after spread or ratio between the relevant instruments is known and specified at the time of the order, and this spread or ratio stands regardless of the prevailing price at the time of execution. Therefore, the parties to these transactions are focused on the spread or ratio between the transaction prices for each of the component instruments, rather than on the absolute price of any single component instrument. Because the focus of such trades is on the relative prices of the component instruments, the price of a component of a particular trade may or may not correspond to the prevailing market price of the security. For Qualified Contingent Trades in Nasdaq Securities, the parties to the trade will not execute one side of the trade without the other component or components being executed in full (or in ratio) and at the specified spread or ratio.[12]

Finally, Phlx Rule 185A is being divided into individually identified subparagraphs to make the Rule clearer. In addition, the name of the rule is being modified to reflect that the rule would refer to more than only intermarket sweep orders.

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Section 6(b)(5) of the Act [14] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest by allowing XLE Participants to gain experience with Benchmark and Qualified Contingent Trade order types for Nasdaq Securities prior to the Trading Phase Date.

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

No written comments were either solicited or received by the Exchange.

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, provided that the Exchange has given the Commission written notice of its intent to file 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16] As required under Rule 19b–4(f)(6)(iii) under the Act,[17] Phlx provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, prior to the date of the filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) under the Act [18] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) under the Act [19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay, which would make the rule change effective and operative upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change clarifies the requirements of an IOC Cross Order marked Benchmark in Nasdaq Securities and an IOC Cross Order marked Qualified Contingent Trade in Nasdaq Securities for the period before the Trading Phase Date. The Commission believes that the earlier operative date is consistent with the protection of investors and the public interest because there is no intermarket trade-through prohibition applicable to Nasdaq Securities before the Trading Phase Date. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[20]

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.[21]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2006–92 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2006–92. 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

[11] *Id.*

[12] *See id.*

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6)

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] 17 CFR 240.19b–4(f)(6).

[19] 19 17 CFR 240.19b–4(f)(6)(iii).

[20] 20 For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] *See* 15 U.S.C. 78s(b)(3)(C).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2006–92 and should be submitted on or before February 1, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–235 Filed 1–10–07; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5663]

Announcement of Meetings of the International Telecommunication Advisory Committee

SUMMARY: This notice announces meetings of the International Telecommunication Advisory Committee (ITAC) to prepare advice on U.S. positions for the International Telecommunication Union's Telecommunication Standardization Sector Study Group 3 (Tariff and accounting principles including related telecommunication economic and policy issues), the Organization of American States Inter-American Telecommunications Commission's Permanent Consultative Committee I (Telecommunications), and a standing electronic mail meeting preparing advice for ITU Radiocommunication Sector meetings.

The ITAC will meet on February 8 and 22 and March 8, 2007, all meetings from 2 p.m.–4 p.m. to prepare advice on U.S. positions to be taken at ITU–T Study Group 3. Location of these meetings may be obtained by calling the Secretariat below.

The ITAC will meet on February 13, 2007 from 10 a.m. to noon, and February 20 and March 13, 2007 both from 2 p.m.–4 p.m. to prepare advice on U.S. positions to be taken at the OAS CITEL PCC.I. Location of these meetings may be obtained by calling the Secretariat below.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare for various ITU–R Study Group meetings continuously by e-mail through the end of July 2007. People desiring to participate in this activity should contact the Secretariat at *minardje@state.gov* or 202 647–3234 for directions.

These meetings are open to the public. Further information may be obtained from the Secretariat *minardje@state.gov,* telephone 202 647–3234.

Dated: January 4, 2007.

Anne D. Jillson,

Foreign Affairs Officer, International Communications & Information Policy, Multilateral Affairs, Department of State.

[FR Doc. E7–257 Filed 1–10–07; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 5662]

Advisory Committee on Transformational Diplomacy; Notice of Meeting

The Secretary of State's Advisory Committee on Transformational Diplomacy will meet on Wednesday, January 24, 2007, Room 7516 HST, U.S. Department of State, 2201 C Street, NW., Washington, DC. The Committee is composed of prominent Americans from the private sector and academia who provide the Department with advice on its worldwide management operations, including structuring, leading, and managing large global enterprises, communicating governmental missions and policies to relevant publics, and better use of information technology.

The meeting will focus on Private Sector Partnerships, Workforce and Training, State Department 2012/2025, IT Transformation, and Transformational Diplomacy.

This meeting is open to the public from 8 a.m. until 10:30 a.m. as seating capacity allows. The Committee will meet in closed session from 10:30 a.m. until 12 p.m. to receive special briefings including classified information. It has been determined that this portion of the meeting will be closed to the public pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1) and 552b(c)(9) (B).

Entry to the building is controlled; to obtain pre-clearance for entry, members of the public (including government employees and Department of State employees) planning to attend should provide by no later than January 16, 2007, their name; place of birth and date of birth; citizenship (country); ID number, i.e., U.S. government ID (agency), U.S. military ID (branch), passport (country), or drivers license number (state); professional affiliation, address, and telephone number to Carlene Roy by fax (202) 647–2524, e-mail (*royc@state.gov*), or telephone (202) 647–0093. Members of the public also may file a written statement with the committee.

One of the following valid photo IDs will be required for admittance to the State Department building: U.S. driver's license, passport, or U.S. Government agency ID. Members of the public must use the ''C'' Street entrance, after going through the exterior screening facilities. Due to escorting requirements, attendees should arrive 15 minutes before the meeting begins.

For additional information, contact Madelyn Marchessault, Office of Management Policy, at (202) 647–0093 or at *Marchessaultms@state.gov*.

Dated: January 4, 2007.

Marguerite Coffey,

Managing Director, Office of Management Policy, Department of State.

[FR Doc. E7–256 Filed 1–10–07; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Ada County, ID

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Letter of project initiation; Notice of Intent to prepare an Environmental Impact Statement (EIS); and initiation of public and agency scoping for the extension of State Highway 16 (SH 16) between State Highway 44 (SH 44) and Interstate 84 (I–84) in Ada County, Idaho.

SUMMARY: The FHWA hereby gives notice that it intends to prepare an EIS for the proposed new construction of approximately 7 miles of SH 16 between SH 44 (State Street) and I–84 in the general vicinity of McDermott Road in Ada County, Idaho. The corridor study will evaluate the location and design for future construction of this highway segment. This EIS is being prepared and considered in accordance with the

National Environmental Policy Act (NEPA) of 1969, regulations of the Council on Environmental Quality (40 CFR parts 1500–1508, and FHWA regulations, guidance and policy.

Anticipated Federal approvals/actions needed for this project to be constructed include permits for Sections 401 and 404 of the Clean Water Act (U.S. Army Corps of Engineers), issuance of a Biological Opinion by the U.S. Fish and Wildlife Service through consultation as required by Section 7 of the Endangered Species Act, and compliance with Section 106 of the National Historic Preservation Act.

Cooperating Agencies: There are no cooperating agencies yet identified for this project.

DATES: Comments on the scope of the EIS for the proposed project should be received no later than January 31, 2007. Comments and questions should be directed to the address listed below. Public comments are welcome anytime during the NEPA process and should be directed to the address listed below. Additional formal opportunities for public participation after the Public Scoping are tentatively scheduled as follows:

Review and comment of Draft EIS (including a public hearing): Fall of 2009.

Review of Final EIS: Fall 2010.

Notices of availability for the Draft EIS, Final EIS and Record of Decision will be provided through direct mail, the Federal Register and other media. Notification also will be sent to Federal, State, local agencies, persons, and organizations that submit comments or questions. Precise schedules and locations for public meetings will be announced in the local news media. Interested individuals and organizations may request to be included on the mailing list for the distribution of meeting announcements and associated information.

FOR FURTHER INFORMATION CONTACT: Ed Johnson, Field Operations Engineer; Federal Highway Administration, 3050 Lake Harbor Lane, Suite 126, Boise, Idaho, 83703, Telephone: (208) 334–9180; or Gwen Smith, GARVEE Public Involvement Coordinator, Idaho Transportation Department, P.O. Box 7129, Boise, Idaho 83707–1129, Telephone: (208) 334–4444; or Steve Alters, CIP, 720 Park Blvd, Boise, Idaho, 83729, Telephone: (208) 386–5004.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register's** home page at: *http://www/nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov.nara*.

Background

The FHWA in cooperation with the Idaho Department of Transportation (ITD), and Connecting Idaho Partners (CIP) will prepare an EIS to identify an alignment for the extension of State Highway 16 (SH 16) from SH 44 (State Street) to Interstate 84 (I–84) in Ada County, Idaho. This extension includes a new bridge across the Boise River. Notice is hereby given that the public scoping process has been initiated to prepare an EIS that will address the impacts of and alternatives to the proposal. The purpose of the scoping process is to solicit public comment regarding the full spectrum of issues and concerns, including a suitable range of alternatives, and the nature and extent of potential environmental impacts and appropriate mitigation measures that should be addressed in the EIS process. The EIS will examine the short and long-term impacts of a reasonable range of alternatives, including the no action alternative, on the natural, physical, and human environments. The impacts assessment will include, but not be limited to, impacts on wetlands, wildlife, and fisheries; social environment; changes in land use; aesthetics; changes in traffic; and economic impacts. Environmental Justice (as outlined in Executive Order 12898) will also be addressed as part of the impact assessment. The EIS will also examine measures to mitigate adverse impacts resulting from the proposed action.

Comments are being solicited from Federal, State, and local agencies and from private organizations and citizens who have interest in this proposal. Public information meetings will be held in the project area to discuss the potential alignments. The draft EIS will be available for public and agency review, and a public hearing will be held to receive comments. Public notice will be given of the time and place of all meetings and hearings.

Comments and/or suggestions from all interested parties are requested, to ensure that the purpose and need for the project, the full range of all issues, and significant environmental issues in particular, are identified and reviewed. Comments or questions concerning this proposed action and/or its EIS should be directed to the FHWA, ITD or CIP at the addresses listed previously.

It is anticipated that a draft EIS will be available in the Fall of 2009.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed Action.)

Authority: 23 U.S.C. 315; 23 CFR 771.123; 49 CFR 1.48.

Issued on: January 7, 2007.

Stephen Moreno,

Idaho Division Administrator, FHWA.

[FR Doc. 07–64 Filed 1–10–07; 8:45 am]

BILLING CODE 4910–RY–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of a Programmatic Environmental Impact Statement on the Jacksonville, Florida Rapid Transit System

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of intent to prepare a programmatic environmental impact statement.

SUMMARY: The Federal Transit Administration, in cooperation with Jacksonville (Florida) Transportation Authority, is planning to prepare a programmatic environmental impact statement for the proposed expansion of and improvements to the Jacksonville Rapid Transit System, a busway serving the greater Jacksonville area. The programmatic environmental impact statement will be prepared in accordance with regulations implementing the National Environmental Policy Act, as supplemented by the joint Federal Transit Administration—Federal Highway Administration National Environmental Policy Act procedures. The purpose of this notice of intent is to alert interested parties regarding the plan to prepare the programmatic environmental impact statement, to provide information on the nature of the proposed transit program, to invite public participation in the impact statement process, including comments on this notice, and to announce that public scoping meetings will be conducted.

DATES: Written comments on this notice, including the scope of study and impacts to be considered, should be sent to Ms. Suraya Teeple, Senior

Transportation Planner, by February 1, 2007.

ADDRESSES: Written comments on this notice should be sent to Ms. Suraya Teeple, Senior Transportation Planner, Jacksonville Transportation Authority, Post Office Drawer O, Jacksonville, Florida 32202.

Public scoping meetings will be held at the following dates, times, and locations.

Monday, January 29, 2007, from 4:30–7:30 p.m. Northwest Library, 1755 Edgewood Avenue West, Jacksonville, Florida 32208.

Tuesday, January 30, 2007, from 4:30–7:30 p.m. FCCJ Deerwood Center, 9911 Old Baymeadows Road, Jacksonville, Florida 32256.

Wednesday, January 31, 2007, from 4:30–7:30 p.m. Regency Square Library, 9900 Regency Square Blvd., Jacksonville, Florida 32225.

Thursday, February 1, 2007, from 4:30–7:30 p.m. FCCJ Kent Campus, 3939 Roosevelt Blvd., Jacksonville, Florida 32205.

Individuals who may require special accommodations should contact Ms. Winova Hart, Project Coordinator, Jacksonville Transportation Authority, Post Office Drawer O, Jacksonville, Florida, 32203 (Telephone (904) 630–3185) at least 48 hours in advance of a meeting in order for Jacksonville Transportation Authority to make the necessary arrangements.

FOR FURTHER INFORMATION CONTACT: Ms. Tajsha LaShore, Transportation Program Specialist, Federal Transit Administration, Atlanta Regional Office at (404) 562–3506.

SUPPLEMENTARY INFORMATION: *The Proposed Program:* The proposed program grew out of a 1998 study of the Rapid Transit System, a busway serving the greater Jacksonville area, which has been funded in part by a one-half cent sales tax approved in 2000. The Rapid Transit System's proposed alignments are located in major corridors—the North corridor, extending from the Jacksonville central business district (CBD) north to Norwood Avenue; the East corridor, extending from the CBD east to Regency Square Mall; the Southeast corridor, extending from the CBD southeast to Baymeadows Road; and the Southwest corridor, extending from the CBD southwest to 103rd Street/Timuquana Road—that serve and connect employment centers and residential areas. A full description of the system, complete with maps, may be obtained upon request, and will be available at each public scoping meeting. Additional information on the Regional Transit System can also be found on the Jacksonville Transportation Authority Web site at *http://www.jtafla.org.* The proposed program is consistent with the approved Long Range Transportation Plan of the First Coast Metropolitan Planning Organization. The objective of this programmatic—also known as Tier 1—impact statement process is to settle on alignments within system corridors to enable right-of-way acquisition to proceed, thereby avoiding additional delays that would serve to increase the overall cost of the program.

Purposes of and Need for the Proposed Program: Recent studies of the corridors to be served by the proposed program revealed the need for transportation improvements, including a wider range of mobility options, to meet increasing travel demand within and through the corridors. Transit service delivery options are undergoing major changes in the greater Jacksonville area in response to changing demographics. Jacksonville is geographically expansive, with multiple employment centers both downtown and in suburban areas. Additionally, Jacksonville has an increasingly elderly population occurring naturally with long term residents and with in-migration from other States and south Florida. Jacksonville also has experienced increases in suburban employment centers and increases in downtown residential development along with continued suburban residential development. Regional Transit System improvements are designed to accommodate these changing circumstances.

Alternatives: By and large, the proposed program is substantially identical to a locally preferred alternative that was adopted in 2005 at the conclusion of alternatives analysis studies. This programmatic impact statement process will examine the transit system as a whole with a view toward settling on alignments within the four corridors identified above. Refinements to various alignments will be explored. These refinements will be developed in consultation with State and local agencies and the surrounding community in the context of the programmatic impact statement. The intent of the refinements is to stay generally within the original corridor while seeking to enhance ridership potential, reduce costs where feasible, and mitigate adverse environmental impacts. Major components of the entire system will be phased in over time. A site-specific environmental process will be undertaken for each component.

For this programmatic examination, the only other alternative currently under consideration is a no-build alternative. The no-build alternative serves as the baseline against which environmental effects of other alternatives, including the proposed program, may be measured.

The Programmatic Environmental Impact Statement Process and the Role of the Public: The purpose of the programmatic impact statement process is to explore in a public setting potentially significant effects of implementing the proposed program, particularly as it relates to alignment options within the system, on the physical, human, and natural environment. Areas of investigation include, but are not limited to, land use, development potential, land acquisition and displacements, historic resources, visual and aesthetic qualities, air quality, noise and vibration, energy use, safety and security, and ecosystems, including threatened and endangered species. Measures to avoid, minimize, or mitigate any significant adverse impacts will be identified.

Regulations implementing the National Environmental Policy Act (NEPA), as well as provisions of the joint Federal Transit Administration—Federal Highway Administration National Environmental Policy Act procedures, call for public involvement in the impact statement process. The scoping meetings announced above are designed to provide the public with the most meaningful opportunity to participate knowledgeably in this process.

Comments in response to this notice on potentially significant environmental impacts that may be associated with the proposed program are welcomed. There will be additional opportunities to comment in the scoping process at the public meetings announced above.

Issued on: January, 5, 2007.

Yvette G. Taylor,

Regional Administrator, FTA Region 4.

[FR Doc. 07–89 Filed 1–10–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No: FTA–2006–25750]

Final Policy Statement on When High-Occupancy Vehicle (HOV) Lanes Converted to High-Occupancy/Toll (HOT) Lanes Shall Be Classified as Fixed Guideway Miles for FTA's Funding Formulas and When HOT Lanes Shall Not Be Classified as Fixed Guideway Miles for FTA's Funding Formulas

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final policy statement.

SUMMARY: This notice supersedes the notice published in the **Federal Register** by FTA on December 27, 2006, at 71 FR 77862. This notice corrects certain typographical errors that appeared in the prior notice, makes non-substantive revisions to the prior notice and re-orders the sections of the prior notice.

This final policy statement describes the terms and conditions on which the Federal Transit Administration (FTA) will classify High-Occupancy Vehicle (HOV) lanes that are converted to High-Occupancy/Toll (HOT) lanes as ''fixed guideway miles'' for purposes of the transit funding formulas administered by FTA. This final policy statement also describes when FTA will not classify HOT lanes as fixed guideway miles for purposes of the transit funding formulas administered by FTA.

DATES: *Effective Date:* The effective date of this final policy statement is January 11, 2007.

ADDRESSES: *Availability of the Final Policy Statement and Comments:* Copies of this final policy statement and comments and material received from the public, as well as any documents indicated in this notice as being available in the docket, are part of docket number FTA–2006–25750. For access to the DOT docket, please go to *http://dms.dot.gov* at any time or to the Docket Management System facility, U.S. Department of Transportation, 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.

FOR FURTHER INFORMATION CONTACT: David B. Horner, Esq., Chief Counsel, Office of Chief Counsel, Federal Transit Administration, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4040, *david.horner@dot.gov*; or Robert J. Tuccillo, Associate Administrator, Office of Budget & Policy, Federal Transit Administration, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4050, *robert.tuccillo@dot.gov*. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: This document is organized in the following sections:

I. Background
II. Final Policy Statement on HOV-to-HOT Conversion
III. Response to Comments Received

I. Background

On September 7, 2006, the Federal Transit Administration (FTA) published in the **Federal Register** (at 71 FR 52849), a proposed policy on (i) when High-Occupancy Vehicle (HOV) lanes converted to High-Occupancy/Toll (HOT) lanes shall be classified as ''fixed guideway miles'' for the purpose of FTA's funding formulas and (ii) when HOT lanes shall not be classified as fixed guideway miles for the purpose of FTA's funding formulas. The proposed policy reads as follows:

> FTA would classify HOT lanes as ''fixed guideway miles'' for purposes of the funding formulas administered under 49 U.S.C. 5307 and 49 U.S.C. 5309, so long as each of the following conditions is satisfied: (i) The HOT lanes were previously HOV lanes reported in the National Transit Database as fixed guideway miles for purposes of the funding formulas administered by FTA under 49 U.S.C. 5307 and 49 U.S.C. 5309; (ii) The HOT lanes are continuously monitored and continue to meet performance standards that preserve free flow traffic conditions as specified in 23 U.S.C. 166(d); and (iii) Program income from the HOT lane facility, including all toll revenue, is used solely for ''permissible uses.''

The proposed policy also addressed whether FTA should require certain transit and tolling policies with respect to HOT lanes classified as fixed guideway miles, and whether FTA should require the return of funds made available under Full Funding Grant Agreements for the construction of HOV lanes that have later been converted to HOT lanes.

II. Final Policy Statement on HOV-to-HOT Conversion

This final policy statement explains when FTA shall classify HOV lanes converted to HOT lanes as ''fixed guideway miles'' for the purpose of FTA's funding formulas and when FTA shall not classify HOT lanes as fixed guideway miles for the purpose of its funding formulas.

Overview

Since the early 1980s, transportation officials have sought to manage traffic congestion and increase vehicle occupancy by means of High-Occupancy Vehicle (HOV) lanes—highway lanes reserved for the exclusive use of car pools and transit vehicles. Today, there are over 130 freeway HOV facilities in metropolitan areas in the US,[1] of which approximately ten have received funding through FTA's Major Capital Investment program and approximately eighty are counted as fixed guideway miles for purposes of FTA's formula grant programs.[2] Since 1990, however, HOV mode share in thirty-six of the forty largest metropolitan areas has steadily declined,[3] while both excess capacity on HOV lanes and congestion on general purpose lanes have increased.[4]

An increasing number of metropolitan areas are considering new demand management strategies as alternatives to HOV lanes. One emerging alternative is the variably-priced High-Occupancy/Toll (HOT) lane. HOT lanes combine HOV and pricing strategies by allowing Single-Occupant Vehicles (SOVs) to access HOV lanes by paying a toll. The lanes are ''managed'' through pricing to maintain free flow conditions even during the height of rush hours.

HOT lanes provide multiple benefits to metropolitan areas that are experiencing severe and worsening congestion and significant transportation funding shortages. First, variably-priced HOT lanes expand mobility options in congested urban areas by providing an opportunity for reliable travel times for users prepared to pay a premium for this service. HOT lanes also improve the efficiency of HOV facilities by allowing toll-paying

[1] Office of Operations, Federal Highway Administration, U.S. Department of Transportation.

[2] National Transit Database.

[3] *Journey to Work Trends in the United States and its Major Metropolitan Areas 1960–2000*, Publication No. FHWA–EP–03–058 Prepared for: U.S. Department of Transportation, Federal Highway Administration, Office of Planning, Prepared by: Nancy McGuckin, Consultant, Nanda Srinivasan, Cambridge Systematics, Inc.

[4] Office of Operations, Federal Highway Administration, U.S. Department of Transportation. Demand for highway travel by Americans continues to grow as population increases, particularly in metropolitan areas. Construction of new highway capacity to accommodate this growth in travel has not kept pace. Between 1980 and 1999, route miles of highways increased 1.5 percent while vehicle miles of travel increased seventy-six percent. The Texas Transportation Institute estimates that, in 2000, the seventy-five largest metropolitan areas experienced 3.6 billion vehicle-hours of delay, resulting in 5.7 billion gallons in wasted fuel and $67.5 billion in lost productivity. And traffic volumes are projected to continue to grow. The volume of freight movement alone is forecast to nearly double by 2020. Congestion is largely thought of as a big city problem, but delays are becoming increasingly common in small cities and some rural areas as well.

SOVs to utilize excess lane capacity on HOVs. In addition, HOT lanes generate new revenue which can be used to pay for transportation improvements, including enhanced transit service.

In August of 2005, recognizing the advantages of HOT lanes, the U.S. Congress enacted Section 112 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), codified at 23 U.S.C. 166, to authorize States to permit use of HOV lanes by SOVs, so long as the performance of the HOV lanes is continuously monitored and continues to meet specified performance standards. The U.S. Department of Transportation (Department) has strongly endorsed the conversion of HOV lanes to variably-priced HOT lanes, most recently in its *Initiative to Reduce Congestion on the Nation's Transportation Network.* It is the Department's policy to encourage jurisdictions to consider ''HOV-to-HOT'' conversion as a means of congestion relief and possible revenue enhancement.

The ability of HOT lanes to introduce additional traffic to existing HOV facilities, while using pricing and other management techniques to control the number of additional motorists, maintain high service levels and provide new revenue, make HOT lanes an effective means of reducing congestion and improving mobility. For this reason, and given the new authority enacted by Congress to promote ''HOV-to-HOT'' conversions, many States, transportation agencies and metropolitan areas are seriously considering applying variable pricing to both new and existing roadways. For example, the current long-range transportation plan for the Washington, DC, metropolitan area includes four new HOT lanes along fifteen miles of the Capital Beltway in Virginia, and six new variably-priced lanes along eighteen miles on the Inter-County Connector in Montgomery and Prince George's Counties in Maryland.[5] Virginia is also exploring the possibility of converting existing HOV lanes along the I–95/395 corridor into HOT lanes.[6] Maryland is considering express toll lanes along I–495, I–95 and I–270, as well as along other facilities.[7] Similarly, in San Francisco, the Metropolitan Transportation Commission's Transportation 2030 Plan advocates development of a HOT network that would convert that region's existing HOV lanes to HOT lanes;[8] Houston's 2025 Regional Transportation Plan includes plans to implement peak period pricing within the managed HOT lanes of the major freeway corridors in the region;[9] and the Miami-Dade, Florida 2030 Transportation Plan includes conversion of existing HOV lanes to reversible HOV/HOT lanes to provide additional capacity to I–95 in Miami-Dade County.[10] Other jurisdictions are exploring the potential for HOT lanes with grants provided by the Department's Value Pricing Pilot Program.[11] These include the Port Authority of New York/New Jersey; San Antonio, Texas; Seattle, Washington; Atlanta, Georgia; and Portland, Oregon.[12]

While an increasing number of metropolitan planning organizations and State departments of transportation are studying the HOT lane concept as a strategy to improve mobility, six HOT lane facilities currently operate in the United States: State Route 91 (SR 91) Express Lanes in Orange County, California; the I–15 FasTrak in San Diego, California; the Katy Freeway QuickRide and the Northwest Freeway (US 290) in Harris County, Texas; I–394 in Minneapolis and St. Paul, Minnesota; and I–25 in Denver, Colorado.

Prior FTA Policy

Since 2002, FTA's policy has been to continue to classify the lanes of an HOV facility converted to HOT lanes as fixed guideway miles for funding formula purposes on the condition that the facility meets two requirements: (i) The HOT facility manages SOV use so that it does not impede the free-flow and high speed of transit and high-occupancy vehicles and (ii) toll revenues collected on the facility will be used for mass transit purposes.[13] FTA has considered requiring as an additional condition for eligibility that the lowest toll payable by SOVs on a HOT facility be not less than the fare charged for transit services on the HOT facility.

Final FTA Policy

(a) *Purpose of Final Policy.* This final policy statement will help ensure that Federal transit funding for congested urban areas is not decreased when existing HOV facilities are converted to variably-priced HOT lanes in an effort by localities to reduce congestion, improve air quality, and maximize throughput using excess HOV lane capacity. The policy will also promote a uniform approach by the Department's operating agencies concerning HOV-to-HOT conversions. In particular, FTA's policy will be coordinated with the statutes enacted by the U.S. Congress under Section 112 of SAFETEA–LU applicable to the Federal Highway Administration that are intended to simplify conversion of HOV lanes to HOT lanes. The policy will also support the Department's objective of encouraging HOV-to-HOT conversions.

(b) *Final Policy.* FTA shall classify HOT lanes as fixed guideway miles for purposes of the funding formulas administered under 49 U.S.C. 5307 and 49 U.S.C. 5309, so long as each of the following conditions is satisfied:

(i) *The HOT lanes were previously*[14] *HOV lanes reported in the National Transit Database as fixed guideway miles for purposes of the funding formulas administered by FTA under 49*

[5] Letter to U.S. Department of Transportation, August 28, 2006, from National Capital Region Transportation Planning Board.

[6] *Id.*

[7] *Id.*

[8] A Vision for the Future Transportation 2030, February 2005, Chapter 1, Page 6.

[9] 2025 Regional Transportation Plan Houston-Galveston Area, June 2005, Page 31.

[10] Miami-Dade Transportation Plan (to the Year 2030) December 2004, FINAL DRAFT, Page 24.

[11] Federal Highway Administration, U.S. Department of Transportation. The Department's Value Pricing Pilot Program (VPPP), initially authorized by the Intermodal Surface Transportation Efficiency Act as the Congestion Pricing Pilot Program and continued as the VPPP under SAFETEA–LU, encourages implementation and evaluation of value pricing pilot projects, offering flexibility to encompass a variety of innovative applications including areawide pricing, pricing of multiple or single facilities or corridors, single lane pricing, and implementation of other market-based strategies.

[12] Federal Highway Administration, U.S. Department of Transportation.

[13] In a Letter to U.S. Representative Randall Cunningham, dated June 10, 2002, concerning the I–15 FasTrak facility in San Diego, FTA stated: ''* * * FTA will recognize, for formula allocation purposes, exclusive fixed guideway transit facilities that permit toll-paying SOVs on an incidental basis (often called high occupancy/toll (HOT) lanes) under the following conditions: the facility must be able to control SOV use so that it does not impede the free flow and high speed of transit and HOV vehicles, and the toll revenues collected must be used for mass transit purposes.''

[14] With respect to whether HOT lanes were previously HOV lanes reported in the National Transit Database (''NTD'') as ''fixed guideway miles,'' HOV facilities classified as ''fixed guideway miles'' in the NTD *on or before* date of the publication of this final policy statement shall satisfy this requirement. With respect to HOV lanes that have *not* been classified as ''fixed guideway miles'' in the NTD on or before the date of publication of this final policy statement, such HOV lanes may not be converted to HOT lanes and maintain their classification as ''fixed guideway miles'' unless: (i) The HOV lanes have reported to the NTD as ''fixed guideway miles'' for three years prior to their conversion to HOT lanes, (ii) users of public transportation have accounted for *at least* 50% of the passenger miles traveled on the HOV lanes in their last twelve months of service (or once the HOV lanes are converted to HOT lanes, users of public transportation are reasonably expected to account for at least 50% of the passenger miles traveled on the HOT lanes in their first twelve months of service), or (iii) in his or her discretion, the Administrator so approves.

U.S.C. 5307(b) and 49 U.S.C. 5309(a)(E).[15] Facilities that were not eligible HOV lanes prior to being converted to HOT lanes will remain ineligible for inclusion as fixed guideway miles in FTA's funding formulas. Therefore, neither non-HOV facilities converted directly to HOT facilities nor facilities constructed as HOT lanes will be eligible for classification as fixed guideway miles.[16]

(ii) The HOT lanes are continuously monitored and continue to meet performance standards that preserve free flow traffic conditions as specified in 23 U.S.C. 166(d). 23 U.S.C. 166(d) provides operational performance standards for an HOV facility converted to a HOT facility. It also requires that the performance of the facility be continuously monitored and that it continue to meet specified performance standards. Due to original project commitments, HOV facilities constructed using capital funds available under 49 U.S.C. 5309(d) or (e) may be required, when converted to HOT lanes, to achieve a higher performance standard than required under 23 U.S.C. 166(d). Standards for operational performance and determining degradation of operational performance for facilities constructed with funds from FTA's New Starts program shall be determined by FTA on a case-by-case basis. FTA will require real-time monitoring of traffic flows to ensure on-going compliance with operational performance standards.

(iii) *Program income from the HOT lane facility, including all toll revenue, is used solely for ''permissible uses.''* ''Permissible uses'' means any of the following uses with respect to any HOT lane facility, whether operated by a public or private entity: (a) Debt service, (b) a reasonable return on investment of any private financing, (c) the costs necessary for the proper operation and maintenance of such facility,[17] and (d) if the operating entity annually certifies that the facility is being adequately operated and maintained (including that the permissible uses described in (a), (b) and (c) above, if applicable, are being duly paid), any other purpose relating to a project carried out under Title 49 U.S.C. 5301 *et seq.* In cases where the HOT lane facility has received (or receives) funding from FTA and another Federal agency, such that use of the facility's program income is governed by more than one Federal program, FTA's restrictions concerning permissible use shall not apply to more than transit's available share[18] of the facility's program income. FTA shall not require recipients to assign priority in payment to any permissible use.

(c) *Transit Fares and Tolls on HOT Lane Facilities.* FTA shall not condition the classification of HOT lanes converted from HOV lanes as fixed guideway miles, or condition any approval or waiver under a Full Funding Grant Agreement, on a grantee's adopting transit fare policies or a tolling authority's adopting of tolling policies concerning, respectively, the price of transit services on the HOT lane facility and the tolls payable by SOVs. Instead, FTA shall permit grantees and tolling authorities to develop their own fare structures for transit services and tolls, respectively, on HOT lane facilities. Transit fares shall remain subject to 49 U.S.C. 332 (Nondiscrimination) and 49 U.S.C. 5307 (Urbanized area formula grants), however.

(d) *No Return of Funds under Full Funding Grant Agreements.* In the event that an HOV facility is converted to a HOT facility and the HOV facility has received funds through FTA's New Starts program, FTA shall not require the grantee to return such funds so long as the facility complies with the conditions set forth in this final policy statement and the original grant agreement or Full Funding Grant Agreement, as applicable.

III. Response to Comments Received

Thirty-four parties submitted comments in response to FTA's proposed policy, published in the **Federal Register** on September 7, 2006, at 71 FR 52849 (the proposed policy). This section responds to those comments by topic in the following order: (a) Policy Statement Generally; (b) HOT Lanes Were Previously HOV Lanes Reported in the National Transit Database as ''Fixed Guideway Miles''; (c) Monitoring and Performance Standards; (d) Program Income and Toll Revenues; (e) Transit Fares and Tolls; (f) Return of Funds under Full Funding Grant Agreements; and (g) Miscellaneous Comments.

(a) *Policy Statement Generally.* The purpose of the proposed policy was to ensure that Federal transit funding for congested urban areas would not be decreased if HOV facilities were converted to variably-priced HOT lanes. The proposed policy also sought to achieve a uniform approach among the operating agencies of the Department concerning HOV-to-HOT conversions, and supported the Department's policy of encouraging HOV-to-HOT conversions. Eight commenters agreed generally with FTA's proposed policy. Six parties submitted general comments. Four commenters asked FTA to defer its final policy determination until the impacts become more apparent. One commenter articulated four policy principles that discuss ways to integrate transit into toll roads and HOT lanes.[19] Another commenter stated that one of FTA's top priorities in developing the policy should be to foster an increase in alternative transportation ridership—whether that alternative is carpool, vanpool, transit, or other shared-mode—and suggested four ways the policy

[15] FTA apportions amounts made available for fixed guideway modernization under 49 U.S.C. 5309 pursuant to fixed guideway factors detailed at 49 U.S.C. 5337. One of these fixed guideway factors, located at 49 U.S.C. 5337(a)(5)(B), apportions a percentage of the available fixed guideway modernization funds to 'fixed guideway systems placed in revenue service at least seven years before the fiscal year in which amounts are made available.' For purposes of 49 U.S.C. 5337(a)(5)(B), (i) no HOV facility that has been in revenue service at least seven years shall forfeit its eligibility for fixed guideway modernization funds because it is converted to a HOT lane facility in accordance with this final policy statement; and (ii) no HOV facility that has been in revenue service for *less than* seven years shall forfeit the years it has accrued under 49 U.S.C. 5337(a)(5)(B) because it is converted to a HOT lane facility and for so long as the HOT lane facility maintains its ''fixed guideway'' classification in accordance with this final policy statement, it shall continue to accrue years thereunder.

[16] FTA recognizes one exception to this statement—bus-only shoulders. Accordingly, FTA shall classify HOT lane facilities converted from bus-only shoulders as fixed guideway miles, so long as such HOT lanes satisfy the conditions set forth in sections II(b)(ii) and (iii) of this final policy statement and were bus-only shoulders previously reported in the National Transit Database as fixed guideway miles for purposes of the funding formulas administered by FTA under 49 U.S.C. 5307 and 5309.

[17] The costs necessary for the proper operation and maintenance of a HOT lane facility may include reconstruction, rehabilitation, and the costs associated with operating transit service on the facility.

[18] *Transit's allocable share* of the facility's program income shall be an amount equal to the facility's total program income, for any period, multiplied by a ratio, (a) The numerator of which shall be the cumulative amount of funds contributed to the facility through a program established by transit law, and (b) the denominator of which shall be the cumulative amount of all Federal, State and local capital funds contributed to the facility, in each case at the time transit's allocable share is calculated. For purposes of 49 CFR part 18.25, (i) amounts other than transit's allocable share shall not constitute program income and (ii) any expenditure of transit's allocable share that is not deducted from outlays made under transit law shall be deemed an ''alternative'' under 49 U.S.C. 18.25(g) and deemed by FTA a term of the grant agreement.

[19] The commenter's suggested policy principles are as follows: (1) Metropolitan areas and states should have greater latitude to use roadway tolling; (2) Tolling should be a supplement to and not a substitution for existing transportation funding; (3) Local sponsors should have the discretion to fund public transportation with toll revenues; and (4) Tolling should be permitted as a long-term strategy.

statement could better support this end.[20]

FTA Response: The commenters that asked FTA to defer its final policy determination until the impacts are more apparent seemed to misunderstand the scope of FTA's proposed policy. FTA's HOV-to-HOT policy will not result in all HOT lane facilities being classified as fixed guideway miles for purposes of FTA's funding formulas. Rather, only those HOT lane facilities converted from HOV lanes that have been previously classified as fixed guideway miles shall qualify for continued classification as such, subject to the conditions set forth in the final policy statement in section II of this notice.

In response to the four policy principles summarized at footnote (19), FTA reminds the commenter that, without this final policy statement, transit formula funding for congested urban areas would decrease if existing HOV facilities were converted to variably-priced HOT lanes. For this reason, FTA believes that this policy statement: (1) Gives states greater latitude to use tolling without negatively impacting available transit resources; (2) enhances existing transportation funding through the collection of toll revenues; (3) grants project sponsors discretion to use toll revenues for any ''permissible use'' (as defined in section II of this notice); and (4) encourages variably-priced HOT lanes as a long-term strategy, consistent with the policy of the Department.

In response to the commenter that stated FTA should consider fostering an increase in alternative transportation ridership as one of its top priorities in developing this guidance, FTA reemphasizes its primary purpose in drafting this guidance—to ensure that Federal transit funding for congested urban areas is not decreased when exiting HOV facilities are converted to HOT lanes. FTA responds to the commenter's four suggestions summarized at footnote (20) in turn. With respect to the first suggestion, the final policy statement supports HOV usage, but recognizes that many HOV facilities are underutilized; the ability of HOT lanes to introduce additional traffic to existing HOV facilities, while using pricing and other demand management techniques to control the number of additional motorists, maintain high service levels and provide new revenue, make HOT lanes an effective means of reducing congestion and improving mobility. With respect to the second and third suggestions, FTA will rely on the management, operation, monitoring and enforcement provisions of 23 U.S.C. 166(d). With respect to the fourth suggestion, the final policy statement does not modify language at 23 U.S.C. 166(c)(3).

Accordingly, FTA has adopted as final the general provisions of its proposed policy.

(b) *HOT Lanes Were Previously HOV Lanes Reported in the National Transit Database as Fixed Guideway Miles.* In its notice describing the proposed policy, FTA requested comments on its proposal to classify HOT lanes as fixed guideway miles for purposes of the funding formulas administered under 49 U.S.C. 5307 and 49 U.S.C. 5309, so long as each of three conditions is satisfied. The first condition is that the HOT lanes were previously HOV lanes reported in the National Transit Database as fixed guideway miles for purposes of the funding formulas administered by FTA under 49 U.S.C. 5307 and 49 U.S.C. 5309. FTA received thirty-five comments on this condition, with some parties offering multiple comments. Eight commenters favored FTA's proposed policy. Eighteen commenters asked FTA to expand its policy to classify *all* HOT lanes as fixed guideway miles for purposes of the funding formulas administered by FTA, regardless of whether the HOT lane facility was newly constructed or was previously an HOV facility. Seven commenters asked FTA not to fund HOT lane facilities at a level that would dilute the pool of transit funding available for existing fixed guideway facilities. Two commenters proposed that FTA require converted HOV lanes to have operated as HOV lanes for seven years prior to their conversion to HOT lanes before FTA would classify them as fixed guideway miles.

FTA Response: FTA recognizes that *all* HOT lanes provide similar benefits to metropolitan areas that are experiencing severe and worsening congestion, regardless of whether the facility is newly constructed or converted from HOV or general purpose lanes. However, the purpose of the final policy statement is to ensure that Federal transit funding for congested urban areas is not decreased when existing HOV facilities are converted to variably-priced HOT lanes in an effort by localities to reduce congestion, improve air quality, or maximize throughput using excess HOV lane capacity and to promote a uniform approach by the Department's operating agencies concerning HOV-to-HOT conversions. If FTA were to classify all HOT lanes as fixed guideway miles without a commensurate increase in overall funding levels, it could negatively impact the ability of many transit operators to finance needed capital maintenance on existing infrastructure. For this reason, FTA has limited the scope of the final policy statement to classifying as fixed guideway miles only those HOT lane facilities that are converted from HOV lanes which had *previously* been classified as fixed guideway miles. In this way, FTA will ensure that Federal transit funding for congested urban areas is not decreased when existing HOV facilities are converted to variably-priced HOT lanes. FTA believes it appropriate to leave for the U.S. Congress, and not to determine on an administrative basis, the question of whether and on what terms facilities newly constructed as HOT lanes or general purpose lanes converted directly to HOT lanes would be classified as fixed guideway miles given the substantial reallocation of formula funds among transit authorities that might result over time if such facilities were also classified as fixed guideway miles.

FTA has included the following footnote (15) in section II (b)(i) of this notice in response to the recommendation that FTA require HOV lanes to have operated as HOV lanes for seven years before they may be converted to HOT lanes and remain classified as fixed guideway miles:

FTA apportions amounts made available for fixed guideway modernization under 49 U.S.C. 5309 pursuant to fixed guideway factors detailed at 49 U.S.C. 5337. One of these fixed guideway factors, located at 49 U.S.C. 5337(a)(5)(B), apportions a percentage of the available fixed guideway modernization funds to 'fixed guideway systems placed in revenue service at least seven years before the fiscal year in which amounts are made available.' For purposes of 49 U.S.C. 5337(a)(5)(B), (i) no HOV facility that has been in revenue service *at least* seven years shall forfeit its eligibility for fixed guideway modernization funds because it is converted to a HOT lane facility in accordance with this final policy statement; and (ii) no HOV facility that has been in revenue service for *less than* seven years shall forfeit the years it has accrued thereunder because it is converted to a HOT lane facility, and for so long as the HOT lane facility maintains its fixed guideway classification in accordance with this policy

[20] The commenter's four suggestions on how FTA's policy statement could foster alternative transportation ridership are as follows: (1) The policy statement should support transportation demand management and HOV usage; (2) Greater emphasis on enforcement should be considered; (3) FTA should tie fixed guideway qualification to integrity of the lane; and (4) FTA should emphasize language at 23 U.S.C. 166(c)(3), which section requests that States, in the use of toll revenues, give priority consideration to projects for developing alternatives to single occupancy vehicle travel and projects for improving highway safety.

statement, it shall continue to accrue years thereunder.

Accordingly, FTA will not require that converted HOV lanes operate as HOV lanes for seven years before they may be converted to HOT lanes and remain classified as fixed guideway miles in accordance with this final policy statement.

(c) *Monitoring and Performance Standards.* In its notice describing the proposed policy, FTA requested comments on its proposal to classify HOT lanes as fixed guideway miles for purposes of the funding formulas administered under 49 U.S.C. 5307 and 49 U.S.C. 5309, so long as each of three conditions is satisfied. The second condition is that the HOT lanes are continuously monitored and continue to meet performance standards that preserve free flow traffic conditions as specified in 23 U.S.C. 166(d). FTA received twenty comments on this topic. Four commenters favored FTA's proposed position. Seven commenters proposed that FTA require a minimum level of transit service on a HOT lane facility before its lanes could be classified as fixed guideway miles for purposes of the funding formulas administered by FTA. Five commenters requested that FTA adopt more exacting performance standards. One commenter requested that FTA state explicitly that local agencies may increase HOV occupancy levels as necessary to ensure free flow conditions needed for transit bus service. Another commenter asked FTA to amend its policy to state that single occupant vehicles may be permitted on HOT lanes that are classified as fixed guideway miles, provided that the lanes satisfy the conditions set forth in FTA's final policy statement. One commenter requested that FTA acknowledge that compliance with State law governing performance standards for HOT lanes suffices in terms of meeting the condition that the HOT lanes are continuously monitored and continue to meet performance standards that preserve free flow traffic conditions as specified in 23 U.S.C. 166(d). One commenter asked FTA to require a study on degradation of transit service before an HOV facility may convert to a HOT lane facility and be classified as fixed guideway miles for purposes of funding formulas administered by FTA.

FTA Response: FTA disagrees that it should require a more exacting performance standard, including a minimum level of transit service. FTA recognizes that a more exacting standard would be necessary if *all* HOT lane facilities were eligible for classification as fixed guideway miles, for under this scenario rural or suburban HOT lane facilities with little or no transit service could receive a significant portion of the Federal transit funds needed by the Nation's largest transit providers to maintain their current infrastructure. For this reason, FTA has limited the benefits of the final policy to HOV lanes that have previously been classified as fixed guideway miles. Such designation as a fixed guideway mile indicates that a facility has a minimum level of transit service. FTA believes that compliance with the performance standards codified at 23 U.S.C. 166(d) is sufficient to ensure free flow traffic conditions and to avoid degradation of transit service on these facilities when converted from HOV lanes to HOT lane facilities. Moreover, HOV facilities constructed using capital funds available under 49 U.S.C. 5309(d) or (e) could be required, when an HOV facility converts to a HOT lane facility, to achieve a higher performance standard than required under 23 U.S.C. 166(d). In all circumstances, FTA shall require real-time monitoring of traffic flows to ensure on-going compliance with 23 U.S.C. 166(d).

FTA does not agree that compliance with State law governing HOT lane performance standards will satisfy FTA's requirements in all circumstances. Rather, FTA shall require all HOT lane facilities to comply with the statutory requirements of 23 U.S.C. 166 to be classified as fixed guideway miles for purposes of FTA's funding formulas. It may be the case that the laws of certain states require a higher level of performance than the Federal standard articulated here. In these instances, the lesser Federal standard should present no obstacle to HOT conversion.

With respect to the request that FTA require a study on the degradation of transit service before an HOV facility may convert to a HOT facility, FTA (i) believes that compliance with the free flow traffic requirements of 23 U.S.C. 166 is sufficient to avoid the degradation of transit service on these facilities and accordingly (ii) will not require that project sponsors incur the additional expense of a formal study on the degradation of transit service.

(d) *Program Income and Toll Revenues.* In its notice describing the proposed policy, FTA requested comments on its proposal to classify HOT lanes as fixed guideway miles for purposes of the funding formulas administered under 49 U.S.C. 5307 and 49 U.S.C. 5309, so long as each of three conditions is satisfied. The third condition is that program income from the HOT lane facility, including all toll revenue, is used solely for ''permissible uses.'' FTA received twenty-five comments on this condition. Five commenters favored FTA's proposed policy. Seven commenters requested that FTA expressly state in its final policy that grantees may use toll revenues for transit operating costs. Four commenters stated that FTA funds should not be used for the maintenance and/or construction of HOT lane facilities. Four commenters asked FTA to require that all Federal transit funds generated by HOT lane facilities because of their classification as fixed guideway miles be directed to the ''designated recipient'' for Federal transit funding. Three commenters stated that FTA should not permit the operators of HOT lane facilities to finance a HOT lane facility's operating losses with Federal funds generated by the facility's classification as fixed guideway miles. One commenter asked FTA not to limit the use of HOT lane toll revenues to transit. Another commenter asked FTA to require that priority of payment be provided for in the project implementation documents.

FTA Response: Based on the recommendation of several commenters that FTA expressly state that grantees may use toll revenues for transit operating costs, and pursuant to 49 CFR part 18.25, which states that FTA ''grantees may retain program income for allowable capital or operating expenses,'' FTA has added transit operating costs to its description of ''permissible uses'' at section II(b)(iii) of this notice.

FTA disagrees with the comment that its grantees should not use Federal transit funds for the maintenance and/or construction of HOT lane facilities. The commenter did not indicate whether it referred to the use of grant funds or program income. While FTA recognizes both HOV and HOT lanes as permissible incidental uses of FTA-funded assets, FTA grant funds shall not be used to construct a HOT lane facility beyond what is allowed by 49 U.S.C. 5302(a)(4), as implemented by FTA's regulations, as amended from time to time.[21] Any facility that converts from an HOV to a HOT facility, and retains its classification as a fixed guideway by satisfying the conditions of this policy statement, may use program income in accordance with this final policy

[21] 49 U.S.C. 5302(a)(4) defines ''fixed guideway'' as ''a public transportation facility (A) using and occupying a separate right-of-way or rail for the exclusive use of public transportation and other high occupancy vehicles; or (B) using a fixed catenary system and a right-of-way usable by other forms of transportation.''

statement, the Department's regulation at 49 CFR part 18.25, and other applicable statutes, regulations and requirements. Similarly, FTA disagrees with the comment that it should limit the use of HOT lane toll revenues to transit. In many cases, a HOT lane facility may have received (or receives) funding from FTA and another Federal agency, such that use of the facility's program income is governed by more than one Federal program. In these instances, FTA's restrictions concerning permissible use shall not apply to more than transit's allocable share of the facility's program income, as described in section II of this notice. FTA will not require recipients to assign priority in payment to any permissible use.

Federal transit law requires FTA to disburse certain funds to the designated recipient. The designated recipient for FTA formula funds shall not be changed because the grantee converted an HOV facility to a HOT facility, in accordance with the final policy statement. FTA shall not prevent such designated recipients from using the funds for eligible activities in accordance with the process for programming transit funds described at 23 CFR part 450.324(l) of the joint FTA–FHWA planning regulations.

(e) *Transit Fares and Tolls.* In its notice describing the proposed policy, FTA requested comments on transit fares and tolls on HOT lane facilities. FTA stated that it would not condition the receipt of Federal transit funds by a qualifying HOT lane facility on the tolling authority's adoption of policies concerning the price of transit services on the HOT lane facility or the tolls payable by single occupant vehicles. FTA would allow grantees and tolling authorities to develop their own fare structures for transit services and tolls on HOT lane facilities. FTA received sixteen comments on this topic. Without further comment, five commenters agreed with FTA's proposed policy not to regulate toll prices. Ten commenters stated that transit vehicles should be exempt from tolls charged on Federally-funded HOT lane facilities for its lanes to be classified as fixed guideway miles for purposes of the funding formulas administered by FTA. One commenter asked FTA to require that transit fares and tolls remain competitive.

FTA Response: Federal transit law prohibits FTA from regulating the ''rates, fares, tolls, rentals, or other charges prescribed by any provider of public transportation.'' 49 U.S.C. 5334(b)(1). Accordingly, FTA shall not condition the receipt of Federal transit funds by a qualifying HOT lane facility on the tolling authority's adoption of policies concerning the price of transit services on the HOT lane facility or the tolls payable by single occupant vehicles. FTA will allow grantees and tolling authorities to develop their own fare structures for transit services and tolls, respectively, on HOT lane facilities. Transit fares shall remain subject to 49 U.S.C. 5332 (Nondiscrimination) and 49 U.S.C. 5307 (Urbanized area formula grants), however.

(f) *Return of Funds under Full Funding Grant Agreements.* In its notice describing the proposed policy, FTA requested comments on its proposal that, in the event that an HOV facility is converted to a HOT facility and the HOV facility has received funds through FTA's New Starts program, FTA would not require the grantee to return such funds, so long as the facility complied with the conditions set forth in the proposed policy. FTA received one comment on this topic. The commenter expressed concern that, when the grantee is not also the tolling authority, the tolling authority may make business decisions contrary to the interest of the grantee/transit provider, thus forcing the grantee/transit provider to repay New Starts funding to FTA.

FTA Response: It appears that the commenter misunderstood the scope of FTA's proposed policy, which states that ''in the event that an HOV facility is converted to a HOT facility and the HOV facility has received funds through FTA's New Starts program, FTA would *not* require the grantee to return such funds so long as the facility complied with the conditions set forth in this guidance.'' If a grantee wishes to convert an existing HOV facility to a HOT lane facility and maintain the classification of its facility as a fixed guideway for purposes of FTA's funding formulas, it must comply with the conditions set forth in the final policy statement. To the extent that the facility is subject to a Full Funding Grant Agreement, the grantee is obligated to abide by the requirements thereof, just as it is bound to any other contractual or legal obligation.

(g) *Miscellaneous Comments.* FTA received seven miscellaneous comments in response to its proposed policy. One commenter asked FTA to address a circumstance in which a previously eligible HOV lane (or a portion of an HOV lane) is temporarily or permanently taken out of service in order to be reconstructed and expanded into an improved HOT lane facility in the same corridor. A second commenter requested that FTA indicate whether it would classify as fixed guideway miles bus-only shoulders converted to HOT lanes when the bus-only shoulders are currently classified as fixed guideway miles. Another commenter asked FTA to clarify its policy with respect to variable-priced express lanes. Two commenters asked FTA to require coordination between privately operated HOT lane facilities and public transportation agencies. One commenter asked FTA to connect this policy with transit supportive land use. And another commenter argued that FTA's policy should not affect New Starts project eligibility criteria.

FTA Response: FTA recognizes that it may be necessary to temporarily remove an HOV lane from service in order to convert it into a HOT lane facility. Such a HOT lane facility will not lose its classification as a fixed guideway so long as it satisfies the conditions set forth in the final policy statement.

FTA agrees with the proposal that it classify as fixed guideway miles bus-only shoulders converted to HOT lanes as long as the bus-only shoulders are currently classified as fixed guideway miles and satisfy the conditions of this final policy statement. Accordingly, FTA has included the following language at footnote (16) in section II(b)(i) of this notice:

> FTA shall classify HOT lane facilities converted from bus-only shoulders as fixed guideway miles, so long as such HOT lanes satisfy conditions (ii) and (iii) of this final policy statement and were bus-only shoulders previously reported in the National Transit Database as fixed guideway miles for purposes of the funding formulas administered by FTA under 49 U.S.C. 5307 and 5309.

The commenter that asked FTA to consider variably-priced express lanes did not provide enough information for FTA to determine whether such facility could satisfy the conditions set forth in the proposed policy. FTA responds by reiterating its statement at section II(b)(i) of this notice, that with the exception of bus-only shoulders, ''neither non-HOV facilities nor facilities constructed as HOT lanes would be eligible for classification as fixed guideway miles.''

The comment requesting that FTA require coordination between privately operated HOT lane facilities and public transportation is beyond the scope of this notice. FTA's Planning and Assistance Standards are located at 49 CFR part 613.

Similarly, the comments requesting that FTA connect this policy with transit supportive land use and that this policy not affect FTA's New Starts project eligibility criteria are beyond the scope of this notice, which is limited to the classification of HOT lane facilities

as fixed guideway miles for purposes of FTA's funding formulas.

Issued on January 8, 2007.

James S. Simpson,

Administrator.

[FR Doc. E7–263 Filed 1–10–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 06–17]

Office of Thrift Supervision

[Docket No. 2006–55]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1254]

FEDERAL DEPOSIT INSURANCE CORPORATION

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55043; File No. S7–08–06]

Interagency Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities

AGENCIES: Office of the Comptroller of the Currency, Treasury (''OCC''); Office of Thrift Supervision, Treasury (''OTS''); Board of Governors of the Federal Reserve System (''Board''); Federal Deposit Insurance Corporation (''FDIC''); and Securities and Exchange Commission (''SEC'') (collectively, the ''Agencies'').

ACTION: Notice of final interagency statement.

SUMMARY: The Agencies are adopting an Interagency Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities (''Final Statement''). The Final Statement pertains to national banks, state banks, bank holding companies (other than foreign banks), federal and state savings associations, savings and loan holding companies, U.S. branches and agencies of foreign banks, and SEC-registered broker-dealers and investment advisers (collectively, ''financial institutions'' or ''institutions'') engaged in complex structured finance transactions (''CSFTs''). In May 2004, the Agencies issued and requested comment on a proposed interagency statement (''Initial Proposed Statement''). After reviewing the comments received on the Initial Proposed Statement, the Agencies in May 2006 issued and requested comment on a revised proposed interagency statement (''Revised Proposed Statement''). The modifications to the Revised Proposed Statement, among other things, made the statement more principles-based and focused on the identification, review and approval process for those CSFTs that may pose heightened levels of legal or reputational risk to the relevant institution (referred to as ''elevated risk CSFTs''). After carefully reviewing the comments on the Revised Proposed Statement, the Agencies have adopted the Final Statement with minor modifications designed to clarify, but not alter, the principles set forth in the Revised Proposed Statement. The Final Statement describes some of the internal controls and risk management procedures that may help financial institutions identify, manage, and address the heightened reputational and legal risks that may arise from elevated risk CSFTs. As discussed further below, the Final Statement will not affect or apply to the vast majority of financial institutions, including most small institutions, nor does it create any private rights of action.

EFFECTIVE DATE: The Final Statement is effective January 11, 2007.

FOR FURTHER INFORMATION CONTACT:

OCC: Kathryn E. Dick, Deputy Comptroller, Credit and Market Risk, (202) 874–4660; Grace E. Dailey, Deputy Comptroller, Large Bank Supervision, (202) 874–4610; or Ellen Broadman, Director, Securities and Corporate Practices Division, (202) 874–5210, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OTS: Fred J. Phillips-Patrick, Director, Credit Policy, (202) 906–7295, and Deborah S. Merkle, Project Manager, Credit Policy, (202) 906–5688, Examinations and Supervision Policy; or David A. Permut, Senior Attorney, Business Transactions Division, (202) 906–7505, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Board: Sabeth I. Siddique, Assistant Director, (202) 452–3861, or Virginia Gibbs, Senior Supervisory Financial Analyst, (202) 452–2521, Division of Banking Supervision and Regulation; or Kieran J. Fallon, Assistant General Counsel, (202) 452–5270, or Anne B. Zorc, Senior Attorney, (202) 452–3876, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TTD) only, call (202) 263–4869.

FDIC: Jason C. Cave, Associate Director, (202) 898–3548; Division of Supervision and Consumer Protection; or Mark G. Flanigan, Counsel, Supervision and Legislation Branch, Legal Division, (202) 898–7426, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SEC: Mary Ann Gadziala, Associate Director, Office of Compliance Inspections and Examinations, (202) 551–6207; Catherine McGuire, Chief Counsel, Linda Stamp Sundberg, Senior Special Counsel (Banking and Derivatives), or Randall W. Roy, Branch Chief, Division of Market Regulation, (202) 551–5550, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

Financial markets have grown rapidly over the past decade, and innovations in financial instruments have facilitated the structuring of cash flows and allocation of risk among creditors, borrowers, and investors in more efficient ways. Financial derivatives for market and credit risk, asset-backed securities with customized cash flow features, specialized financial conduits that manage pools of assets, and other types of structured finance transactions serve important purposes, such as diversifying risk, allocating cash flows and reducing cost of capital. As a result, structured finance transactions, including the more complex variations of these transactions, now are an essential part of U.S. and international capital markets.

When a financial institution participates in a CSFT, it bears the usual market, credit, and operational risks associated with the transaction. In some circumstances, a financial institution also may face heightened legal or reputational risks due to its involvement in a CSFT. For example, a financial institution involved in a CSFT may face heightened legal or reputational risk if the customer's regulatory, tax or accounting treatment for the CSFT, or disclosures concerning the CSFT in its public filings or financial statements, do not comply with applicable laws, regulations or accounting principles.[1]

In some cases, certain CSFTs appear to have been used in illegal schemes

[1] For a memorandum on the potential liability of a financial institution for securities laws violations arising from participation in a CSFT, see Letter from Annette L. Nazareth, Director, Division of Market Regulation, Securities and Exchange Commission, to Richard Spillenkothen and Douglas W. Roeder, dated December 4, 2003 (available at *http://www.federalreserve.gov/boarddocs/srletters/2004/* and *http://www.occ.treas.gov).*

that misrepresented the financial condition of public companies to investors and regulatory authorities. After conducting investigations, the OCC, Federal Reserve System and SEC took strong and coordinated civil and administrative enforcement actions against certain financial institutions that engaged in CSFTs that appeared to have been designed or used to shield their customers' true financial health from the public. These actions involved the assessment of significant financial penalties on the institutions and required the institutions to take several measures to strengthen their risk management procedures for CSFTs.[2] The complex structured finance relationships involving these financial institutions also sparked an investigation by the Permanent Subcommittee on Governmental Affairs of the United States Senate,[3] as well as numerous lawsuits by private litigants.

The OCC, Federal Reserve System and SEC also conducted special reviews of several large financial institutions engaged in CSFTs, and the Agencies have focused attention on the CSFT activities of financial institutions in the normal course of the supervisory process. These reviews and activities indicate that many of the large financial institutions engaged in CSFTs have taken meaningful steps in recent years to improve their control infrastructure relating to CSFTs.

II. Initial and Revised Proposed Statements

To assist financial institutions in identifying, managing, and addressing the risks that may be associated with CSFTs, the Agencies developed and requested public comment on the Initial Proposed Statement.[4] The Initial Proposed Statement described the types of policies and procedures that a financial institution engaged in CSFTs should have in place to allow the institution to identify, document, evaluate, and control the full range of credit, market, operational, legal, and reputational risks that may arise from CSFTs. The agencies collectively received comments from more than 40 commenters on the Initial Proposed Statement. Although commenters generally supported the Agencies' efforts to describe the types of risk management procedures and internal controls that may help institutions manage the risks associated with CSFTs, virtually all of the commenters recommended changes to the Initial Proposed Statement.

After carefully reviewing the comments on the Initial Proposed Statement, the Agencies issued and requested comment on a Revised Proposed Statement.[5] The Revised Proposed Statement was modified in numerous respects to clarify the purpose, scope and effect of the statement; make the statement more risk-focused and principles based; and focus the statement on those CSFTs that may pose elevated levels of legal or reputational risk to the relevant institution.[6]

III. Overview of Comments on the Revised Proposed Statement

The Agencies collectively received written comments from 19 commenters on the Revised Proposed Statement, although many commenters submitted identical comments to multiple Agencies. Commenters included banking organizations, financial services trade associations, and individuals. Commenters generally expressed strong support for the Revised Proposed Statement, including its principles-based structure and focus on elevated risk CSFTs. Many commenters also asserted that the Revised Proposed Statement provides a financial institution appropriate flexibility to develop internal controls and risk management procedures that are tailored to the institution's own business activities and organizational structure.

Several commenters requested that the Agencies clarify or revise the Revised Proposed Statement in certain respects. For example, some commenters asked the Agencies to further streamline the provisions in the statement pertaining to documentation of elevated risk CSFTs, or clarify how the U.S. branches or agencies of foreign banks might implement risk management systems, policies or controls consistent with the statement's principles. In addition, some commenters asked the Agencies to set forth or clarify the legal standards governing the potential liability of financial institutions for CSFTs or provide ''safe harbors'' from such potential liability. One group of commenters also argued that the Revised Proposed Statement should not be implemented because it allegedly would encourage or condone illegal conduct by financial institutions. The comments received on the Revised Proposed Statement are further discussed below.

IV. Overview of Final Statement

After carefully reviewing the comments on the Revised Proposed Statement, the Agencies have made minor modifications to the Revised Proposed Statement in response to comments and to clarify the principles, scope, and intent of the Final Statement. The Final Statement has been adopted as supervisory guidance by the Board, OCC, FDIC and OTS and as a policy statement by the SEC. The Agencies will use the Final Statement going forward in reviewing the internal controls and risk management policies, procedures and systems of financial institutions engaged in CSFTs as part of the Agencies' ongoing supervisory process.

The Agencies continue to believe that it is important for a financial institution engaged in CSFTs to have policies and procedures that are designed to allow the institution to effectively manage and address the full range of risks associated with its CSFT activities, including the elevated legal or reputational risks that may arise in connection with certain CSFTs. For this reason, the Final Statement describes the types of risk management principles that the Agencies believe may help a financial institution to identify elevated risk CSFTs and to evaluate, manage, and address these risks within the institution's internal control framework.[7] These policies and procedures should, among other things, be designed to allow the institution to identify elevated risk CSFTs during its

[2] *See, e.g., In the Matter of Citigroup, Inc.,* Securities Exchange Act Release No. 48230 (July 28, 2003), Written Agreement by and between Citibank, N.A. and the Office of the Comptroller of the Currency, No. 2003–77 (July 28, 2003) (pertaining to transactions entered into by Citibank, N.A. with Enron Corp.) and Written Agreement by and between Citigroup, Inc. and the Federal Reserve Bank of New York, dated July 28, 2003 (pertaining to transactions involving Citigroup Inc. and its subsidiaries and Enron Corp. and Dynegy Inc.); *SEC* v. *J.P. Morgan Chase,* SEC Litigation Release No. 18252 (July 28, 2003) and Written Agreement by and among J.P. Morgan Chase & Co., the Federal Reserve Bank of New York, and the New York State Banking Department, dated July 28, 2003 (pertaining to transactions involving J.P. Morgan Chase & Co. and its subsidiaries and Enron Corp.).

[3] *See Fishtail, Bacchus, Sundance, and Slapshot: Four Enron Transactions Funded and Facilitated by U.S. Financial Institutions,* Report Prepared by the Permanent Subcomm. on Investigations, Comm. on Governmental Affairs, United States Senate, S. Rpt. 107–82 (2003).

[4] *See* 69 FR 28980, May 19, 2004.

[5] *See* 71 FR 28326, May 16, 2006.

[6] A more detailed summary of the comments on the Initial Proposed Statement, as well as the changes made in response to those comments, is contained in the **Federal Register** notice accompanying the Revised Proposed Statement (71 FR 28326, 28328–29 (May 16, 2006)).

[7] As noted in the Final Statement, financial institutions are encouraged to refer to other supervisory guidance and materials prepared by the Agencies for further information concerning market, credit and operational risk, as well as for further information on legal and reputational risk, internal audit and internal controls.

transaction and new product approval processes, and should provide for elevated risk CSFTs to be reviewed by appropriate levels of control and management personnel at the institution, including personnel from control areas that are independent of the business line(s) involved in the transaction.

The Final Statement—like the Revised Proposed Statement—applies to financial institutions that are engaged in CSFT activities and focuses on those CSFTs that may create heightened levels of legal or reputational risks for a participating financial institution. Because CSFTs typically are conducted by a limited number of large financial institutions, the Final Statement will not affect or apply to the vast majority of financial institutions, including most small institutions.

As the Final Statement recognizes, structured finance transactions encompass a broad array of products with varying levels of complexity. Most structured finance transactions, such as standard public mortgage-backed securities and hedging-type transactions involving ''plain vanilla'' derivatives or collateralized debt obligations, are familiar to participants in the financial markets, have well-established track records, and typically would not be considered CSFTs for purposes of the Final Statement. Some commenters requested that the Agencies provide a more extensive list of structured finance transactions that typically would not be considered CSFTs. The Agencies note that the types of non-complex transactions listed in the Final Statement are only examples of the types of transactions that typically would not be considered CSFTs and that any list of examples would not, and could not, be all inclusive given the changing nature of the structured finance market. Consistent with the principles-based approach of the Final Statement, the Agencies believe the statement appropriately highlights the hallmarks of a non-complex transaction—*i.e.*, a well established track record and familiarity to participants in the financial markets—that may guide institutions and examiners in considering whether a particular type of transaction should be considered a CSFT now or in the future.

A. Identification, Due Diligence, and Approval Processes for Elevated Risk CSFTs

As noted above, a financial institution should establish and maintain policies, procedures and systems that are designed to identify elevated risk CSFTs as part of the institution's transaction or new product approval processes, and to ensure that transactions or new products identified as elevated risk CSFTs are subject to heightened review.[8] In general, a financial institution should conduct the level and amount of due diligence for an elevated risk CSFT that is commensurate with the level of risks identified. A financial institution's policies and procedures should provide that CSFTs identified as potentially having elevated legal or reputational risk are reviewed and approved by appropriate levels of management. The Agencies continue to believe that the designated approval process for elevated risk CSFTs should include the institution's representatives from the relevant business line(s) and/or client relationship management, as well as from appropriate control areas that are independent of the business line(s) involved in the transaction. An institution's policies should provide that new complex structured finance products receive the approval of all relevant control areas that are independent of the profit center before the product is offered to customers.[9]

The Final Statement—like the Revised Proposed Statement—provides examples of transactions that may warrant additional scrutiny by an institution. These examples include, among other things, transactions that appear to the institution to:

- Lack economic substance or business purpose;
- Be designed or used primarily for questionable accounting, regulatory, or tax objectives, particularly when the transactions are executed at year-end or at the end of a reporting period for the customer; or
- Raise concerns that the client will report or disclose the transaction in its public filings or financial statements in a manner that is materially misleading or inconsistent with the substance of the transaction or applicable regulatory or accounting requirements.

A few commenters contended that the examples of elevated risk CSFTs contained in the Revised Proposed Statement have characteristics that are signals, if not conclusive proof, of fraudulent activity, and recommended that the Agencies inform financial institutions that transactions or products with any of these characteristics should be considered presumptively prohibited. The commenters also argued that the statement encourages or condones illegal conduct by financial institutions. The Agencies believe that CSFTs that initially appear to an institution, during the ordinary course of its new product or transaction approval process, to have one or more of the characteristics identified in the Final Statement should generally be identified as an elevated risk CSFT, and the institution should conduct due diligence for the transaction that is commensurate with the level of identified, potential risks. The Agencies, however, do not believe it is appropriate to provide that all transactions initially identified as potentially creating elevated legal or reputational risks for an institution should be considered presumptively prohibited. For example, an institution, after conducting additional due diligence for a transaction initially identified as an elevated risk CSFT, may determine that the transaction does not, in fact, have the characteristics that initially triggered the review. Alternatively, the institution may take steps to address the legal or reputational risks that initially triggered the review. In this regard, the Final Statement expressly provides that, if after evaluating an elevated risk CSFT, a financial institution determines that its participation in the transaction would create significant legal or reputational risks for the institution, the financial institution should take appropriate steps to manage and address these risks. Such steps may include modifying the transaction or conditioning the institution's participation in the transaction upon the receipt of representations or assurances from the customer that reasonably address the heightened risks presented by the transaction.

Importantly, the Final Statement continues to provide that a financial

[8] In response to comments, the Agencies have modified the Final Statement to clarify that a U.S. branch or agency of a foreign bank is not necessarily expected to establish or adopt separate U.S.-based risk management structures or policies for its CSFT activities. In addition, the Agencies believe the Final Statement provides U.S. branches and agencies of foreign banks sufficient flexibility to develop controls, risk management and reporting structures, and lines of authority that are consistent with the internal management structure of U.S. branches and agencies. However, the risk management structure and policies used by a U.S. branch or agency, whether adopted or implemented on a group-wide or stand-alone basis, should be effective in allowing the branch or agency to manage the risks associated with its CSFT activities.

[9] One commenter sought clarification regarding when during the new product approval process a new complex structured finance product should receive the approval of relevant control areas. The Agencies note that the Final Statement is not intended to prevent institutions from engaging in initial or preliminary discussions or negotiations with potential customers about a new complex structured finance product. However, an institution should obtain the necessary approvals for a new complex structured finance product from appropriate control areas before the institution enters into, or becomes obligated to enter into, a transaction with the customer.

institution should decline to participate in an elevated risk CSFT if, after conducting appropriate due diligence and taking appropriate steps to address the risks from the transaction, the institution determines that the transaction presents unacceptable risks to the institution or would result in a violation of applicable laws, regulations or accounting principles.[10] The Final Statement also expressly notes that financial institutions must conduct their activities in accordance with applicable statutes and regulations. The Agencies believe the Final Statement should assist financial institutions engaged in CSFTs in managing the risks associated with these activities and complying with the law, and does not, as some commenters alleged, encourage or condone illegal conduct.

Some commenters also requested that the Agencies enunciate, clarify or modify the legal standards governing the potential liability of a financial institution for participating in a CSFT that is used for fraudulent or illegal purposes. For example, some commenters asked the Agencies to declare that institutions do not have a duty to ensure the accuracy of a client's public filings or accounting. Other commenters asked that the Agencies state that an institution will not be held liable or responsible for a CSFT if the institution has a reasonable degree of confidence that the customer will report or account for the transactions properly. Other commenters expressed concern that the Revised Proposed Statement, or the comments submitted on that document, attempted to alter the current legal standards under which a financial institution may be held liable for fraudulent activity or criminally responsible under the Federal securities law or other laws.

As events in recent years have highlighted, institutions may in certain circumstances bear significant legal or reputational risk from participating in a CSFT. In light of these risks, the Final Statement describes the types of risk management systems and internal controls that may help a financial institution engaged in CSFTs to identify those CSFTs that may pose heightened legal or reputational risk to the institution, and to evaluate, manage, and address those risks. Because the Final Statement represents guidance on the part of the Banking Agencies and a policy statement on the part of the SEC, it does not, by itself, establish any legally enforceable requirements or obligations. Moreover, as the Final Statement expressly provides, it does not create any private rights of action, nor does it alter or expand the legal duties and obligations that a financial institution may have to a customer, its shareholders or other parties under applicable law. Accordingly, the Agencies do not believe it is appropriate or possible to address in the Final Statement these legal concerns expressed by commenters.

B. Documentation

The Final Statement states that a financial institution should create and collect sufficient documentation to, among other things, verify that the institution's policies and procedures related to elevated risk CSFTs are being followed and allow the internal audit function to monitor compliance with those policies and procedures. The Final Statement also provides that, when an institution's policies and procedures require an elevated risk CSFT to be submitted for approval to senior management, the institution should maintain the transaction-related documentation provided to senior management as well as other documentation that reflect management's approval (or disapproval) of the transaction, any conditions imposed by senior management, and the reasons for such action.

Several commenters strongly suggested that the Agencies should eliminate or modify the portions of the statement that provide for a financial institution to maintain certain documentation related to elevated risk CSFTs that are submitted to the institution's senior management for approval (or denial). For example, some commenters argued that institutions should not be required to maintain any documentation for declined transactions. Other commenters expressed concern that this provision was inconsistent with the current practice of financial institutions, would require financial institutions to create new and potentially extensive documentation to memorialize all aspects of the institution's analytical and decision-making process with respect to an elevated risk CSFT, or would require institutions to create or maintain extensive documentation even for transactions that are approved or rejected by junior staff.

As an initial matter, the Agencies note that the Final Statement's provisions regarding documentation for elevated risk CSFTs submitted to senior management for approval (or disapproval) do not apply to transactions that may be reviewed and acted on by more junior personnel in accordance with the institution's policies and procedures. Rather, these provisions apply only to those elevated risk CSFTs that are identified by the institution as potentially involving the greatest degree of risk to the institution and, for this reason, are required to be reviewed by the institution's senior management. The Agencies believe that it is important for institutions to maintain documentation for this category of elevated risk CSFTs, whether approved or declined, that reflects the factors considered by senior management in taking such action. The Agencies believe this type of documentation may be of significant benefit to the institution and to the Agencies in reviewing the effectiveness of the institution's CSFT-related policies, procedures, and internal controls. However, to help address the commenter's concern about potential burden, the Agencies have modified the Final Statement to recognize that the minutes of an institution's reviewing senior management committee may have the information described and to clarify that the documentation for a transaction should reflect the factors considered by senior management in taking action, but does not have to detail every aspect of the institution's legal or business analysis of the transaction.[11]

C. General Risk Management Principles for Elevated Risk CSFTs

The Final Statement—like the Revised Proposed Statement—also describes some of the other key risk management policies and internal controls that financial institutions should have in place for elevated risk CSFTs. For example, the Final Statement provides that the board of directors and senior management of an institution should establish a ''tone at the top'' through both actions and formalized policies that sends a strong message throughout

[10] Some commenters asked the Agencies to clarify that the Final Statement does not necessarily prevent a financial institution from proceeding with a CSFT simply because there may be some ambiguity in how the transaction might be viewed under the law or applicable accounting principles. The Agencies recognize that in certain circumstances ambiguities may exist as to how the law or accounting principles apply to a CSFT, particularly in light of the inherent complexity and rapidly evolving nature of CSFTs. Nevertheless, as discussed in the Final Statement, a financial institution should maintain strong and effective processes and controls designed to determine whether any such ambiguities may create significant legal or reputational risks for the institution and to manage and address those risks as appropriate.

[11] In light of comments, the Agencies have modified the Documentation section of the Statement to clarify that an institution should retain sufficient documentation to establish that it has provided the customer any disclosures concerning an elevated risk CSFT that the institution is otherwise required to provide to the customer.

the financial institution about the importance of compliance with the law and overall good business ethics. The Final Statement also describes the types of training, reporting mechanisms, and audit procedures that institutions should have in place with respect to elevated risk CSFTs. The Final Statement also provides that a financial institution should conduct periodic independent reviews of its CSFT activities to verify and monitor that its policies and controls relating to elevated risk CSFTs are being implemented effectively and that elevated risk CSFTs are accurately identified and receive proper approvals.

In response to comments, the Agencies have modified the Final Statement to clarify that the independent reviews conducted by a financial institution may be performed by the institution's audit department or an independent compliance function within the institution. One commenter also asked the Agencies to state that the proper role of an institution's independent review function is only to confirm that the institution's policies and procedures for elevated risk CSFTs are being followed and that the function should not assess the quality of the decisions made by institution personnel. The Agencies believe that an institution's audit or compliance department should have the flexibility, in appropriate circumstances, to review the decisions made by institution personnel during the review and approval process for elevated risk CSFTs and for this reason have not made the recommended change.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR Part 1320, Appendix A.1), the Agencies reviewed the Final Statement. The Agencies may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The Agencies previously determined that certain provisions of the Revised Proposed Statement contained information collection requirements. OMB reviewed and approved the information collections contained in the Revised Proposed Statement for the FDIC, OTS, OCC and SEC; and the Board reviewed the Revised Proposed Statement under the authority delegated to the Board by OMB (5 CFR Part 1320, Appendix A.1).

OMB control numbers:

OCC: 1557–0229.

OTS: 1550–0111.

FRB: 7100–0311.

FDIC: 3064–0148.

SEC: 3235–0622.

Burden Estimates

OCC

Number of Respondents: 21.

Estimated Time per Response: 25 hours.

Total Estimated Annual Burden: 525 hours.

OTS

Number of Respondents: 5.

Estimated Time per Response: 25 hours.

Total Estimated Annual Burden: 125 hours.

Board

Number of Respondents: 20.

Estimated Time per Response: 25 hours.

Total Estimated Annual Burden: 500 hours.

FDIC

Number of Respondents: 5.

Estimated Time per Response: 25 hours.

Total Estimated Annual Burden: 125 hours.

SEC

Number of Respondents: 5.

Estimated Time per Response: 25 hours.

Total Estimated Annual Burden: 125 hours.

No commenters addressed the Agencies' information collection estimates. The Agencies do not believe that the clarifications included in this Final Statement impact the burden estimates previously developed and approved for these information collections. The Agencies have a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to:

OCC: You should direct your comments to:

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0229, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043. Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0229, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

You can request additional information or a copy of the collection from Mary Gottlieb, OCC Clearance Officer, or Camille Dickerson, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet site at *http://www.treas.gov*. In addition, interested persons may inspect the comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or fax number (202) 906–6518, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552

Board: You may submit comments, identified by FR 4022, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail*: *Regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Michelle Long, Federal Reserve Board Clearance Officer (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted,

unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: Interested parties are invited to submit written comments to the FDIC concerning the Paperwork Reduction Act implications of this proposal. Such comments should refer to ''Complex Structured Finance Transactions, 3064–0148.'' Comments may be submitted by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *E-mail: comments@FDIC.gov.* Include Complex Structured Financial Transactions, 3064–0148 in the subject line of the message.
- *Mail:* Steven F. Hanft (202) 898–3907, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

SEC: You should direct your comments to: Office of Management and Budget, Attention Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, with a copy sent to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090 with reference to File No. S7–08–06.

The Final Statement follows:

Interagency Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities

I. Introduction

Financial markets have grown rapidly over the past decade, and innovations in financial instruments have facilitated the structuring of cash flows and allocation of risk among creditors, borrowers and investors in more efficient ways. Financial derivatives for market and credit risk, asset-backed securities with customized cash flow features, specialized financial conduits that manage pools of assets and other types of structured finance transactions serve important business purposes, such as diversifying risks, allocating cash flows, and reducing cost of capital. As a result, structured finance transactions now are an essential part of U.S. and international capital markets. Financial institutions have played and continue to play an active and important role in the development of structured finance products and markets, including the market for the more complex variations of structured finance products.

When a financial institution participates in a complex structured finance transaction (''CSFT''), it bears the usual market, credit, and operational risks associated with the transaction. In some circumstances, a financial institution also may face heightened legal or reputational risks due to its involvement in a CSFT. For example, in some circumstances, a financial institution may face heightened legal or reputational risk if a customer's regulatory, tax or accounting treatment for a CSFT, or disclosures to investors concerning the CSFT in the customer's public filings or financial statements, do not comply with applicable laws, regulations or accounting principles. Indeed, in some instances, CSFTs have been used to misrepresent a customer's financial condition to investors, regulatory authorities and others. In these situations, investors have been harmed, and financial institutions have incurred significant legal and reputational exposure. In addition to legal risk, reputational risk poses a significant threat to financial institutions because the nature of their business requires them to maintain the confidence of customers, creditors and the general marketplace.

The Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission (the ''Agencies'') have long expected financial institutions to develop and maintain robust control infrastructures that enable them to identify, evaluate and address the risks associated with their business activities. Financial institutions also must conduct their activities in accordance with applicable statutes and regulations.

II. Scope and Purpose of Statement

The Agencies are issuing this Statement to describe the types of risk management principles that we believe may help a financial institution to identify CSFTs that may pose heightened legal or reputational risks to the institution (''elevated risk CSFTs'') and to evaluate, manage and address these risks within the institution's internal control framework.[12]

Structured finance transactions encompass a broad array of products with varying levels of complexity. Most structured finance transactions, such as standard public mortgage-backed securities transactions, public securitizations of retail credit cards, asset-backed commercial paper conduit transactions, and hedging-type transactions involving ''plain vanilla'' derivatives and collateralized loan obligations, are familiar to participants in the financial markets, and these vehicles have a well-established track record. These transactions typically would not be considered CSFTs for the purpose of this Statement.

Because this Statement focuses on sound practices related to CSFTs that may create heightened legal or reputational risks—transactions that typically are conducted by a limited number of large financial institutions—it will not affect or apply to the vast majority of financial institutions, including most small institutions. As in all cases, a financial institution should tailor its internal controls so that they are appropriate in light of the nature, scope, complexity and risks of its activities. Thus, for example, an institution that is actively involved in structuring and offering CSFTs that may create heightened legal or reputational risk for the institution should have a more formalized and detailed control framework than an institution that participates in these types of transactions less frequently. The internal controls and procedures discussed in this Statement are not all inclusive, and, in appropriate circumstances, an institution may find that other controls, policies, or procedures are appropriate in light of its particular CSFT activities.

Because many of the core elements of an effective control infrastructure are the same regardless of the business line involved, this Statement draws heavily on controls and procedures that the Agencies previously have found to be effective in assisting a financial institution to manage and control risks and identifies ways in which these controls and procedures can be

[12] As used in this Statement, the term ''financial institution'' or ''institution'' refers to national banks in the case of the Office of the Comptroller of the Currency; federal and state savings associations and savings and loan holding companies in the case of the Office of Thrift Supervision; state member banks and bank holding companies (other than foreign banking organizations) in the case of the Federal Reserve Board; state nonmember banks in the case of the Federal Deposit Insurance Corporation; and registered broker-dealers and investment advisers in the case of the Securities and Exchange Commission. The U.S. branches and agencies of foreign banks supervised by the Office of the Comptroller, the Federal Reserve Board and the Federal Deposit Insurance Corporation also are considered to be financial institutions for purposes of this Statement.

effectively applied to elevated risk CSFTs. Although this Statement highlights some of the most significant risks associated with elevated risk CSFTs, it is not intended to present a full exposition of all risks associated with these transactions. Financial institutions are encouraged to refer to other supervisory guidance prepared by the Agencies for further information concerning market, credit, operational, legal and reputational risks as well as internal audit and other appropriate internal controls.

This Statement does not create any private rights of action, and does not alter or expand the legal duties and obligations that a financial institution may have to a customer, its shareholders or other third parties under applicable law. At the same time, adherence to the principles discussed in this Statement would not necessarily insulate a financial institution from regulatory action or any liability the institution may have to third parties under applicable law.

III. Identification and Review of Elevated Risk Complex Structured Finance Transactions

A financial institution that engages in CSFTs should maintain a set of formal, written, firm-wide policies and procedures that are designed to allow the institution to identify, evaluate, assess, document, and control the full range of credit, market, operational, legal and reputational risks associated with these transactions. These policies may be developed specifically for CSFTs, or included in the set of broader policies governing the institution generally. A financial institution operating in foreign jurisdictions may tailor its policies and procedures as appropriate to account for, and comply with, the applicable laws, regulations and standards of those jurisdictions.[13]

A financial institution's policies and procedures should establish a clear framework for the review and approval of individual CSFTs. These policies and procedures should set forth the responsibilities of the personnel involved in the origination, structuring, trading, review, approval, documentation, verification, and execution of CSFTs. Financial institutions may find it helpful to incorporate the review of new CSFTs into their existing new product policies. In this regard, a financial institution should define what constitutes a ''new'' complex structured finance product and establish a control process for the approval of such new products. In determining whether a CSFT is new, a financial institution may consider a variety of factors, including whether it contains structural or pricing variations from existing products, whether the product is targeted at a new class of customers, whether it is designed to address a new need of customers, whether it raises significant new legal, compliance or regulatory issues, and whether it or the manner in which it would be offered would materially deviate from standard market practices. An institution's policies should require new complex structured finance products to receive the approval of all relevant control areas that are independent of the profit center before the product is offered to customers.

A. Identifying Elevated Risk CSFTs

As part of its transaction and new product approval controls, a financial institution should establish and maintain policies, procedures and systems to identify elevated risk CSFTs. Because of the potential risks they present to the institution, transactions or new products identified as elevated risk CSFTs should be subject to heightened reviews during the institution's transaction or new product approval processes. Examples of transactions that an institution may determine warrant this additional scrutiny are those that (either individually or collectively) appear to the institution during the ordinary course of its transaction approval or new product approval process to:

- Lack economic substance or business purpose;
- Be designed or used primarily for questionable accounting, regulatory, or tax objectives, particularly when the transactions are executed at year end or at the end of a reporting period for the customer;
- Raise concerns that the client will report or disclose the transaction in its public filings or financial statements in a manner that is materially misleading or inconsistent with the substance of the transaction or applicable regulatory or accounting requirements;
- Involve circular transfers of risk (either between the financial institution and the customer or between the customer and other related parties) that lack economic substance or business purpose;
- Involve oral or undocumented agreements that, when taken into account, would have a material impact on the regulatory, tax, or accounting treatment of the related transaction, or the client's disclosure obligations;[14]
- Have material economic terms that are inconsistent with market norms (*e.g.*, deep ''in the money'' options or historic rate rollovers); or
- Provide the financial institution with compensation that appears substantially disproportionate to the services provided or investment made by the financial institution or to the credit, market or operational risk assumed by the institution.

The examples listed previously are provided for illustrative purposes only, and the policies and procedures established by financial institutions may differ in how they seek to identify elevated risk CSFTs. The goal of each institution's policies and procedures, however, should remain the same—to identify those CSFTs that warrant additional scrutiny in the transaction or new product approval process due to concerns regarding legal or reputational risks.

Financial institutions that structure or market, act as an advisor to a customer regarding, or otherwise play a substantial role in a transaction may have more information concerning the customer's business purpose for the transaction and any special accounting, tax or financial disclosure issues raised by the transaction than institutions that play a more limited role. Thus, the ability of a financial institution to identify the risks associated with an elevated risk CSFT may differ depending on its role.

B. Due Diligence, Approval and Documentation Process for Elevated Risk CSFTs

Having developed a process to identify elevated risk CSFTs, a financial institution should implement policies and procedures to conduct a heightened level of due diligence for these transactions. The financial institution should design these policies and procedures to allow personnel at an appropriate level to understand and evaluate the potential legal or reputational risks presented by the transaction to the institution and to manage and address any heightened

[13] In the case of U.S. branches and agencies of foreign banks, these policies, including management, review and approval requirements, should be coordinated with the foreign bank's group-wide policies developed in accordance with the rules of the foreign bank's home country supervisor and should be consistent with the foreign bank's overall corporate and management structure as well as its framework for risk management and internal controls.

[14] This item is not intended to include traditional, non-binding ''comfort'' letters or assurances provided to financial institutions in the loan process where, for example, the parent of a loan customer states that the customer states that the customer (*i.e.*, the parent's subsidiary) is an integral and important part of the parent's operations.

legal or reputational risks ultimately found to exist with the transaction.

Due Diligence. If a CSFT is identified as an elevated risk CSFT, the institution should carefully evaluate and take appropriate steps to address the risks presented by the transaction with a particular focus on those issues identified as potentially creating heightened levels of legal or reputational risk for the institution. In general, a financial institution should conduct the level and amount of due diligence for an elevated risk CSFT that is commensurate with the level of risks identified. A financial institution that structures or markets an elevated risk CSFT to a customer, or that acts as an advisor to a customer or investors concerning an elevated risk CSFT, may have additional responsibilities under the federal securities laws, the Internal Revenue Code, state fiduciary laws or other laws or regulations and, thus, may have greater legal and reputational risk exposure with respect to an elevated risk CSFT than a financial institution that acts only as a counterparty for the transaction. Accordingly, a financial institution may need to exercise a higher degree of care in conducting its due diligence when the institution structures or markets an elevated risk CSFT or acts as an advisor concerning such a transaction than when the institution plays a more limited role in the transaction.

To appropriately understand and evaluate the potential legal and reputational risks associated with an elevated risk CSFT that a financial institution has identified, the institution may find it useful or necessary to obtain additional information from the customer or to obtain specialized advice from qualified in-house or outside accounting, tax, legal, or other professionals. As with any transaction, an institution should obtain satisfactory responses to its material questions and concerns prior to consummation of a transaction.[15]

In conducting its due diligence for an elevated risk CSFT, a financial institution should independently analyze the potential risks to the institution from both the transaction and the institution's overall relationship with the customer. Institutions should not conclude that a transaction identified as being an elevated risk CSFT involves minimal or manageable risks solely because another financial institution will participate in the transaction or because of the size or sophistication of the customer or counterparty. Moreover, a financial institution should carefully consider whether it would be appropriate to rely on opinions or analyses prepared by or for the customer concerning any significant accounting, tax or legal issues associated with an elevated risk CSFT.

Approval Process. A financial institution's policies and procedures should provide that CSFTs identified as having elevated legal or reputational risk are reviewed and approved by appropriate levels of control and management personnel. The designated approval process for such CSFTs should include representatives from the relevant business line(s) and/or client management, as well as from appropriate control areas that are independent of the business line(s) involved in the transaction. The personnel responsible for approving an elevated risk CSFT on behalf of a financial institution should have sufficient experience, training and stature within the organization to evaluate the legal and reputational risks, as well as the credit, market and operational risks to the institution.

The institution's control framework should have procedures to deliver the necessary or appropriate information to the personnel responsible for reviewing or approving an elevated risk CSFT to allow them to properly perform their duties. Such information may include, for example, the material terms of the transaction, a summary of the institution's relationship with the customer, and a discussion of the significant legal, reputational, credit, market and operational risks presented by the transaction.

Some institutions have established a senior management committee that is designed to involve experienced business executives and senior representatives from all of the relevant control functions within the financial institution (including such groups as independent risk management, tax, accounting, policy, legal, compliance, and financial control) in the oversight and approval of those elevated risk CSFTs that are identified by the institution's personnel as requiring senior management review and approval due to the potential risks associated with the transactions. While this type of management committee may not be appropriate for all financial institutions, a financial institution should establish processes that assist the institution in consistently managing the review and approval of elevated risk CSFTs on a firm-wide basis.[16]

If, after evaluating an elevated risk CSFT, the financial institution determines that its participation in the CSFT would create significant legal or reputational risks for the institution, the institution should take appropriate steps to address those risks. Such actions may include declining to participate in the transaction, or conditioning its participation upon the receipt of representations or assurances from the customer that reasonably address the heightened legal or reputational risks presented by the transaction. Any representations or assurances provided by a customer should be obtained before a transaction is executed and be received from, or approved by, an appropriate level of the customer's management. A financial institution should decline to participate in an elevated risk CSFT if, after conducting appropriate due diligence and taking appropriate steps to address the risks from the transaction, the institution determines that the transaction presents unacceptable risk to the institution or would result in a violation of applicable laws, regulations or accounting principles.

Documentation. The documentation that financial institutions use to support CSFTs is often highly customized for individual transactions and negotiated with the customer. Careful generation, collection and retention of documents associated with elevated risk CSFTs are important control mechanisms that may help an institution monitor and manage the legal, reputational, operational, market, and credit risks associated with the transactions. In addition, sound documentation practices may help reduce unwarranted exposure to the financial institution's reputation.

A financial institution should create and collect sufficient documentation to allow the institution to:

- Document the material terms of the transaction;
- Enforce the material obligations of the counterparties;
- Confirm that the institution has provided the customer any disclosures concerning the transaction that the institution is otherwise required to provide; and
- Verify that the institution's policies and procedures are being followed and allow the internal audit function to

[15] Of course, financial institutions also should ensure that their own accounting for transactions complies with applicable accounting standards, consistently applied.

[16] The control processes that a financial institution establishes for CSFTs should take account of, and be consistent with, any informational barriers established by the institution to manage potential conflicts of interest, insider trading or other concerns.

monitor compliance with those policies and procedures.

When an institution's policies and procedures require an elevated risk CSFT to be submitted for approval to senior management, the institution should maintain the transaction-related documentation provided to senior management as well as other documentation, such as minutes of the relevant senior management committee, that reflect senior management's approval (or disapproval) of the transaction, any conditions imposed by senior management, and the factors considered in taking such action. The institution should retain documents created for elevated risk CSFTs in accordance with its record retention policies and procedures as well as applicable statutes and regulations.

C. Other Risk Management Principles for Elevated Risk CSFTs

General Business Ethics. The board and senior management of a financial institution also should establish a ''tone at the top'' through both actions and formalized policies that sends a strong message throughout the financial institution about the importance of compliance with the law and overall good business ethics. The board and senior management should strive to create a firm-wide corporate culture that is sensitive to ethical or legal issues as well as the potential risks to the financial institution that may arise from unethical or illegal behavior. This kind of culture coupled with appropriate procedures should reinforce business-line ownership of risk identification, and encourage personnel to move ethical or legal concerns regarding elevated risk CSFTs to appropriate levels of management. In appropriate circumstances, financial institutions may also need to consider implementing mechanisms to protect personnel by permitting the confidential disclosure of concerns.[17] As in other areas of financial institution management, compensation and incentive plans should be structured, in the context of elevated risk CSFTs, so that they provide personnel with appropriate incentives to have due regard for the legal, ethical and reputational risk interests of the institution.

Reporting. A financial institution's policies and procedures should provide for the appropriate levels of management and the board of directors to receive sufficient information and reports concerning the institution's elevated risk CSFTs to perform their oversight functions.

Monitoring Compliance with Internal Policies and Procedures. The events of recent years evidence the need for an effective oversight and review program for elevated risk CSFTs. A financial institution's program should provide for periodic independent reviews of its CSFT activities to verify and monitor that its policies and controls relating to elevated risk CSFTs are being implemented effectively and that elevated risk CSFTs are accurately identified and received proper approvals. These independent reviews should be performed by appropriately qualified audit, compliance or other personnel in a manner consistent with the institution's overall framework for compliance monitoring, which should include consideration of issues such as the independence of reviewing personnel from the business line. Such monitoring may include more frequent assessments of the risk arising from elevated risk CSFTs, both individually and within the context of the overall customer relationship, and the results of this monitoring should be provided to an appropriate level of management in the financial institution.

Audit. The internal audit department of any financial institution is integral to its defense against fraud, unauthorized risk taking and damage to the financial institution's reputation. The internal audit department of a financial institution should regularly audit the financial institution's adherence to its own control procedures relating to elevated risk CSFTs, and further assess the adequacy of its policies and procedures related to elevated risk CSFTs. Internal audit should periodically validate that business lines and individual employees are complying with the financial institution's standards for elevated risk CSFTs and appropriately identifying any exceptions. This validation should include transaction testing for elevated risk CSFTs.

Training. An institution should identify relevant personnel who may need specialized training regarding CSFTs to be able to effectively perform their oversight and review responsibilities. Appropriate training on the financial institution's policies and procedures for handling elevated risk CSFTs is critical. Financial institution personnel involved in CSFTs should be familiar with the institution's policies and procedures concerning elevated risk CSFTs, including the processes established by the institution for identification and approval of elevated risk CSFTs and new complex structured finance products and for the elevation of concerns regarding transactions or products to appropriate levels of management. Financial institution personnel involved in CSFTs should be trained to identify and properly handle elevated risk CSFTs that may result in a violation of law.

IV. Conclusion

Structured finance products have become an essential and important part of the U.S. and international capital markets, and financial institutions have played an important role in the development of structured finance markets. In some instances, however, CSFTs have been used to misrepresent a customer's financial condition to investors and others, and financial institutions involved in these transactions have sustained significant legal and reputational harm. In light of the potential legal and reputational risks associated with CSFTs, a financial institution should have effective risk management and internal control systems that are designed to allow the institution to identify elevated risk CSFTs, to evaluate, manage and address the risks arising from such transactions, and to conduct those activities in compliance with applicable law.

Dated: December 12, 2006.

John C. Dugan,

Comptroller of the Currency.

Dated: December 21, 2006.

By the Office of Thrift Supervision.

Scott M. Polakoff,

Deputy Director & Chief Operating Officer.

By order of the Board of Governors of the Federal Reserve System, December 20, 2006.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, the 22nd day of December, 2006.

By order of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: January 5, 2007.

By the Securities and Exchange Commission.

Nancy M. Morris,

Secretary.

[FR Doc. 07–55 Filed 1–10–07; 8:45 am]

BILLING CODE 4810–33–P; 6720–01–P; 6210–01–P; 6714–01–P; 8011–01–P

[17] The agencies note that the Sarbanes-Oxley Act of 2002 requires companies listed on a national securities exchange or inter-dealer quotation system of a national securities association to establish procedures that enable employees to submit concerns regarding questionable accounting or auditing matters on a confidential, anonymous basis. *See* 15 U.S.C. 78j–1(m).

Corrections

Federal Register

Vol. 72, No. 7

Thursday, January 11, 2007

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 COMMERCE

National Oceanic and Atmospheric Administration

50 Part 622

[Docket No. 060731206–6280–02; I.D. 072806A]

RIN 0648–AS67

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 26

Correction

In **Federal Register** correction to rule document 06–9342 appearing on page 78274 in the issue of Thursday, December 28, 2006, the correction should read as follows:

§622.4 [Corrected]

On page 67458, in the first column, in §622.4, in amendatory instruction 6.D., in the second line, ''(p)(i)'' should read ''(p)(1)''.

[FR Doc. C6–9342 Filed 1–10–07; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54977; File No. SR–NYSE–2006–116]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to Amendment of Annual Report Timely Filing Requirements

Correction

In notice document E6–22201 beginning on page 78249 in the issue of Thursday, December 28, 2006, make the following correction:

On page 78250, in the second column footnote 17 should be footnote 5.

[FR Doc. Z6–22201 Filed 1–10–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
January 11, 2007

Part II

Securities and Exchange Commission

17 CFR Parts 200, 232, 240, 249

Termination of a Foreign Private Issuer's Registration of a Class of Securities Under Section 12(g) and Duty To File Reports Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 232, 240 and 249

[Release No. 34–55005; International Series Release No. 1300; File No. S7–12–05]

RIN 3235–AJ38

Termination of a Foreign Private Issuer's Registration of a Class of Securities Under Section 12(g) and Duty To File Reports Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Reproposed rule.

SUMMARY: We are reproposing amendments to the rules that govern when a foreign private issuer may terminate the registration of a class of equity securities under section 12(g) of the Securities Exchange Act of 1934 (''Exchange Act'') and the corresponding duty to file reports required under section 13(a) of the Exchange Act, and when it may cease its reporting obligations regarding a class of equity or debt securities under section 15(d) of the Exchange Act. Under the current rules, a foreign private issuer may find it difficult to terminate its Exchange Act registration and reporting obligations despite the fact that there is relatively little interest in the issuer's U.S.-registered securities among United States investors. Moreover, currently a foreign private issuer can only suspend, and cannot terminate, a duty to report arising under section 15(d) of the Exchange Act. Reproposed Exchange Act Rule 12h–6 would permit the termination of Exchange Act reporting regarding a class of equity securities under either section 12(g) or section 15(d) of the Exchange Act by a foreign private issuer that meets a quantitative benchmark designed to measure relative U.S. market interest for that class of securities, which does not depend on a head count of the issuer's U.S. security holders. The reproposed benchmark would require the comparison of the average daily trading volume of an issuer's securities in the United States with that in its primary trading market. Because the Commission did not fully address this approach when it originally proposed Rule 12h–6, and because of other proposed changes to Rule 12h–6 not fully discussed in the original rule proposal, we are reproposing Rule 12h–6 and the accompanying rule amendments. These rule amendments would seek to provide U.S. investors with ready access through the Internet on an ongoing basis to material information about a foreign private issuer of equity securities that is required by its home country after it has exited the Exchange Act reporting system.

DATES: Comments must be received on or before February 12, 2007. Given the advanced stage of this rulemaking initiative, the Commission anticipates taking further action as expeditiously as possible after the end of the comment period. It therefore strongly encourages the public to submit their comments within the prescribed comment period. Comments received after that point cannot be assured of full consideration by the Commission.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's *Internet comment form* (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–12–05 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number S7–12–05. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml.* Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Elliot Staffin, Special Counsel, at (202) 551–3450, in the Office of International Corporate Finance, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are reproposing amendments to Commission Rule 30–1,[1] Rule 101[2] of Regulation S–T,[3] and Rules 12g3–2, 12g–4 and 12h–3[4] under the Exchange Act,[5] and reproposing new Rule 12h–6[6] and Form 15F[7] under the Exchange Act.

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I. Executive Summary and Background

A. Introduction

On December 23, 2005, the Commission issued proposed amendments to its current rules governing when a foreign private

[1] 17 CFR 200.30–1.
[2] 17 CFR 232.101.
[3] 17 CFR 232.10 *et seq.*
[4] 17 CFR 240.12g3–2, 240.12g–4 and 240.12h–3.
[5] 15 U.S.C. 78a *et seq.*
[6] 17 CFR 240.12h–6, as reproposed.
[7] 17 CFR 249.324, as reproposed.

issuer[8] may exit the Exchange Act reporting regime.[9] The Commission proposed these rule amendments out of concern that, due to several trends, including the increased internationalization of the U.S. securities markets in recent decades, it has become difficult for a foreign private issuer to exit the Exchange Act reporting system even when there is relatively little U.S. investor interest in its U.S.-registered securities.[10]

We recognized that U.S. investors benefit from the investment opportunities provided by foreign private issuers registering their securities with the Commission and listing and publicly offering those securities in the United States. However, because of the burdens and uncertainties associated with terminating registration and reporting under the Exchange Act, the current exit process may serve as a disincentive to foreign private issuers accessing the U.S. public capital markets. In order to remove this disincentive, we proposed to amend the current Exchange Act exit rules for foreign private issuers.

We received over 50 letters commenting on the proposed rule amendments.[11] While most of the commenters supported the purpose and general framework of the proposed rulemaking, many expressed concern that the rule proposals would unduly restrict a significant portion of U.S.-registered foreign private issuers from terminating their Exchange Act registration and reporting obligations. We have carefully considered commenters' suggestions regarding the rule proposals, and have incorporated many of them into the rules that we are reproposing today.

A number of commenters have noted that many non-U.S. securities markets impose relatively few restrictions on the ability of a foreign issuer to delist from those markets and to terminate all reporting and other compliance obligations in those markets.[12] In the United States, foreign companies are generally able to delist their securities from exchanges without significant restrictions.[13] However, although a foreign private issuer is able to delist its securities from U.S. exchanges, it may continue to have reporting obligations under the Exchange Act.

The rules we are reproposing today are intended to provide foreign private issuers with methods by which they can exit the U.S. public securities markets without significant burdens when U.S. market interest in the issuers' securities is relatively low. For foreign registrants of equity securities, that method would be based on a comparison of the average daily trading volume of its class of securities in the United States with that in its primary trading market.[14] Although we expressed some reservation about relying solely on trading volume data as the basis for measuring U.S. regulatory interest in the Proposing Release, in light of the comments received, we are reconsidering our position. We believe that a standard based on trading volume may in fact be superior to the originally proposed standard, which was based primarily on a comparison of an issuer's U.S. public float with its worldwide public float, because it is a direct measure of the issuer's nexus with the U.S. market, and because trading volume data is easier to obtain than public float or record holder data. In applying an exit standard based on trading volume data for the U.S. and an issuer's primary trading market, issuers will face reduced costs when determining whether they can terminate their registration and reporting obligations under the Exchange Act, compared to the earlier proposed measures that would have required an issuer to assess the U.S. residence of its security holders.

We believe the reproposed rules appropriately provide meaningful protection of U.S. investors by permitting the termination of Exchange Act registration and reporting only by foreign registrants in whose U.S. registered securities relative U.S. market interest is low. We believe the proposed conditions governing eligibility to use the trading volume-based measure, along with the other proposed conditions concerning prior Exchange Act reporting, the prohibition against recent registered U.S. offerings, and required foreign listing should further serve to protect U.S. investors.

We believe the reproposed rules will provide foreign private issuers, regardless of size, with the meaningful option of terminating their Exchange Act reporting obligations when, after electing to access the U.S. public capital markets, they find that there is relatively little U.S. investor interest in their U.S.-registered securities. As a result, foreign private issuers should be more willing initially to register their securities with the Commission, to the benefit of U.S. investors who will have more investment choices.

B. Overview of the Current Exchange Act Exit Rules

Exchange Act Rule 12g–4 currently governs whether an issuer may terminate its registration of a class of securities under section 12(g) of the Exchange Act[15] and its corresponding section 13(a) reporting obligations.[16] Under this rule, a foreign private issuer may seek termination of its registration of a class of securities under section 12(g) by certifying in Form 15[17] that the subject class of securities is held of record by less than 300 residents in the United States or by less than 500 U.S. residents when the issuer's total assets have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years.[18] To determine

[8] As defined in Rule 3b–4(c) (17 CFR 240.3b–4(c)), a foreign private issuer is a corporation or other organization incorporated or organized in a foreign country that either has 50 percent or less of its outstanding voting securities held of record by United States residents or, if more than 50 percent of its voting securities are held by U.S. residents, about which none of the following are true:

(1) A majority of its executive officers or directors are U.S. citizens or residents;

(2) More than 50 percent of its assets are located in the United States; and

(3) The issuer's business is administered principally in the United States.

[9] Release No. 34–53020 (December 23, 2005), 70 FR 77688 (December 30, 2005) (Original Proposing Release).

[10] See Original Proposing Release, 70 FR at 77689–77690.

[11] These comments are available on the Commission's Web site at *http://www.sec.gov/rules/proposed/s71205.shtml* and in the Commission's Public Reference Room in its Washington, DC headquarters.

[12] See, for example, the letter, dated February 9, 2004, from the Association Francaise Des Entreprises Privees (AFEP) and other European industry group representatives.

[13] See, for example, Exchange Act Rule 12d2–2 (17 CFR 240.12d2–2) and section 806.02 of the New York Stock Exchange (NYSE) Listed Company Manual.

[14] As discussed in greater detail in Part II.A. of this release, a foreign private issuer would be eligible to deregister a class of equity securities under reproposed Rule 12h–6 if the average daily trading volume in the United States was no greater than 5% of its average daily trading volume in its primary trading market over a recent 12-month period.

[15] This statutory section only applies to equity securities. See Exchange Act Section 12(g)(1) [15 U.S.C. 78*l* (g)(1)]. An issuer may register a class of equity securities under section 12(g) either voluntarily or because it had 500 or more security holders of record and more than $10 million in total assets and, if a foreign private issuer, more than 300 shareholders resident in the United States on the last day of its most recently completed fiscal year. See Exchange Act Rules 12g–1 (17 CFR 12g–1) and 12g3–2(a) (17 CFR 240.12g3–2(a)). However, a foreign private issuer may avoid an Exchange Act registration obligation under section 12(g) by establishing the exemption under Exchange Act Rule 12g3–2(b) (17 CFR 240.12g3–2(b)).

[16] 15 U.S.C. 78m(a).

[17] 17 CFR 249.323.

[18] Exchange Act Rule 12g–4(a)(2) (17 CFR 240.12g–4(a)(2)). Alternatively, a foreign private issuer may seek to terminate its section 12(g) registration under the Rule 12g–4 provision that applies to any issuer, whether domestic or foreign. Under this provision, an issuer must certify on Form 15 that its class of equity securities is held

Continued

the number of U.S. resident shareholders under this rule, a foreign private issuer must use the method of counting provided under Exchange Act Rule 12g3–2(a).[19] This method requires looking through the record ownership of brokers, dealers, banks, depositaries or other nominees on a worldwide basis and counting the number of separate accounts of customers resident in the United States for which the securities are held.[20] Under this rule, issuers are required to make inquiries of all nominees, wherever located and wherever in the chain of ownership, for the purpose of assessing the number of U.S. resident holders.

Rule 12h–3 [21] is the Exchange Act rule governing when an issuer may suspend its reporting obligations under section 15(d).[22] While Rule 12h–3's standards are substantially similar to those under Rule 12g–4,[23] there are two important differences. First, an issuer may generally not suspend its section 15(d) reporting obligations until it has filed one Exchange Act annual report after the offering in question. Second, an issuer cannot terminate its reporting obligations under section 15(d) but can only suspend those obligations.[24] Therefore, for as long as the subject class of securities is outstanding, a foreign private issuer must also determine at the end of each fiscal year whether the number of U.S. resident security holders or total number of record holders has increased enough to trigger anew its section 15(d) reporting obligations.

An issuer may be subject to Exchange Act reporting obligations under more than one statutory section or rule. While an issuer is deemed to have only one active set of reporting obligations, when an issuer attempts to exit the Exchange Act reporting system, it must consider whether there are any dormant or suspended reporting obligations that would preclude the issuer from ceasing its Exchange Act reporting.

For example, an issuer may have active section 13(a) reporting obligations because it has a class of equity or debt securities listed on a national securities exchange and registered with the Commission under section 12(b) of the Exchange Act.[25] When attempting to exit the Exchange Act reporting system, the registrant not only must take steps to effect its delisting from the national securities exchange,[26] but also must consider whether it has any dormant or suspended reporting obligations under section 12(g) or 15(d) [27] that will become operative once its section 12(b) registration ceases.[28]

C. Concerns Regarding the Current Exchange Act Exit Rules

It has been almost four decades since the Commission first adopted the ''300 U.S. resident shareholder'' standard as the benchmark for determining both when a foreign private issuer must register a class of equity securities under section 12(g) and when it may terminate that registration.[29] Moreover, it has been over two decades since the Commission adopted Form 15 under Rules 12g–4 and 12h–3.[30] Since then, market globalization, advances in information technology, the increased use of American Depositary Receipt (''ADR'') [31] facilities by foreign companies to sell and list their securities in the United States, and other factors have increased significantly the number of foreign companies that have engaged in cross-border securities activities and sought listings in U.S. securities markets, as well as increased the amount of U.S. investor interest in the securities of foreign companies.

Representatives of foreign companies and foreign industry associations have voiced their concerns that the ''300 U.S. resident shareholder'' standard has become outdated and too easily exceeded by a foreign company that may have engaged in very little recent selling activity in the United States.[32] These representatives have further criticized the exit rules' reliance on the number of U.S. resident shareholders because, with the advent of book-entry recording,[33] it is difficult and costly to arrive at an accurate count of a foreign company's U.S. resident shareholders. These representatives have also been critical of Rule 12h–3 because it merely suspends rather than terminates a company's section 15(d) reporting obligations. As such, years after filing a Form 15, a foreign company may find

of record on a worldwide basis by less than 300 persons or by less than 500 persons when the issuer's total assets have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years. Exchange Act Rule 12g–4(a)(1) (17 CFR 240.12g–4(a)(1)).

[19] 17 CFR 240.12g3–2(a).

[20] See 17 CFR 240.12g3–2(a)(1).

[21] 17 CFR 240.12h–3.

[22] The effectiveness of a registration statement under the Securities Act of 1933 (Securities Act) triggers Section 15(d) reporting obligations. That section provides that an issuer cannot suspend its reporting obligations unless the subject class of securities is held of record by less than 300 persons at the beginning of a fiscal year other than the year in which the Securities Act registration statement became effective.

[23] See, in particular, Rule 12h–3(b)(2) (17 CFR 240.12h–3(b)(2)). This provision imposes not only the same record holder standards as under Rule 12g–4 but also the same counting method required under Rule 12g3–2(a).

[24] Exchange Act Rule 12h–3(e) (17 CFR 240.12h–3(e)).

[25] 15 U.S.C. 78*l*(b).

[26] To effect the delisting and subsequent termination of an issuer's registration of a class of securities under section 12(b), the national securities exchange or issuer must file a Form 25 (17 CFR 249.25) with the Commission pursuant to Exchange Act Rule 12d2–2 (17 CFR 240.12d2–2). We have adopted amendments to our rules and Form 25 to streamline the procedures for removing from listing, and withdrawing from registration, securities under section 12(b). See Release No. 34–52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

[27] A registrant may have section 12(g) reporting obligations following its termination of registration of a class of equity securities under section 12(b): (1) If it initially registered the class of securities under section 12(g) before listing the securities on a national securities exchange; or (2) under Exchange Act Rule 12g–2 (17 CFR 240.12g–2). That rule provides that any class of securities that would have been required to be registered under section 12(g), except for the fact that it was listed and registered on a national securities exchange, is deemed to be registered under section 12(g) upon the termination of registration under section 12(b) as long as the class of securities are not exempt from registration under section 12 and are held of record by 300 or more persons. Exchange Act section 15(d) automatically suspends the duty to file reports under that section regarding securities registered under an effective Securities Act registration statement once the issuer has registered the class of securities under section 12 of the Exchange Act.

[28] Because compliance with Rule 12d2–2 does not depend on the number of an issuer's record holders, termination of registration under section 12(b) does not raise the same concerns for an issuer as under section 12(g) or 15(d). As is currently the case, under the rule amendments reproposed today, a foreign private issuer that has a class of securities registered under section 12(b) will have to comply with Rule 12d2–2 before it can effect termination of registration under section 12(g) or termination of its reporting obligations under section 13(a) or section 15(d). Moreover, as under the current Exchange Act exit regime, a foreign private issuer will have to file a post-effective amendment to terminate the registration of any unsold securities under an existing Securities Act registration statement before it can terminate its registration and reporting under Rule 12h–6.

[29] See Release No. 34–8066 (April 28, 1967).

[30] See Release No. 34–20784 (March 22, 1984), 49 FR 12688 (March 30, 1984).

[31] An ADR is a negotiable instrument that represents an ownership interest in a specified number of securities, which the securities holder has deposited with a designated bank depositary. Use of an ADR facility makes it easier for a U.S. resident to collect dividends in U.S. dollars. Moreover, because the clearance and settlement process for ADRs generally is the same for securities of domestic companies that are traded in U.S. markets, a U.S. holder of an ADR is able to hold securities of a foreign company that trades, clears and settles within automated U.S. systems and within U.S. time periods.

[32] See, for example, the letter from AFEP.

[33] The last three decades have seen the development of a U.S. clearance and settlement system that relies on electronic book-entry to settle securities transactions and transfer ownership rather than one dependent on the use of paper certificates. For an overview of this development, see Release No. 33–8398 (March 11, 2004), 69 FR 12922 (March 18, 2004), the text surrounding n. 104. This movement to electronic book-entry clearance and settlement systems has taken place on a global basis as well, as both developed and developing securities markets have sought to improve efficiency.

that it has once again exceeded the 300 U.S. resident shareholder threshold, and thereupon again become subject to section 15(d) reporting duties, without regard to its U.S. market activity.[34]

Finally, these representatives have objected to our current rule, which does not permit a foreign private issuer to obtain the Exchange Act Rule 12g3–2(b) exemption [35] if, during the previous 18 months, it has had a class of securities registered under section 12 or a reporting obligation, suspended or active, under section 15(d) of the Exchange Act.[36]

D. The Originally Proposed Rule Amendments

In light of the changes to U.S. capital markets caused primarily by market globalization and advances in information technology, the Commission proposed to amend the rules allowing a foreign private issuer to exit the Exchange Act registration and reporting regime. We proposed to amend Rules 12g–4 and 12h–3 to eliminate the provisions that primarily condition a foreign private issuer's eligibility to cease its Exchange Act reporting obligations on whether the number of its U.S. resident security holders has fallen below the 300 or 500 person threshold. In their place, we proposed new Exchange Act Rule 12h–6 that would permit a foreign private issuer that meets the conditions discussed below to terminate:

- Its registration of a class of equity securities under section 12(g) and its resulting section 13(a) reporting obligations; and
- Its section 15(d) reporting obligations regarding a class of equity or debt securities.

Under proposed Rule 12h–6, a foreign private issuer would have been eligible to terminate its Exchange Act reporting obligations regarding a class of equity securities if it met one of a set of alternative benchmarks, not based on a record holder count, and which depended on whether the issuer was a well-known seasoned issuer (''WKSI'').[37] As proposed, a foreign private issuer could have terminated its Exchange Act registration and reporting obligations:

- If a WKSI, as long as the U.S. average daily trading volume (''ADTV'') of the subject class of securities had been no greater than 5 percent of the ADTV of that class of securities in its primary trading market during a recent 12 month period, and U.S. residents held no more than 10 percent of the issuer's worldwide public float as of a specified date; or
- If a WKSI with greater than 5 percent U.S. ADTV, or if a non-WKSI, regardless of U.S. trading volume, U.S. residents held no more than 5 percent of the issuer's worldwide public float as of a specified date.[38]

Proposed Rule 12h–6 also would have imposed the following conditions on a foreign private issuer before it could terminate its registration and reporting obligations regarding a class of equity securities:

- The issuer must have been an Exchange Act reporting company for the past two years, have filed or furnished all reports required for this period, and have filed at least two annual reports under section 13(a);
- The issuer's securities must not have been sold in the United States in either a registered or unregistered offering under the Securities Act during the preceding 12 months except for a few specified exempt securities or exempt transactions; and
- For the preceding two years, the issuer must have maintained a listing of the subject class of securities on an exchange in its home country, as defined in Form 20–F,[39] which constituted the primary trading market for the securities.

Finally, we also proposed to:

- Streamline the counting method used to determine an issuer's U.S. public float or the number of its U.S. shareholders by permitting the look-through to be limited to the United States, the issuer's jurisdiction, and, if different, the jurisdiction of its primary trading market;
- Permit issuers to rely on the assistance of an independent information services provider when calculating the number of their U.S. resident holders; and
- Permit issuers to establish the Rule 12g3–2(b) exemption for a class of equity securities that was the subject of a Form 15F immediately upon termination of Exchange Act reporting, so long as the issuer publishes its home country materials electronically.

E. Principal Comments Regarding the Proposed Rule Amendments

We received 54 comment letters in response to our proposals. These letters represented the views of over 80 distinct entities, including business and legal associations, foreign companies, depositary banks, stock exchanges and market operators, financial advisory and accounting firms, law firms, foreign governments, and academia. While most commenters supported the purpose and overall structure of the rule proposals, many also believed that the proposed rule amendments would be, like the existing rules, unnecessarily restrictive.

We received the most comments concerning the proposed quantitative benchmarks that would enable a foreign private issuer of equity securities to exit the Exchange Act reporting regime regardless of the number of its U.S. resident shareholders. Numerous commenters urged the Commission to increase significantly the proposed benchmarks based on the calculation of the percentage of an issuer's worldwide public float held by U.S. residents. Several commenters also urged the Commission to adopt the same quantitative standards for smaller companies as for well-known seasoned issuers. Many commenters also suggested the adoption of a rule provision that would permit an issuer to exclude certain holders, such as qualified institutional buyers

[34] Similarly, as some commenters have noted, after terminating its registration regarding a class of securities under section 12(g), with little or no effort on its part, a foreign private issuer may discover at the end of a subsequent fiscal year that it once again has more than 300 U.S. resident shareholders and, therefore, must register the class of securities anew under that section of the Exchange Act.

[35] Rule 12g3–2(b) provides an exemption from registration under section 12(g) with respect to a foreign private issuer that submits to the Commission, on a current basis, the home country materials required by the rule.

[36] Exchange Act Rule 12g3–2(d)(1) (17 CFR 12g3–2(d)(1)). This exception to the Rule 12g3–2(b) exemption does not apply to registered Securities Act offerings filed by Canadian companies on certain Multijurisdictional Disclosure System (''MJDS'') forms. The Rule 12g3–2(b) exemption is also not available for a foreign private issuer's securities issued to acquire by merger or similar transaction an issuer that had securities registered under section 12 or a reporting obligation, suspended or active, under section 15(d), except for a transaction registered on specified MJDS forms. See Exchange Act Rule 12g3–2(d)(2) (17 CFR 240.12g3–2(d)(2)).

[37] For purposes of proposed Rule 12h–6, a ''well-known seasoned issuer'' would have meant a well-known seasoned issuer as defined in Securities Act Rule 405 (17 CFR 230.405), which would have required the worldwide market value of an issuer's outstanding voting and non-voting common equity held by non-affiliates to be $700 million or more.

[38] If a foreign private issuer was unable to meet one of these proposed benchmarks, but satisfied the other conditions of the rule, it could still have terminated its Exchange Act registration and reporting obligations regarding a class of equity securities as long as that class of securities was held of record by less than 300 persons on a worldwide basis or less than 300 persons resident in the United States as of a specified date. Proposed Rule 12h–6 also included a similar ''300 U.S. resident or worldwide holder'' standard for debt securities issuers.

[39] 17 CFR 249.220f. Form 20–F General Instruction F defines ''home country'' as the jurisdiction in which the issuer is legally organized, incorporated or established and, if differnt, the jurisdiction where it has its principal listing.

(''QIBs''),[40] from its U.S. public float percentage determination, as an alternative to adopting significantly raised quantitative benchmarks. Numerous commenters further favored significantly raising the alternative record holder threshold for equity securities issuers and the record holder standard for debt securities issuers.

Other issues raised by commenters included their request:

- To extend termination of Exchange Act reporting under Rule 12h–6 to prior Form 15 filers whose termination of registration or suspension of reporting became effective before the effective date of the new rule;
- To require a shorter prior reporting period for some or all classes of issuers;
- To permit an issuer that has succeeded to the Exchange Act reporting obligations of an acquired company under Exchange Act Rule 12g–3[41] or Rule 15d–5[42] to take into account the reporting history of the acquired company for the purpose of meeting the prior reporting condition under Rule 12h–6;
- To exclude unregistered offerings from the one year dormancy condition;
- To permit an issuer to meet the listing condition requirement if at least 55 percent of the trading volume of the subject class of securities occurs in the aggregate in more than one non-U.S. market;
- To increase the 300 record holder standard, which is included in both the alternative record holder provision for equity securities issuers and the provision for debt securities issuers;
- To extend the Exchange Act Rule 12g3–2(b) exemption to prior Form 15 filers even if 18 months has not elapsed;
- To extend the Rule 12g3–2(b) exemption to successor issuers;
- To permit all issuers having the Rule 12g3–2(b) exemption to publish electronically on their Web sites their home country documents; and
- To amend Exchange Act Rule 12g3–2(a), which governs when a foreign private issuer enters the Exchange Act registration and reporting regime under section 12(g), so as to conform that rule to the amended exit thresholds under Rule 12h–6.

F. Summary of the Reproposed Rule Amendments

We have addressed many of the commenters' concerns in the rules that we are reproposing today. Major revisions to the proposed rules include:

- Revising the quantitative benchmark provision for an issuer of equity securities by:
  - Applying the same quantitative benchmark, which does not require a head count of security holders, to any issuer of equity securities, regardless of size;
  - Permitting an issuer to terminate its Exchange Act registration and reporting obligations regarding a class of equity securities, assuming it meets all the other conditions of Rule 12h–6, if the U.S. ADTV of the subject class of securities has been no greater than 5 percent of the ADTV of that class of securities in the issuer's primary trading market during a recent 12 month period, regardless of the size of its U.S. public float;
  - Requiring an issuer to wait 12 months before filing its Form 15F[43] in reliance on the trading volume standard if the issuer has delisted its class of equity securities from a national securities exchange or automated inter-dealer quotation system in the United States,[44] and, at the time of delisting, the U.S. ADTV of the subject class of securities exceeded 5 percent of the ADTV of that class of securities in the issuer's primary trading market for the preceding 12 months; and
  - Further requiring an issuer to wait 12 months before filing its Form 15F in reliance on the trading volume standard if the issuer has terminated an American Depositary Receipts (ADR) facility;
- Shortening the prior reporting period required for an issuer of equity securities so that, under the reproposed rules, an issuer must have at least one year of Exchange Act reporting, must be current in reporting obligations for that period, and have filed at least one Exchange Act annual report;
- Permitting an issuer of equity securities during the one year dormancy period to sell unregistered securities exempted under the Securities Act, including securities sold in section 4(2) private placements,[45] pursuant to Securities Act Rule 144A,[46] under section 3(a)(10) schemes of arrangement,[47] and pursuant to Securities Act Rules 801 and 802;[48]
- Expanding the types of registered offerings that are excluded from the dormancy condition's prohibition against the sale of registered securities, so that, in addition to permitting registered securities sold to its employees or by selling shareholders in a non-underwritten offering, an issuer may issue registered securities upon the exercise of outstanding rights that have been granted pro rata to all security holders, pursuant to a dividend or interest reinvestment plan, or upon the conversion of outstanding convertible securities;
- Revising the proposed home country listing condition for an issuer of equity securities by:
  - Shortening the minimum period of required non-U.S. listing to one year;
  - Permitting an issuer to have maintained that listing in a foreign jurisdiction that, either singly or together with one other foreign jurisdiction, constitutes the primary trading market for the issuer's subject class of securities;
  - Revising the definition of ''primary trading market'' to mean that at least 55 percent of the trading in the foreign private issuer's subject class of securities took place in, on or through the facilities of a securities market or markets in no more than two foreign jurisdictions; and
  - Requiring that, if an issuer aggregates the trading of its securities in two foreign jurisdictions for the purpose of Rule 12h–6, the trading market for the issuer's securities in at least one of the two foreign jurisdictions must be larger than the U.S. trading market for the issuer's securities;
- Revising the proposed counting method to apply only to an issuer's determination of its U.S. resident holders under the reproposed 300 record holder standard for equity and debt securities issuers, and to provide that an issuer that aggregates the trading volume of its securities in two foreign jurisdictions for the purpose of meeting the listing condition under Rule 12h–6 would have to look through nominee accounts in both foreign jurisdictions, which comprise its primary trading market, as well as in the United States and in its jurisdiction of incorporation if different from the two jurisdictions that comprise its primary trading market;
- Revising the proposed scope of Rule 12h–6 to extend termination of

[40] A QIB is an entity specified under Securities Act Rule 144A (17 CFR 230.144A) that in the aggregate owns at least $100 million in securities of issuers that are not affiliated with the entity.

[41] 17 CFR 240.12g–3.

[42] 17 CFR 240.15d–5.

[43] Like current Rules 12g–4 and 12h–3, which require the filing of Form 15, reproposed Rule 12h–6 would require the filing of a form—Form 15F—by which an issuer would certify that it meets the conditions for ceasing its Exchange Act reporting obligations.

[44] Neither the OTC Bulletin Board operated by the NASD nor the market operated by the Pink Sheets LLC are deemed to be automated inter-dealer quotation systems. See Release 33–6862 (April 23, 1999), n.22.

[45] 15 U.S.C. 77d(2).

[46] 17 CFR 230.144A.

[47] 15 U.S.C. 77c(a)(10).

[48] 17 CFR 230.801 and 230.802.

Exchange Act reporting to a successor issuer that meets specified conditions;

- Revising the proposed scope of Rule 12h–6 to extend termination of Exchange Act reporting to a foreign private issuer that filed a Form 15 and thereafter suspended or terminated its Exchange Act reporting obligations before the effective date of Rule 12h–6, as long as:
  - Since the effective date of its termination or suspension of reporting under Form 15, the issuer has not engaged in any transaction or triggered any threshold that, under the current rules, would require it to resume or assume anew Exchange Act reporting obligations;
  - The issuer files a Form 15F; and
  - If its Form 15 applied to a class of equity securities, the issuer has satisfied Rule 12h–6's ''primary trading market'' listing condition for that class of securities;
- Extending the Rule 12g3–2(b) exemption to a foreign private issuer, including a successor issuer, immediately upon its termination of reporting under Rule 12h–6;
- Extending the Rule 12g3–2(b) exemption to a foreign private issuer that previously filed a Form 15, and thereafter terminated or suspended its Exchange Act reporting obligations regarding a class of equity securities before the effective date of Rule 12h–6, immediately upon the effectiveness of its termination of reporting under Rule 12h–6; and
- Permitting a non-reporting company that has received or will receive the Rule 12g3–2(b) exemption, upon application to the Commission and not pursuant to Rule 12h–6, to publish its ''ongoing'' home country documents required under Rule 12g3–2(b)(1)(iii)[49] on its Internet Web site rather than submitting them in paper to the Commission.

We are reproposing other proposed provisions with little to no change. These provisions include:

- The alternative record holder provision for equity issuers and the provision for debt securities issuers, both of which retain the current 300 record holder standard, as proposed;
- The provision permitting an issuer of equity or debt securities to rely on the assistance of an independent information services provider when calculating the number of its U.S. resident security holders;
- The requirement that a foreign private issuer publish a notice, such as a press release, which announces its intention to terminate its Exchange Act reporting obligations, except that instead of the proposed requirement that the notice be published at least 15 business days before the filing of the Form 15F, we are reproposing to require that an issuer publish the notice before or at the time of filing of the Form 15F;
- The automatic suspension of an issuer's Exchange Act reporting obligations upon the filing of its Form 15F followed by a 90-day waiting period at the end of which, assuming the Commission has no objections, the suspension becomes a termination of reporting;
- The form and content of Form 15F, except that we have modified proposed Form 15F to conform to the changes to the proposed rule amendments that we are reproposing today; and
- The electronic furnishing of home country information on the Internet Web site of an issuer that has obtained the Rule 12g3–2(b) exemption upon the termination of its Exchange Act reporting obligations under Rule 12h–6.

We believe the rules we are reproposing today are consistent with the protection of U.S. investors. These rules would establish a new benchmark that reflects the balancing of potential benefits to U.S. investors, in the form of increased investment opportunities in foreign private companies listing in the United States, and the potential loss of the full protections of the Exchange Act for U.S. investors in foreign private issuers that elect to terminate their Exchange Act registration and reporting under reproposed Rule 12h–6. Compared to the current exit rules, the reproposed rule amendments would establish a more clearly defined process with more appropriate benchmarks by which a foreign private issuer can terminate its Exchange Act reporting obligations if, after a period of time, U.S. market interest is not significant relative to non-U.S. market interest. As a result, we believe foreign private issuers should be more willing initially to register their securities with the Commission, to the benefit of investors.

At the same time, we believe the conditions that determine a foreign private issuer's eligibility to terminate its Exchange Act registration and reporting under reproposed Rule 12h–6 will serve to protect U.S. investors. For example, the prior reporting condition is intended to provide investors with at least one complete year's worth of Exchange Act reports, including an annual report, upon which they can base their investment decisions about a particular foreign registrant before it exits the Exchange Act reporting system. The dormancy condition is designed to deter a foreign private issuer's promotion of U.S. investor interest through recent registered capital-raising before exiting our reporting system. The foreign listing condition and U.S. trading volume benchmark support our view that, before a foreign private issuer may terminate its Exchange Act reporting obligations under Rule 12h–6, it must be subject to an ongoing disclosure and financial reporting regime, and have a significant market following, in its home market. The condition restricting the ability of an issuer to rely on the trading volume standard under specified circumstances should deter an issuer from excluding U.S. investors, particularly retail investors, from investing in their securities when U.S. market interest is still significant. The immediate availability of the exemption under Rule 12g3–2(b) would foster access by U.S. investors to ongoing home country information about an issuer after it terminates its Exchange Act registration and reporting under Rule 12h–6. Finally, the conditions relating to the filing of Form 15F and the publication of a press release or other notice would promote transparency in the exit process.

II. Discussion

A. Conditions for Equity Securities Issuers

1. Quantitative Benchmarks

a. Non-Record Holder Benchmark

As reproposed, Rule 12h–6 would enable a foreign private issuer, regardless of size, to qualify for termination of its Exchange Act reporting by meeting a quantitative benchmark provision that does not depend on the number of its U.S. record holders or the percentage of its securities held by those holders. Specifically, an issuer would be able to terminate its Exchange Act registration and reporting obligations regarding a class of equity securities, assuming it meets the other conditions of Rule 12h–6, if the ADTV of the subject class of equity securities in the United States has been 5 percent or less of the ADTV of that class of securities in the issuer's primary trading market during a recent 12-month period.[50]

[49] 17 CFR 240.12g3–2(b)(1)(iii).

[50] Reproposed Rule 12h–6(a)(4)(i). When calculating its U.S. ADTV, an issuer would have to take into account all U.S. trading of its subject securities, whether occurring on a registered national securities exchange or elsewhere, as reported through the U.S. transaction reporting plan. It would then divide its U.S. ADTV by the ADTV in the one or two jurisdictions that comprise its primary trading market. For a discussion of how an issuer would make its primary trading market

Continued

Although numerous commenters supported the adoption of a quantitative benchmark that is not based on the number of an issuer's U.S. shareholders, many commenters expressed concern that, based on their projections, too few existing reporting foreign private issuers would be eligible to terminate their Exchange Act registration and reporting obligations under the proposed benchmarks.[51] The proposed benchmarks were based either on a combination of U.S. public float and trading volume criteria or solely on U.S. public float data. According to these commenters, the proposed rules, if adopted, would continue to discourage foreign companies from entering U.S. public capital markets.[52]

While many commenters supported significantly increasing the proposed U.S. shareholder standard to a 25 percent threshold,[53] there was less agreement on whether a particular class of security holders should be included when making the U.S. public float determination. Some commenters suggested the possible exclusion of a number of classes of investors, such as qualified institutional buyers (''QIBs''), the top five or ten U.S. shareholders of an issuer's equity securities, and U.S. shareholders owning more than a specified amount (for example, $10 million) of an issuer's equity securities.[54] Others supported the inclusion of all U.S. investors, regardless of type.[55]

Another commenter supported a quantitative benchmark based solely on trading volume criteria because that would best indicate the impact of U.S. deregistration on the broader market for the foreign issuer's securities.[56] Although we initially did not propose such an approach, after reconsideration, we now believe that a new quantitative benchmark based solely on trading volume may more efficiently further the purposes of this rulemaking.

One advantage to a benchmark based solely on trading volume is that it is a fairly direct measure of U.S. market interest in a foreign private issuer's securities at a particular time. Another factor in favor of a trading volume only benchmark is that trading volume data for the U.S. and an issuer's primary market is easier to obtain and confirm than is the data required for a U.S. public float or record holder determination. As commenters have noted, it is difficult for a reporting foreign private issuer to determine accurately the specific identities of its U.S. investors.[57] A public float benchmark would require such a determination to varying degrees, particularly if classes of investors are excluded. As a result, the reproposed benchmark, based solely on trading volume, should result in reduced costs to issuers in determining whether they can terminate their Exchange Act reporting obligations.

Various markets may measure and report trading volume differently. For example, dealer interpositioning in dealer markets may result in a higher reported volume in securities transactions. In our other rules that use ADTV as a measure, however, we have not found it necessary or appropriate to make distinctions based on the type of market on which a security is traded for purposes of determining ADTV.[58] Nonetheless, as noted below, we seek comment as to whether Rule 12h–6 should take into account in some fashion the fact that ADTV may not be measured uniformly across trading markets.

Reproposed Rule 12h–6 does not mandate or expressly specify acceptable information sources for determining ADTV. This is consistent with other rules that use ADTV as a measure.[59] Issuers should have flexibility in determining the ADTV of their securities in the appropriate markets from information that is generally widely available from a number of reliable sources. Nonetheless, as noted below, we seek comment as to whether Rule 12h–6 should specify one or more acceptable sources of ADTV information.

As originally proposed, Rule 12h–6 would have established different deregistration thresholds for well-known seasoned issuers (''WKSIs''). Many commenters opposed having different standards for WKSIs and smaller companies. Those commenters maintained that smaller companies should benefit from the full range of options available to WKSIs under the new rule since the costs of Exchange Act reporting generally are disproportionately greater for smaller companies than for larger companies.[60] These comments have persuaded us to propose the same trading volume standard for smaller issuers as for larger issuers. Having the same benchmark for any foreign private issuer of equity securities, regardless of size, should add increased flexibility and simplification to the Exchange Act deregistration regime.[61] Moreover, setting the percentage of U.S. trading volume at a low level, at 5% of trading volume in the primary market, would serve to protect U.S. investors.

i. One Year Ineligibility Period After Delisting

Because the principal quantitative measure under proposed Rule 12h–6 would be based on a comparison of the trading volume in the United States and in one or two foreign markets of a foreign private issuer's equity securities, the rule should be structured so as not to create an incentive for a foreign private issuer to delist its securities from a U.S. exchange for the purpose of decreasing its U.S. trading volume. Indeed, as one commenter suggested, if we were to adopt a measure based solely on trading volume, a foreign private issuer that delisted its securities from a U.S. exchange before its trading volume fell below the applicable percentage should not be eligible to terminate its registration under such a standard.[62]

Companies should not be unnecessarily restricted in choosing the markets in which they wish their securities to trade. As a result, we do not believe that delisting from a U.S. exchange should result in a bar against

determination under reproposed Rule 12h–6, see Part II.A.4. of this release.

[51] See, for example, the letter of Sullivan & Cromwell.

[52] See, for example, the letter, dated February 28, 2006, of Cleary Gottlieb Steen & Hamilton LLP (''Cleary Gottlieb letter'').

[53] See the letter from the European Commission, the letter, dated February 28, 2006, from the European Association for Listed Companies and other designated associations of publicly traded European companies (''EALIC''), and the letters from the American Bar Association, Section of Business Law (''ABA (Business)''), Linklaters, Cleary Gottlieb, and Cravath, Swaine and Moore (''Cravath'').

[54] See, for example, the letters from the European Commission, EALIC and Cleary Gottlieb.

[55] See the letters from the New York Stock Exchange and Galileo Global Advisors.

[56] See the letter from Fried, Frank, Harris, Shriver & Jacobson. Earlier letters from EALIC and Cleary Gottlieb, dated February 9, 2004, suggested a similar approach.

[57] See, for example, the letter, dated March 18, 2005, from Cleary Gottlieb.

[58] See Regulation M, 17 CFR 242.100–105, and Release No. 33–7375 (December 20, 1996).

[59] See, for example, the definition of ADTV in Regulation M at 17 CFR 242.100.

[60] See the letters from the European Commission, PricewaterhouseCoopers and Cleary Gottlieb.

[61] In the Proposing Release, in support of separate standards for WKSIs and non-WKSIs, we noted that there typically is a greater flow of information about a WKSI, both from the issuer and its analysts, than about a smaller company, and that this flow of information is more likely to continue after the WKSI's termination of reporting. After considering the numerous comments opposing a rule based on WKSI status, we are of the view that the proposed rules, if adopted, could well discourage smaller foreign companies from entering U.S. public capital markets, to the detriment of U.S. investors. In addition, we note that both smaller and larger companies will have to publish their material home country documents on their Internet Web sites as a condition to maintaining the Rule 12g3–2(b) exemption received upon termination of reporting under Rule 12h–6.

[62] See the letter, dated February 9, 2004, from Cleary Gottlieb.

a foreign private issuer from using the reproposed rule. Nonetheless, we share the concern about a possible negative impact stemming from a measure based solely on trading volume. In addition, by requiring companies to remain registered and reporting under the Exchange Act for a period of time after delisting when, before delisting, the company had a relatively active U.S. market for its securities, U.S. investors will have access to information prepared in accordance with the Commission's financial reporting and disclosure requirements for a period of time during which, most likely, the U.S. market will be diminishing.

To address these concerns, we are proposing, as a condition to the use of the trading volume standard of Rule 12h–6 and corresponding eligibility to file Form 15F, that if a foreign private issuer has had its equity securities delisted from a registered national securities exchange or automated inter-dealer quotation system within one year before filing the Form 15F, it must have satisfied the trading volume percentage as of the date of delisting, and as measured over the 12 months preceding the date of delisting. Under this proposed condition:

- A listed foreign private issuer that satisfied the trading volume condition would be able to delist from its stock exchange and terminate its Exchange Act registration and reporting obligations concurrently; and
- A listed foreign private issuer that did not satisfy the trading volume condition would be able to delist but would not be eligible to file a Form 15F and terminate its Exchange Act registration and reporting obligations until one year after the date of delisting, assuming that, at the date of filing its Form 15F, its U.S. ADTV for the recent 12 month period subsequent to its delisting did not exceed 5% of the ADTV in the issuer's primary trading market.[63]

ii. One Year Ineligibility Period After Termination of ADR Facility

Many foreign issuers have their securities trade in the United States in the form of American Depositary Receipts (''ADRs''). It appears that the current rules relating to termination of Exchange Act reporting by foreign private issuers may, as an unintended consequence, encourage foreign private issuers to terminate their ADR facilities as they seek to have fewer than 300 U.S. resident holders of their securities.[64] When an issuer terminates its ADR facility, the holders of ADRs generally have the option to make arrangements to hold the underlying securities directly. However, if holders are unable or unwilling to make these arrangements, or to pay the costs associated with these arrangements, the holders will have their investment cashed out, that is, the underlying securities will generally be sold into the home market and the net proceeds (after deducting fees and expenses of the selling broker and the depositary bank) remitted to the former ADR holders.

We believe foreign issuers should be encouraged to maintain their ADR facilities, even when they delist from a U.S. market and terminate their Exchange Act reporting obligations. After a foreign issuer delists and deregisters, its ADRs should continue to be able to be traded in the over-the-counter market in the United States. The termination of ADR facilities has a detrimental impact on holders, imposing fees and other charges on investors and, when investors are cashed out, subjecting investors to unplanned tax consequences. In addition, the termination of ADR facilities will effectively limit the ability of many U.S. investors to purchase the securities of the subject foreign company.

To address these concerns, we are proposing, as a condition to the use of Rule 12h–6 and eligibility to file Form 15F in reliance on the trading volume provision, that a foreign private issuer shall not have terminated any sponsored ADR facility within the 12-month period before filing the Form 15F.

Comment Solicited

We solicit comment on the proposed trading volume benchmark and on the proposed conditions restricting its use:

- Is the proposed trading volume benchmark an appropriate measure of the relative U.S. market interest in a foreign private issuer's securities?
- We assume that U.S. trading volume numbers reflect U.S. investor interest and U.S. resident trading activity in a security. We request data on the accuracy of these assumptions.
- Would the proposed trading volume benchmark provide adequate U.S. investor protection, particularly of retail investors?
- Would the proposed trading volume benchmark affect the OTC trading in the securities of foreign issuers? If so, how so? Would investors in those OTC securities be adequately protected by the proposed trading volume benchmark?
- Is the proposed trading volume benchmark preferable to the originally proposed benchmarks that were based either, if a WKSI, on a combination of trading volume and public float criteria, or solely on public float criteria?
- If the proposed trading volume threshold is preferable, is the threshold set at the appropriate level (5%)? Should it be set, instead, at a lower level, for example, 3% or 1%, or a higher level, for example, 7% or 10%?[65]
- Should the proposed trading volume benchmark require the measurement of the issuer's ADTV over a recent 12 month period, as proposed? Should it be measured over a shorter period, say, 6 months, 3 months, or two months, or over a longer period, for example, 18 months or 24 months? Would a longer or shorter period be more or less susceptible to manipulation or other distorting effects regarding certain transactions?
- Should the proposed trading volume benchmark require an issuer to measure U.S. trading volume as a percentage of its worldwide trading volume, rather than as a percentage of the trading volume in its primary market, as proposed? If so, should an issuer only have to obtain trading volume data from foreign jurisdictions in which it has listed its securities in addition to the United States? If the proposed benchmark should measure U.S. trading volume as a percentage of worldwide trading volume, should we reduce the threshold, for example, to 3% or 1%, to take account that some issuers may be listed or traded in several markets?
- Are there difficulties associated with determining trading volume in the United States or foreign markets for purposes of reproposed Rule 12h–6? How should the rule deal with any such difficulties?
- Should the U.S. ADTV component of the proposed trading volume benchmark include all U.S. trading in the subject class of securities, whether listed or over-the-counter, as proposed?
- Should the proposed trading volume benchmark require an issuer to

[63] Proposed Note 1 to paragraph (a)(4) of reproposed Rule 12h–6. An issuer that failed to meet the trading volume standard at the date of delisting would have to meet the trading volume standard one year later when filing its Form 15F. If, notwithstanding its delisting, an active U.S. over-the-counter market in the company's securities continued, the company would not be eligible to use proposed Rule 12h–6 and file a Form 15F in reliance on the trading volume benchmark.

[64] One ADR depositary bank commented that it has recently been involved in at least a dozen ADR facility terminations for this purpose, which have eliminated thousands of U.S. retail holders. See the letter from the Bank of New York.

[65] We encourage commenters to provide appropriate economic support for any suggested change in the reproposed trading volume benchmark.

obtain trading volume data from particular sources? Should the reproposed rule instead provide safe harbor procedures regarding sources that an issuer may use, but would not be required to use, to obtain trading volume data? If so, what are those procedures or sources?

• Should the proposed trading volume benchmark require an issuer to account for differences in calculating trading volume between different types of markets? If so, how should such differences be taken into account?

• Should one trading volume standard apply to all issuers, regardless of size, as proposed? Should we instead adopt different trading volume standards depending, for example, on the size of the issuer's U.S. public float?

• Would it be more appropriate to adopt an absolute trading volume measure that would require an issuer's U.S. trading volume not to have exceeded a specified amount for a 12-month period? If so, what should be the specified amount? What factors should determine that amount?

• Would the proposed trading volume benchmark create any unanticipated incentives in foreign private issuers that are undesirable? For example, is there a potential for manipulation in the calculation of average trading volume under reproposed Rule 12h–6? If so, how should we address it?

• What are the approximate costs that an issuer is expected to incur when determining whether it meets the proposed trading volume threshold? Are these costs lower or higher than the costs that an issuer would incur under the originally proposed benchmarks?

• Should we adopt the originally proposed benchmarks instead?

• Should we instead adopt a benchmark or benchmarks that use public float criteria, with or without a trading volume component, but that are set at a higher level than the originally proposed public float benchmarks? For example, should we adopt a standard that permits deregistration if an issuer's U.S. public float is no greater than 15%, 20%, or 25% of its worldwide public float? Should the issuer's status as a WKSI be a factor?

• Is it appropriate to require an issuer to wait one year before being eligible to rely on Rule 12h–6's trading volume standard after delisting its securities from a U.S. stock market when, at the time of the delisting, the issuer did not satisfy the trading volume condition, as proposed?

• If so, should we adopt a one-year ineligibility period, as proposed? Should the period be more than one year, for example, 15, 18 or 24 months? Should it be shorter than one year, for example, six or nine months?

• Should we apply the proposed one-year ineligibility period relating to delisting to issuers that delisted before the effective date of Rule 12h–6? If not, what type of relief should be provided to those issuers?

• Is it appropriate to require an issuer to wait one year before being eligible to use proposed Rule 12h–6 after terminating its ADR facility?

• If so, should we adopt a one year ineligibility period, as proposed? Should the period be more than one year, for example, 15, 18 or 24 months? Should it be shorter than one year, for example, six or nine months?

• Should the one year ineligibility condition apply only when, at the date of termination of its ADR facility, the ADTV of the issuer's U.S. market exceeded 5% of the ADTV in its primary trading market for the preceding 12 months?

• Should we adopt a condition requiring an issuer to maintain a sponsored ADR facility for a certain period of time following its deregistration under Rule 12h–6? If so, should the period be six months, more than six months, for example, three months, or longer than six months, for example, a year following deregistration?

• Should we apply the proposed condition relating to the termination of an ADR facility to issuers that terminated their ADR facilities before the effective date of Rule 12h-6? If not, what type of relief should be provided to those issuers?

b. Alternative 300 Holder Condition

As an alternative to the proposed trading volume benchmark provision, reproposed Rule 12h–6 would permit a foreign private issuer to terminate its Exchange Act reporting obligations regarding a class of equity securities if it has less than 300 record holders on a worldwide basis or who are U.S. residents as long as the issuer meets the rule's other conditions.[66] The purpose of this alternative 300 holder condition is to enable an issuer to terminate its Exchange Act reporting obligations if it cannot satisfy the new trading volume benchmark but does meet the current 300 holder standard. Otherwise, an issuer could find itself worse off under Rule 12h–6 than under the current exit rules.[67]

While numerous commenters supported having an alternative record holder condition, most requested that the Commission significantly raise the 300 holder threshold.[68] Many supported an increase to 3,000 while others requested an increase to 500 or 1,000. Some commenters also requested that the Commission raise the record holder ''entrance'' threshold in Rule 12g3–2(a) to conform to any record holder increase in the new exit rule.

We are not proposing to increase the 300 holder threshold for foreign private issuers either in the exit or entrance rules at this time. We understand that, due to the increased internationalization of the U.S. securities markets in recent decades, the 300 holder standard may not reflect current market conditions and, therefore, may require updating. However, the principal purpose for retaining the 300 holder provision is to preclude disadvantaging those companies that could terminate their Exchange Act reporting obligations under the current exit rules but not under the proposed trading volume condition. In addition, since domestic registrants are subject to a substantially similar record holder standard, we believe any change would be more appropriately considered as part of a comprehensive evaluation of the record holder provisions in both the Exchange Act entrance and exit rules for both domestic and foreign registrants.[69]

Comment Solicited

We solicit comment on the reproposed alternative 300 holder condition:

• Would it be appropriate to adopt a 300 holder standard as an alternative to the proposed trading volume standard, as reproposed?

• Should we require an issuer to wait one year after terminating its ADR facility or after delisting before being eligible to rely on the 300 holder condition, as we have proposed for the trading volume standard?

• Does the adoption of the proposed trading volume benchmark obviate the need to increase the 300 holder standard under reproposed Rule 12h–6?

[66] Proposed Rule 12h–6(a)(4)(ii).

[67] The reproposed alternative record holder condition is substantially the same as the proposed condition. We did not originally propose, and we are not now proposing, a similar 500 record holder condition, although one exists in the current rules for a small issuer with total assets that have not exceeded $10 million for its most recent three fiscal years. Based on current experience, we believe foreign private issuers seldom use the current standard.

[68] See, for example, the letters from Cleary Gottlieb and Linklaters.

[69] In this regard, we note that the Advisory Committee on Smaller Public Companies has made recommendations relating to Exchange Act registration and termination of registration. See the Final Report of the Advisory Committee on Smaller Public Companies, dated April 23, 2006, which is available at *http://www.sec.gov/ info/ smallbus/ acspc/acspc-finalreport.pdf.*

2. Prior Exchange Act Reporting Condition

We are reproposing a prior Exchange Act reporting condition that a foreign private issuer must meet before it can terminate its section 12(g) registration or its section 15(d) reporting obligations regarding a class of equity securities under Rule 12h–6.[70] This condition would require an issuer of equity securities to have had reporting obligations under section 13(a) or section 15(d) of the Exchange Act for at least the 12 months preceding the filing of Form 15F, to have filed or furnished all reports required for this period, and to have filed at least one annual report pursuant to section 13(a) of the Exchange Act. The purpose of this prior Exchange Act reporting condition is to provide investors in U.S. securities markets with a minimum period of time to make investment decisions regarding a foreign private issuer's securities based on the information provided in an Exchange Act annual report and the interim home country materials furnished in English under cover of Form 6–K.[71]

Originally proposed Rule 12h–6 would have required a foreign private issuer to have had Exchange Act reporting obligations for the two years preceding the filing of its Form 15F and to have filed at least two Exchange Act annual reports before it could terminate its Exchange Act reporting obligations regarding a class of equity securities. Several commenters objected to this two year reporting condition on the grounds that it would impose a stricter reporting requirement than is the case under the current exit rules.[72] Some noted that section 15(d) and Rule 12h–3 only require at a minimum the filing of one Exchange Act annual report. Others stated that there is no mandatory minimum reporting requirement under section 12(g) and Rule 12g–4.[73]

Still other commenters opposed a prior reporting condition that required an issuer to have furnished all Form 6–K reports required during the applicable period. Those commenters stated that this requirement would make the rule unavailable if a foreign private issuer did not submit a single required Form 6–K report during the period because it was unsure of the underlying home country document's materiality.[74]

In order to prevent the rule from imposing a significantly greater burden on a foreign private issuer than the current exit regime, we propose to reduce the required prior reporting period to at least 12 months and require only one Exchange Act annual report. However, the reproposed rule would also require a foreign private issuer to have submitted all Form 6–Ks required during the 12 months preceding the filing of its Form 15F in order to be eligible to terminate its reporting obligations regarding a class of equity securities. This requirement would help ensure that a U.S. investor is able to access through EDGAR[75] and in English all material interim information about a foreign private issuer as required by its home country. We believe this investor protection concern outweighs any difficulty that a foreign private issuer may experience when determining whether a particular home country document is material, particularly since a foreign private issuer must routinely make materiality judgments under existing Exchange Act reporting requirements.

From a practical point of view, the proposed 12-month prior reporting requirement should not be problematic since, based on current experience, most foreign companies that register securities with the Commission, including solely under Exchange Act section 12(g), stay in the U.S. market for at least a year and file at least one Exchange Act annual report.[76] Moreover, the prior reporting condition would require that a foreign private issuer must be current in its reporting obligations, not that it must have timely filed all reports required during the 12 month period. In the event that an issuer determines that it should have filed a Form 6–K during this period, it can do so before it files its Form 15F.[77]

Comment Solicited

We solicit comment on the reproposed prior Exchange Act reporting condition:

- Is it appropriate to require, as a condition of deregistration under Rule 12h–6, that an issuer have been an Exchange Act reporting company for at least the 12 months prior to the filing of its Form 15F, and to have filed or submitted all Exchange Act reports, including one annual report, for that period, as reproposed?
- Should this time period be longer in order to provide U.S. investors with a history of Exchange Act reports, including financial reports?
- If a foreign private issuer seeking to deregister has not timely filed its reports, should any adopted rule require a period of time to elapse within which the issuer would have to be both current and timely before it could file its Form 15F to cease its Exchange Act reporting obligations? If so, should the required period be one month or a period longer or shorter than one month?

3. The One Year Dormancy Condition

As reproposed, a foreign private issuer would also have to comply with a one year dormancy condition before it could terminate its Exchange Act registration and reporting obligations regarding a class of equity securities under Rule 12h–6.[78] As reproposed, Rule 12h–6 would prohibit sales of a foreign private issuer's securities in the United States in a registered offering under the Securities Act during the 12 months preceding the filing of its Form 15F other than securities issued:

- To the issuer's employees;
- By selling security holders in non-underwritten offerings;
- Upon the exercise of outstanding rights granted by the issuer if the rights are granted pro rata to all existing security holders of the class of the issuer's securities to which the rights attach;
- Pursuant to a dividend or interest reinvestment plan; or
- Upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer.

The primary purpose of the dormancy condition's prohibition of registered offerings is to preclude a foreign private issuer from exiting the Exchange Act reporting system shortly after it has engaged in U.S. capital raising.

As originally proposed, Rule 12h–6 would have excepted from the dormancy condition's prohibition of

[70] Reproposed Rule 12h–6(a)(1).

[71] Under cover of a Form 6–K (17 CFR 249.306), a foreign private issuer is required to furnish in English a copy of any document that it publishes or is required to publish under the laws of its home country or the requirements of its local exchange or that it has distributed to shareholders, and which is material to an investment decision.

[72] See the letters from Simpson Thacher & Bartlett and the New York State Bar Association.

[73] See the letter from Skadden, Arps, Slate, Meagher & Flom.

[74] See the letter from Cleary Gottlieb.

[75] EDGAR is the Commission's Electronic Data Gathering, Analysis and Retrieval System.

[76] See the letter from PricewaterhouseCoopers, which, when maintaining that a two-year reporting period was unnecessary, stated its belief that ''companies would not generally incur the cost to become an SEC registrant if they intended to deregister within a two-year period.'' See also Commission staff's annual review of foreign private issuers that are Exchange Act reporting companies at the end of each calendar year (''International Registered and Reporting Companies'' Reports), which are available at the Commission's Internet Web site at *http://www.sec.gov/ divisions/corpfin/ internatl/companies.shtml.*

[77] See Part II.D.1. of this release for a discussion of the application of reproposed Rule 12h–6, including its prior reporting condition, to successor issuers.

[78] Reproposed Rule 12h–6(a)(2).

sales of an issuer's registered securities in the United States only securities sold to an issuer's employees and those sold by selling security holders in non-underwritten offerings. The reproposed rule retains these exceptions because, as we noted in the Original Proposing Release, these sales are not undertaken primarily for capital-raising purposes or for the benefit of the issuer. The reproposed rule continues to prohibit sales of an issuer's securities by its selling security holders in an underwritten registered offering, despite some commenters who opposed this prohibition,[79] because there is a greater likelihood of issuer involvement in a U.S. underwritten offering than in a non-underwritten offering of selling security holders.

At the suggestion of some commenters, we propose to add three additional exceptions to the dormancy condition's prohibition of sales of an issuer's registered securities:[80] The issuance of registered securities pursuant to pro rata rights offerings, dividend or interest reinvestment plans, and the conversion of outstanding convertible securities. These transactions may occur for reasons unrelated to capital raising or for the benefit of the issuer, for example, to benefit current security holders or for the convenience of investors. However, the reproposed rule also provides that these exceptions do not apply to securities issued pursuant to a standby underwritten offering or other similar arrangement in the United States. This limitation is consistent with the Commission's previous treatment of these three types of registered offerings.[81]

As originally proposed, Rule 12h–6 would also have precluded a foreign private issuer from engaging in unregistered offerings in the United States during the dormancy period, other than those involving securities sold to its employees, securities exempt from registration under section 3 of the Securities Act[82] (except section 3(a)(10)) and obligations having a maturity at the time of issuance of less than nine months and exempted under section 4(2) of the Securities Act. We proposed to prohibit unregistered offerings, such as private placements, under the dormancy condition in order to prevent a foreign company that has actively engaged in U.S. capital raising efforts and sold securities to U.S. investors relatively recently from exiting the Exchange Act reporting regime under Rule 12h–6 on the grounds that the U.S. securities markets no longer represent as viable an option for capital raising. In addition, we believed that proscribing only registered offerings could act as a disincentive to a foreign private issuer to conduct a registered offering in the United States.

Numerous commenters urged the Commission to exclude unregistered offerings from the one year dormancy condition on the grounds that an issuer that has engaged in exempted offerings, such as Rule 144A or section 4(2) private placements, has not taken advantage of its status as a reporting company since both reporting and non–reporting companies may engage in those exempted offerings, and since, without a contractual undertaking, purchasers in those offerings are not entitled to the full protections of the U.S. federal securities laws.[83] Many commenters also warned that, unless the Commission excluded from the dormancy requirement exempted unregistered offerings, such as rights offerings exempt under Securities Act Rule 801 or exchange offers exempt under Securities Act Rule 802, foreign private issuers would systematically exclude U.S. investors from these offerings,[84] thereby running counter to the Commission's stated goal of encouraging foreign companies to include U.S. holders in these offerings on an equal basis with foreign security holders when it adopted the cross–border transaction safe harbors of Securities Act Rules 801 and 802 and the Tier 1 tender offer rules.[85]

Several commenters specifically opposed including schemes of arrangement exempted under Securities Act section 3(a)(10) within the scope of the dormancy condition. Those commenters noted that many schemes of arrangement are undertaken for non–capital raising purposes, for example, to effect a redomicile or reorganization for tax purposes.[86] Others believed that prohibiting only registered offerings under the dormancy condition would only marginally encourage issuers to engage in unregistered offerings instead of registered ones, if at all.[87]

These comments have persuaded us that adoption of the originally proposed dormancy condition could well drive many private placement financings and other unregistered offerings by foreign companies offshore, to the detriment of U.S. investors and U.S. broker–dealers, since many companies might prefer to finance outside the United States under Regulation S than inside the United States, for example, under section 4(2) and Rule 144A, in order to avoid triggering the dormancy condition. Therefore, we are reproposing a dormancy condition that is significantly less restrictive in scope than the proposed condition. The reproposed rule would permit the unregistered sale of securities that are exempted under the Securities Act. The permitted category of securities would include sales pursuant to section 4(2), Regulation D, Rule 144A, Rules 801 and 802, and exempt securities under section 3, including section 3(a)(10) of the Securities Act.

At the request of several commenters, the reproposed rule would include the definition of ''employee'' under Form S–8[88] for the purpose of applying the dormancy condition under Rule 12h–6.[89] That definition includes any employee, director, general partner, certain trustees, certain insurance agents, and former employees as well as executors, administrators or beneficiaries of the estates of deceased employees, and a family member of an employee who has received shares through a gift or domestic relations order.[90] Otherwise, a narrow interpretation of the term ''employee'' could result in an issuer being disqualified from terminating its Exchange Act registration and reporting obligations under Rule 12h–6 because it engaged in a sale of securities during the dormancy period to an employee's family member or other relationship permitted under Form S–8 but not explicitly allowed under the new rule.

Comment Solicited

We solicit comment on the reproposed dormancy condition:

- Would it be appropriate to adopt the dormancy condition, as reproposed?
- Is the reproposed amount of time required for the dormancy condition too long or too short?
- Are the reproposed exceptions to the dormancy condition appropriate?
- Are certain transactions we initially proposed to exempt from the dormancy

[79] See the letter from Cravath.

[80] See the letter from ABA (Business).

[81] Instruction 2 to Item 8 of Form 20–F imposes a similar limitation.

[82] 15 U.S.C. 77c.

[83] See, for example, the letters from Cravath, the New York State Bar, and Skadden Arps.

[84] See, for example, the letter from Linklaters.

[85] See Release No. 33–7759 (October 26, 1999), 64 FR 61382 (November 10, 1999).

[86] See, for example, the letter from Cleary Gottlieb.

[87] See the letter from Linklaters.

[88] 17 CFR 239.16b. Form S–8 is the form used by an Exchange Act reporting company to register securities for issuance to its employees or those of its subsidiaries or parent under an employee benefit plan.

[89] See, for example, the letter from ABA (Business).

[90] See General Instruction A.1 to Form S–8.

condition, when a public float standard was proposed, no longer appropriate for exemption? For example, is there a risk that foreign private issuers would issue securities to U.S. investors or employees who would then sell them in registered secondary offerings before deregistration?

4. Foreign Listing Condition

As reproposed, Rule 12h–6 would require that, with respect to equity securities, for at least the 12 months preceding the filing of its Form 15F, a foreign private issuer must have maintained a listing of the subject class of securities on an exchange in a foreign jurisdiction, which, either singly or together with one other foreign jurisdiction, constitutes the primary trading market for the issuer's subject class of securities.[91] The reproposed rule defines ''primary trading market'' to mean that at least 55 percent of the trading in the foreign private issuer's subject class of securities took place in, on or through the facilities of a securities market or markets in no more than two foreign jurisdictions during a recent 12-month period.[92] That definition further provides that if an issuer aggregates the trading of its securities in two foreign jurisdictions for the purpose of Rule 12h–6, the trading market for the issuer's securities in at least one of the two foreign jurisdictions must be larger than the U.S. trading market for the issuer's securities.[93]

The purpose of this foreign listing condition is to help assure that there is a non-U.S. jurisdiction that principally regulates and oversees the issuance and trading of the issuer's securities and the issuer's disclosure obligations to investors. This listing condition makes more likely the availability of a set of non-U.S. securities disclosure documents to which a U.S. investor may turn for material information when making investment decisions about the issuer's securities following the termination of its disclosure obligations under Rule 12h–6. If the United States was the sole or principal market for the foreign private issuer's securities, then the Commission would have a greater regulatory interest in continuing to subject the foreign company to the Exchange Act reporting regime.

As originally proposed, Rule 12h–6 would have required a foreign private issuer of equity securities to have maintained a listing of the subject class of securities for the preceding two years on an exchange in its home country. As originally proposed, ''home country'' would have had the same meaning as under Form 20–F, which defines ''home country'' as the jurisdiction in which the issuer is legally organized, incorporated or established and, if different, the jurisdiction where it has its principal listing. Originally proposed Rule 12h–6 would further have required that a foreign private issuer's home country constitute its primary trading market. We proposed to define the term ''primary trading market'' to mean that at least 55 percent of the trading in the foreign private issuer's securities took place in, on or through the facilities of a securities market in a single foreign country during a recent 12 month period.

We received a variety of comments on this home country listing condition. Although most commenters agreed in principle with a prior non-U.S. listing condition, several commenters expressed concern that many foreign private issuers would not be able to meet the ''55 percent trading in a single non-U.S. market'' threshold of the primary trading market definition.[94] Those commenters urged the Commission to adopt a prior listing condition that would permit an issuer to meet the 55 percent or greater trading threshold by aggregating its trading in more than one non-U.S. market.

Some commenters expressed concern that the proposed prior non-U.S. listing period was too long.[95] Other commenters noted that some foreign private issuers have their principal trading market in a jurisdiction that is different than its place of incorporation or principal listing.[96] For example, some companies are incorporated in Switzerland and listed on the Swiss Exchange (SWX), but are primarily traded on virt-x, a cross-border electronic trading platform based in London that is regulated by the United Kingdom's Financial Services Authority. Those companies would not meet the proposed home country listing condition because their primary trading market is in the United Kingdom, and not in their jurisdiction of incorporation or principal listing.

In response to commenters' concerns, we are shortening the reproposed foreign listing period to one year from the originally proposed two years. This change is consistent with our similar revision of the proposed prior reporting condition. We also propose to permit an issuer to aggregate its trading over two non-U.S. markets for the purpose of meeting the foreign listing condition in order to address the concerns of issuers that have substantial trading markets in more than one country. Finally, we are proposing a ''foreign listing'' condition rather than a ''home country'' listing condition in order to accommodate issuers that have their primary trading market in jurisdictions other than their place of incorporation or principal listing. These proposed revisions should increase the flexibility of the new rule for many foreign private issuers.

At the same time, the reproposed foreign listing condition should serve to protect the interests of U.S. investors by requiring that at least 55 percent of the ADTV of the company's subject class of securities must have occurred through the facilities of no more than two foreign jurisdictions, and that, if an issuer does aggregate the ADTV of its subject class of securities over two non-U.S. jurisdictions, at least one of the two foreign markets must be larger than the U.S. market for the subject class of securities.[97] These proposed requirements should increase the likelihood that the principal pricing determinants for a foreign private issuer's securities are located outside the United States and that the issuer is subject to an overseas regulator with principal authority for regulating the issuance and trading of the issuer' securities and the issuer's disclosure to investors.[98] Consequently, for an issuer meeting these requirements, there should be less interruption in the flow of material information about the issuer

[91] Reproposed Rule 12h–6(a)(3) (17 CFR 240.12h–6(a)(3)).

[92] Reproposed Rule 12h–6 defines ''recent 12-month period'' to mean a 12-calendar month period that ended no more than 60 days before the filing date of the Form 15F. Rule 12h–6(e)(7).

[93] Rule 12h–6(e)(6). As proposed and as adopted, measurement under this condition is by reference to average daily trading volume (ADTV) as reported by the relevant market. Although the proposing release noted that there are differences concerning how various markets measure and report trading volume (for example, dealer markets versus auction markets), no commenter addressed this point.

[94] See, for example, the letter from Cravath. However, commenters did not provide data or other specific information in this area.

[95] See the letter from Ziegler, Ziegler & Associates.

[96] See the letter from the Swiss Exchange.

[97] For the purpose of the reproposed primary trading market determination, an issuer would first measure the ADTV of its listed securities aggregated over one or two foreign jurisdictions. It would then divide this amount by its worldwide ADTV. This denominator would include the ADTV only for those foreign jurisdictions in which the issuer has listed the subject class of securities as well as its U.S. ADTV. Its U.S. ADTV would include all securities of the subject class, whether listed or unlisted.

[98] This ''primary trading market'' requirement would also help ensure that an issuer's foreign listing represents a significant trading market for its equity securities rather than a listing on a non-trading market such as the Luxembourg Stock Exchange.

once it exits the Exchange Act reporting system, to the benefit of U.S. investors.

As reproposed, Rule 12h–6 would require issuers to determine that the primary trading market for their equity securities is outside the United States and, if it is, that the trading volume of their securities in the United States does not exceed the threshold under the rule. In addition, as noted above, the condition relating to primary trading market would help assure that a foreign private issuer would be subject to the disclosure and other requirements of a foreign regulatory authority. The evolution of market structures could raise a number of issues in this area. Non-U.S., private non-exchange trading markets may develop in the future whose listed or traded issuers may not be subject to the same regulatory treatment by foreign securities regulators as listed companies today. Also, securities markets, which historically have been organized and regulated along national lines, and their listed companies, which also have been largely regulated by national securities regulatory authorities, may in the future become more transnational. The schemes of regulation for these markets and companies may change in response to these continued developments.

Comment Solicited

We solicit comment on the reproposed foreign listing condition:

- Would it be appropriate to adopt the foreign listing condition, as reproposed?
- Should the foreign listing condition be longer or shorter than the reproposed condition?
- Is the reproposed definition of primary trading market appropriate? Should we instead require an issuer's primary trading market to consist of one single foreign country, as initially proposed, rather than two foreign countries, as reproposed? Should we instead permit an issuer to aggregate the trading in its securities over three or more foreign jurisdictions as long as the trading volume in one of those jurisdictions is greater than its U.S. trading volume?
- Should the reproposed definition require that more than or less than 55% of an issuer's trading occur in the primary trading market?
- For purposes of the reproposed primary trading market determination, will issuers have difficulty making the necessary calculations? If so, what are these difficulties and how might they be addressed in the rule?
- Should the worldwide foreign trading component in the denominator of the primary trading market calculation include all foreign markets in which an issuer's securities are traded, including unlisted or over-the-counter trading, rather than only for foreign listed markets, as reproposed?
- Should the denominator of the primary trading market calculation include only the foreign jurisdictions in the numerator plus U.S. ADTV?
- Should the U.S. ADTV component in the denominator of the primary trading market calculation include only listed securities rather than all U.S. traded securities, whether listed or unlisted, as reproposed?
- Will issuers have difficulty obtaining ADTV information for trading in the United States, in their primary trading market, or elsewhere?
- In the United States, issuers should be able to obtain information through the U.S. transaction reporting plan. Do other markets or jurisdictions have similar trade reporting arrangements? Is additional guidance from the Commission necessary in this area, or will issuers be able to make reasonable judgments?
- Should the proposed rule provide additional flexibility for the development of trans-national trading markets? If so, what types of provisions would be appropriate to address these types of markets?

B. Debt Securities Provision

As reproposed, Rule 12h–6 would enable a foreign private issuer to terminate its Exchange Act reporting obligations regarding a class of debt securities as long as the issuer has filed or furnished all reports required under Exchange Act section 13(a) or section 15(d), including at least one Exchange Act annual report, and has its class of debt securities held of record by less than 300 holders either on a worldwide basis or who are U.S. residents.[99] This provision reflects the minimum reporting requirement and current 300 holder standard under section 15(d) and Rule 12h–3.

The reproposed debt securities provision is substantially similar to the originally proposed provision.[100] We did not originally propose, and we are not here proposing, a provision comparable to Rule 12h–3's 500 record holder threshold for debt securities issuers because we believe most foreign private issuers that are debt securities registrants would likely exceed the $10 million asset threshold that accompanies the 500 record holder standard.[101]

A few commenters requested that the Commission increase the debt securities record holder threshold to as much as 1,000. We have decided against proposing to increase the debt securities threshold at this time for the same reasons that we also are not proposing to increase the record holder threshold for equity securities issuers as part of this rulemaking.

Comment Solicited

We solicit comment on the reproposed debt securities record holder condition:

- Would it be appropriate to adopt the debt securities record holder condition, as reproposed?

C. Revised Counting Method

As originally proposed, Rule 12h–6 would have permitted an issuer to use a modified version of the ''look through'' counting method under Rule 12g3–2(a) when determining the percentage of a foreign private issuer's outstanding equity shares held by its non-affiliates on a worldwide basis that are held by U.S. residents or the number of U.S. residents holding a foreign private issuer's equity or debt securities. Instead of having to look through the accounts of brokers, banks and other nominees on a worldwide basis to determine the number of its U.S. resident holders, as is required under the current rules, an issuer could limit its inquiry to brokers, banks and other nominees located in the United States, the issuer's jurisdiction of incorporation, legal organization or establishment and, if different, the jurisidiction of its primary trading market.[102] This revised counting method is substantially similar to the counting method that the Commission adopted under the exemptive rules for cross-border rights offerings, exchange offers and business combinations, as

[99] Reproposed Rule 12h–6(b).

[100] We have made one technical revision to the originally proposed debt securities provision. An issuer that has listed a class of debt securities on an exchange and registered the class under section 12(b), without also registering those securities under the Securities Act, would have reporting obligations under section 13(a), not section 15(d) of the Exchange Act. Yet the originally proposed debt securities provision only referred to section 15(d) obligations. In order to permit the termination of registration and reporting under Rule 12h–6 by listed debt issuers, we have revised the reporting condition to state that an issuer must have filed or furnished all reports required under Exchange Act section 13(a) or section 15(d). A listed debt issuer must have terminated its listing and section 12(b) registration pursuant to Rule 12d–2 before it could effect its termination of reporting under Rule 12h–6.

[101] None of the commenters requested that we incorporate the 500 record holder and $10 million asset standard into proposed Rule 12h–6's debt securities provision or into the alternative record holder condition for equity securities.

[102] Reproposed Rule 12h–6(d).

well as under the definition of foreign private issuer.

The reproposed counting method is substantially the same as originally proposed, except for two revisions. Since reproposed Rule 12h–6 would eliminate the public float benchmark, the reproposed counting method would apply only to an issuer of equity securities proceeding under the alternative 300 holder provision, or to a debt securities issuer that must meet the 300 holder standard. In addition, as reproposed, Rule 12h–6 would provide that an issuer that aggregates the trading volume of its securities in two foreign jurisdictions for the purpose of meeting the rule's listing condition will have to look through nominee accounts in both foreign jurisdictions, which comprise its primary trading market, and in the United States as well as in its jurisdiction of incorporation, if different from the two jurisdictions that comprise its primary trading market.

As part of the counting method provision, we are reproposing a presumption that we previously adopted under the cross-border rules and definition of foreign private issuer.[103] This presumption is that, if, after reasonable inquiry, an issuer is unable without unreasonable effort to obtain information about the amount of securities held by nominees for the accounts of customers resident in the United States, it may assume that the customers are the residents of the jurisdiction in which the nominee has its principal place of business.

Some commenters stated that, while this presumption is useful when determining the percentage of an issuer's worldwide public float that is held by U.S. residents, it is not much help when an issuer must calculate the actual number of its U.S. resident holders for the purpose of either the alternative record holder condition for equity issuers or the debt securities provision. Those commenters urged the Commission to adopt a presumption that would enable an issuer to count each nominee as one shareholder located in the nominee's principal place of business when the issuer is unable without unreasonable effort to obtain information about the nominee's customer accounts.

We did not adopt the suggested presumption when we adopted the counting method for the rule defining the term ''foreign private issuer,'' [104] and we decline to propose it as part of this rulemaking. Based on our experience with that definitional rule, we are not persuaded that issuers are unable without undue burden to apply the current standard using the adopted presumption.

Some foreign jurisdictions have laws that provide an established and enforceable means for a public company to obtain information about its shareholders. We solicited comment regarding whether we should permit an issuer to rely on information obtained through these foreign statutory or code provisions when calculating the percentage of its worldwide public float held by U.S. residents or the number of its U.S. resident equity or debt holders. We received only two comment letters regarding this issue.[105]

Reproposed Rule 12h–6 does not provide that a foreign private issuer may rely solely on specified foreign statutory or code provisions. However, as part of its inquiry regarding whether it meets any of the quantitative benchmarks under Rule 12h–6, an issuer may refer to shareholder information obtained pursuant to those foreign statutory or code provisions to the extent that this shareholder information is reasonably reliable and accurate and furthers the purpose of the inquiry.

Comment Solicited

We solicit comment on the reproposed counting method provison:

- Would it be appropriate to adopt the counting method provision, as reproposed?
- How should issuers' experiences with applying the counting method under the cross-border rules and definition of foreign private issuer inform our decision whether to adopt the reproposed counting method?
- The reproposed counting method would limit the current required worldwide search for nominees of U.S. holders to the U.S., the jurisdiction of incorporation or organization, and possibly the primary trading market. Are these limits appropriate? If not, should the search be further limited or expanded?

D. Expanded Scope of Rule 12h–6

In response to comments on the appropriate scope of Rule 12h–6, we propose to expand the rule in two respects. First, we propose to provide that an issuer that has succeeded to the Exchange Act reporting obligations of an acquired company may terminate those reporting obligations under Rule 12h–6 as long as it satisfies specified conditions. Second, we propose to extend the application of Rule 12h–6 to a foreign private issuer that previously filed a Form 15 and effected its termination of registration or suspension of reporting under the current exit rules before the effective date of Rule 12h–6, subject to conditions.

1. Application of Rule 12h–6 to Successor Issuers

In the Original Proposing Release, we requested comment on the prior Exchange Act reporting condition. Several commenters expressed their concern that, as proposed, an issuer that has succeeded to the Exchange Act reporting obligations of an acquired company pursuant to Rule 12g–3 or 15d–5 [106] may not be able to terminate its reporting obligations under Rule 12h–6 because of the proposed rule's reporting condition, although the successor issuer satisfies the rule's other requirements. In order to address this concern, reproposed Rule 12h–6 specifically provides that, following a merger, consolidation, exchange of securities, acquisition of assets or otherwise, a foreign private issuer that has succeeded to the reporting obligations under Exchange Act section 13(a) of another issuer pursuant to Rule 12g–3, or to the reporting obligations of another issuer under Exchange Act section 15(d) pursuant to Rule 15d–5, may file a Form 15F to terminate those reporting obligations if, regarding a class of equity securities, the successor issuer meets Rule 12h–6's prior reporting, foreign listing, and quantitative benchmark conditions.[107] Regarding a class of debt securities, the successor issuer must meet the conditions under Rule 12h–6(b), including the revised reporting condition. Reproposed Rule 12h–6 then provides that, when determining whether it meets the prior reporting condition under either the equity or debt securities provision of the final rule, a successor issuer may take into account the reporting history of the issuer whose reporting obligations it has assumed pursuant to Rule 12g–3 or 15d–5.[108]

This successor issuer provision would enable a non-Exchange Act reporting foreign private issuer that acquires a reporting foreign private issuer in a

[103] See Securities Act Rule 800(h)(4) (17 CFR 230.800(h)(4)) and Instruction B to Exchange Act Rule 3b–4(c)(1) (17 CFR 240.3b–4(c)(1)).

[104] See Release No. 34–41936 (September 28, 1999), 64 FR 53900 (October 5, 1999).

[105] Both commenters stated that they had successfully relied on section 212 of the United Kingdom Companies Act to obtain information about an issuer's shareholders. One of the commenters also cited Article L. 228–2 of the French Commercial Code as an established and reliable means for a company to obtain shareholder information.

[106] 17 CFR 240.12g–3 and 240.15d–5.

[107] Reproposed Rule 12h–6(c)(1).

[108] Reproposed Rule 12h–6(c)(2).

transaction exempt under the Securities Act, for example, under Rule 802 or section 3(a)(10), to qualify immediately for termination of its Exchange Act reporting obligations under Rule 12h–6, without having to file an Exchange Act annual report, as long as the successor issuer meets the rule's listing and quantitative benchmark conditions, and the acquired company's reporting history fulfills Rule 12h–6's prior reporting condition. Since the successor issuer would have assumed the acquired company's Exchange Act reporting obligations, we believe that it is appropriate that the issuer succeed to the acquired company's reporting history for the purpose of Rule 12h–6.

However, if a previously non-Exchange Act reporting foreign private issuer acquires an Exchange Act reporting company by consummating an exchange offer, merger or other business combination registered under the Securities Act, most likely on a Form F–4 registration statement, the acquiror would have to fulfill Rule 12h–6's prior reporting condition without reference to the acquired company's reporting history. Since the acquiror would have triggered its own section 15(d) reporting obligations upon the effectiveness of its Securities Act registration statement, it would have to meet Rule 12h–6's full reporting condition like any other section 15(d) reporting company before it could terminate its reporting obligations under the new rule.

Comment Solicited

We solicit comment on the proposed expanded scope of Rule 12h–6 with respect to successor issuers:

- Should an issuer be permitted to terminate its Exchange Act reporting obligations under Rule 12h–6 if, following a merger, acquisition or other similar transaction in which it has succeeded to Exchange Act reporting obligations pursuant to Rule 12g–3, it meets Rule 12h–6's foreign listing and quantitative benchmark requirements, and the acquired company's reporting history fulfills Rule 12h–6's prior reporting condition, as proposed?
- Should we require that the Exchange Act reporting target company have satisfied the trading volume or 300 record holder benchmark just prior to completing one of the above transactions before a successor issuer may proceed under Rule 12h–6?
- Should there be limitations placed on a successor issuer's eligibility to use Rule 12h–6? If so, what are those limitations?

2. Application of Rule 12h–6 to Prior Form 15 Filers

As originally proposed, Rule 12h–6 would have applied only to reporting foreign private issuers that have not yet filed a Form 15 to cease their Exchange Act reporting obligations. In response to our request for comments concerning the scope of proposed Rule 12h–6 and on the current exemptive scheme for foreign private issuers,[109] numerous commenters urged the Commission to expand the scope of Rule 12h–6 by extending it to foreign private issuers that have previously filed a Form 15 and thereby already terminated or suspended their Exchange Act reporting obligations under the current exit rules.[110]

We agree with those commenters who stated that foreign private issuers should not be denied the benefits of the new exit regime simply because they met the requirements for ceasing their Exchange Act reporting obligations under the current rules and followed the only exit procedure available to them.[111] We see no meaningful distinction between an issuer that would qualify for termination of Exchange Act reporting under the alternative record holder provision of Rule 12h–6 and a Form 15 filer that has already met the record holder requirements under Rule 12g–4 or Rule 12h–3 but, under the proposed rule amendments, would continue to have to count its U.S. shareholders annually in order to determine whether it has renewed or assumed anew Exchange Act reporting obligations.

Accordingly, as reproposed, Rule 12h–6 would extend termination of Exchange Act reporting to a foreign private issuer that, before the effective date of Rule 12h–6, has already effected the suspension or termination of its Exchange Act reporting obligations after filing a Form 15. Since these filers have already met a quantitative standard under the current exit rules, they would not have to meet any other quantitative benchmark under Rule 12h–6. They also would not have to satisfy the prior reporting or dormancy provisions since they would already be non-reporting entities.

However, a prior Form 15 filer would have to meet the following conditions in order to obtain the benefits of Rule 12h–6:

- The issuer must currently not be required to register a class of securities under section 12(g) or be required to file reports under section 15(d);
- the issuer must file a Form 15F; and
- if its Form 15 applied to a class of equity securities, for at least the 12 months before the filing of its Form 15F, the issuer must have maintained a listing of the subject class of equity securities on an exchange in a foreign jurisdiction, which, either singly or together with another foreign jurisdiction, constitutes the primary trading market for the issuer's class of subject securities.

As with any other foreign private issuer of equity securities that elects to terminate its reporting obligations under Rule 12h–6, the purpose of the proposed listing condition is to help ensure that the prior Form 15 filer is subject to a foreign regulator and a non-U.S. body of regulation governing the trading of the issuer's securities and its disclosure obligations to its shareholders. This listing condition makes more likely the availability of a set of home country securities documents to which a U.S. investor may turn for material information when making investment decisions about the issuer's securities following the termination of its disclosure obligations under Rule 12h–6.

The purpose of the proposed Form 15F filing requirement is to notify investors and alert the Commission that the prior Form 15 filer is claiming the benefits of Rule 12h–6, to have the issuer certify that it meets the conditions of the new rule, and to provide the issuer's Internet Web site address.[112]

Comment Solicited

We solicit comment on the proposed expanded scope of Rule 12h–6 with respect to prior Form 15 filers:

- Is it appropriate to permit an issuer that, before the effective date of Rule 12h–6, has terminated or suspended its Exchange Act reporting obligations by filing a Form 15, to obtain the benefits of termination under Rule 12h–6, as proposed?
- Are the proposed requirements that a prior Form 15 filer must meet in order to be eligible to proceed under Rule 12h–6 appropriate? Are there any other eligibility requirements that we should add?

[109] See Release No. 34–53020 at pp. 20 and 69–70.

[110] See the letters from the European Commission, Cleary Gottlieb and Makinson Cowell.

[111] These benefits include termination of Exchange Act reporting regarding a subject class of securities and the immediate availability of the Rule 12g3–2(b) exemption upon the termination of reporting.

[112] A prior Form 15 filer would have to furnish its home country documents, required under Rule 12g3–2(b), on the Internet the same as any other Form 15F filer. See Part II.H., below.

E. Public Notice Requirement

We are reproposing a public notice requirement as a condition to termination of reporting under Rule 12h–6, except for prior Form 15 filers.[113] Pursuant to this requirement, an issuer of equity or debt securities or a successor issuer would have to publish, either before or on the date that it files its Form 15F, a notice in the United States that discloses its intent to terminate its section 13(a) or 15(d) reporting obligations. The issuer would have to publish the notice, such as a press release, through a means reasonably designed to provide broad dissemination of the information to the public in the United States. The issuer also would be required to submit a copy of the notice, either under cover of a Form 6–K before or at the time of filing of the Form 15F, or as an exhibit to the Form 15F. The primary purpose of this reproposed notice provision is to alert U.S. investors who have purchased the issuer's securities about the issuer's intended exit from the Exchange Act registration and reporting system.

The reproposed notice provision is substantially similar to the originally proposed notice requirement, except that, under the earlier proposed provision, the issuer would have had to publish the notice at least 15 business days before it files its Form 15F. At the suggestion of commenters, we have revised the notice provision simply to require an issuer to publish the notice before or on the date of filing of its Form 15F. We agree that a fixed, prior Form 15F notice requirement would be of little benefit to investors and would only serve to prolong the termination process.

The reproposed notice requirement would not apply to a prior Form 15 filer that files a Form 15F to terminate its registration and reporting obligations under Rule 12h–6(h). Since a prior Form 15 filer would already have ceased its Exchange Act reporting obligations, investors would gain little from the publishing of such a notice.

Comment Solicited

We solicit comment on the reproposed notice requirement:

- Would it be appropriate to adopt the notice requirement, as reproposed?
- Should we require an issuer to mail a copy of the notice to each of its U.S. investors in addition to, or in lieu of, publishing the notice through a press release or other publicly disseminated means?

[113] Reproposed Rule 12h–6(g).

F. Form 15F

Like our current exit rules, reproposed Rule 12h–6 would require a foreign private issuer to file electronically on EDGAR a form certifying that it meets the requirements for ceasing its Exchange Act reporting obligations. By signing and filing new Form 15F, a foreign private issuer would be certifying that:

- It meets all of the conditions for termination of Exchange Act reporting specified in Rule 12h–6; and
- There are no classes of securities other than those that are the subject of the Form 15F regarding which the issuer has Exchange Act reporting obligations.

Unlike current Form 15, reproposed Form 15F would require a foreign private issuer to provide disclosure regarding several items in order to provide investors with information regarding an issuer's decision to terminate its Exchange Act reporting obligations. The information would also assist Commission staff in monitoring the use of Rule 12h–6.

Most commenters that addressed the originally proposed Form 15F generally agreed with its form and content. Accordingly, the reproposed Form 15F is substantially similar to the earlier proposed Form 15F. Like the originally proposed form, the reproposed Form 15F would solicit information regarding:

- An issuer's Exchange Act reporting history;
- When it last sold registered securities in the United States other than those excluded from consideration under Rule 12h–6;
- The primary trading market for an issuer's equity securities that is the subject of its Form 15F;
- Trading volume data for an issuer's equity securities in the United States and in its primary trading market, if applicable;
- The number of an issuer's equity or debt securities record holders, if applicable; and
- The classes of equity and debt securities, if any, that are the subject of the Form 15F.

In addition, we have revised the proposed form to conform to the changes to the originally proposed Rule 12h–6, as reproposed today. These revisions include adding items to acquire material information concerning a Form 15F filer:

- That is a successor issuer;
- That is a prior Form 15 filer;
- That has a primary trading market composed of two foreign jurisdictions; and
- That may have delisted or terminated an ADR facility prior to filing the Form 15F.

As with Form 15, and as originally proposed, filing of the reproposed Form 15F would immediately suspend an issuer's Exchange Act reporting obligations regarding the subject class of securities and commence a 90-day waiting period. If, at the end of this 90-day period, the Commission has not objected to the filing, the suspension would automatically become a termination of registration and reporting. If the Commission denies the Form 15F or the issuer withdraws it, within 60 days of the date of the denial or withdrawal, the issuer would be required to file or submit all reports that would have been required had it not filed the Form 15F.[114]

Some commenters requested that we shorten the 90 day period to 60 days or lengthen the time in which an issuer must file or submit Exchange Act reports upon withdrawal of its Form 15F. We are not proposing to do so because the reproposed time periods are based on those established under Form 15 and the current exit rules, which we believe have proven adequate.

After filing the reproposed Form 15F, an issuer would have no continuing obligation to make inquiries or perform other work concerning the information contained in the Form 15F, including its assessment of trading volume or ownership of its securities. However, the reproposed Form 15F would require an issuer to undertake to withdraw its Form 15F before the date of effectiveness if it has actual knowledge of information that causes it reasonably to believe that, at the date of filing the Form 15F:

- The average daily trading volume of its subject class of securities in the United States during a recent 12-month period exceeded 5 percent of the average daily trading volume of that class of securities in the issuer's primary trading market during the same period, if proceeding under Rule 12h–6(a)(4)(i);
- Its subject class of securities was held of record by 300 or more United States residents or 300 or more persons worldwide, if proceeding under Rule 12h–6(a)(4)(ii) or Rule 12h–6(b); or
- It otherwise no longer qualified for termination of its Exchange Act reporting obligations under Rule 12h–6.

While this reproposed undertaking is substantially similar to the originally proposed undertaking, in response to commenters, we have added the phrase ''at the date of filing'' to clarify that an issuer would not be required to withdraw a Form 15F due to changes in

[114] Reproposed Rule 12h–6(f).

its trading volume or share ownership occurring after the date of filing.[115]

Comment Solicited

We solicit comment on the reproposed Form 15F filing requirement:

- Would it be appropriate to adopt the Form 15F filing requirement, as reproposed?
- Are there any items that should be added to the Form 15F? Are there any reproposed items that should be removed?

G. Amended Rules 12g–4 and 12h–3

Although similar to the current 300 record holder standard, reproposed Rule 12h–6's alternative threshold record holder condition and its debt securities provision would offer advantages compared to the current exit rules. As reproposed, Rule 12h–6's revised counting method would limit the jurisdictions in which a foreign private issuer must search for records of its U.S. resident holders. Moreover, reproposed Rule 12h–6 would enable a foreign private issuer to terminate, rather than merely suspend, its section 15(d) reporting obligations regarding a class of equity or debt securities. In addition, under reproposed Rule 12h–6, a foreign private issuer would be able to claim the benefits of the Rule 12g3–2(b) exemption immediately upon the effectiveness of its termination of reporting regarding a class of equity securities under section 12(g) or 15(d). In each instance, once its termination of reporting becomes effective under Rule 12h–6, an issuer would no longer have to concern itself with whether the number of its U.S. resident or worldwide holders of the class of subject securities has risen above the statutory or regulatory threshold.

Given these advantages, we believe that, following the adoption of reproposed Rule 12h–6, few, if any, foreign private issuers would elect to proceed under the provisions of Rule 12g–4 or Rule 12h–3 that allow a foreign private issuer to terminate its registration of a class of securities under section 12(g) or suspend the duty to file reports under section 15(d) if the class of securities is held by less than 300 U.S. residents or by 500 U.S. residents and the issuer has had total assets not exceeding $10 million on the last day of each of its most recent three fiscal years.[116] Accordingly, we are reproposing the amendments to eliminate these provisions in Rules 12g–4 and 12h–3, as originally proposed.

Comment Solicited

We solicit comment on the reproposed amendments to Rules 12g–4 and 12h–3:

- Would it be appropriate to adopt the amendment to the current exit rules, as reproposed?

H. Amendment Regarding the Rule 12g3–2(b) Exemption

We are reproposing, substantially as originally proposed, an amendment to Exchange Act Rule 12g3–2 [117] that would apply the exemption under Exchange Act Rule 12g3–2(b) immediately to an issuer of equity securities upon the effectiveness of its termination of reporting under Rule 12h–6.[118] As a condition to the immediate application of the Rule 12g3–2(b) exemption upon its termination of reporting under Rule 12h–6, an issuer would have to publish subsequently in English material home country documents required under Rule 12g3–2(b)(1)(iii) on its web site or through an electronic information delivery system generally available to the public in its primary trading market.[119]

The purpose of this condition is to provide U.S. investors with access to material information about an issuer of equity securities following its termination of reporting pursuant to Rule 12h–6.[120] In addition, an issuer would be able to maintain a sponsored ADR facility with respect to its securities.[121] This condition also would facilitate resales of that issuer's securities to qualified institutional buyers under Rule 144A.[122] Moreover, having a foreign private issuer's key home country documents posted in English on its web site would assist U.S. investors who are interested in trading the issuer's securities in its primary securities market.[123]

The reproposed extension of Rule 12g3–2(b) would apply both to a class of equity securities formerly registered under section 12(g) and one that formerly gave rise to section 15(d) reporting obligations, as originally proposed. The Rule 12g3–2(b) exemption received under reproposed Rule 12g3–2(e) would remain in effect for as long as the foreign private issuer satisfies the rule's electronic publication conditions or until the issuer registers a new class of securities under section 12 or incurs section 15(d) reporting obligations by filing a new Securities Act registration statement, which has become effective.[124]

Some commenters have suggested that we make the application of the Rule 12g3–2(b) exemption optional rather than automatic upon the termination of reporting under Rule 12h–6. We decline to do so as part of the reproposed rule amendments because we do not believe that such an amendment would be in the best interests of U.S. investors. Enabling an issuer to claim the exemption immediately upon termination of reporting under Rule 12h–6, rather than upon application or notice to the Commission at some later date, should foster the prompt publishing of that issuer's material home country documents on its Internet Web site, to the benefit of investors.[125]

[115] We also are reproposing amendments to the rules governing the Commission's delegated authority to permit staff of the Division of Corporation Finance to accelerate the effectiveness of an issuer's termination of registration and reporting under Rule 12h–6 before the 90th day at the issuer's request. The issuer must make this request in writing and file it on EDGAR. Nevertheless, Division of Corporation Finance staff may submit requests to accelerate the effectiveness of an issuer's termination of registration and reporting pursuant to Rule 12h–6 to the Commission for consideration, as appropriate. As we noted in the Original Proposing Release, there is currently a similar delegation relating to Form 15, which is rarely used.

[116] See Exchange Act Rules 12g–4(a)(2) and 12h–3(b)(2).

[117] Reproposed Rule 12g3–2(e).

[118] Currently, foreign private issuers that registered a class of securities under section 12 must wait at least 18 months following their termination of reporting before they would be eligible to apply for the Rule 12g3–2(b) exemption. In addition, foreign private issuers with an active or suspended reporting obligation under section 15(d) have thus far not been eligible to claim the Rule 12g3–2(b) exemption. See Rule 12g3–2(d)(1) (17 CFR 240.12g3–2(d)(1)), which currently excepts from the 18 month requirement issuers that have filed Securities Act registration statements using the Multijurisdictional Disclosure Act (MJDS) forms.

[119] Reproposed Rule 12g3–2(e)(2).

[120] Any post-termination trading of a foreign private issuer's securities in the United States would have to occur through over-the-counter markets such as that maintained by the Pink Sheets, LLC since, as of April, 1998, the NASD and the Commission have required a foreign private issuer to register a class of securities under Exchange Act section 12 before its securities could be traded through the electronic over-the-counter bulletin board administered by Nasdaq. See, for example, NASD Notice to Members (January 1998).

[121] In order to establish an ADR facility, an issuer must register the ADRs on Form F–6 (17 CFR 239.36) under the Securities Act. The eligibility criteria for the use of Form F–6 include the requirement that the issuer have a reporting obligation under Exchange Act section 13(a) or have established the exemption under Rule 12g3–2(b).

[122] See Securities Act Rule 144A(d)(4) (17 CFR 230.144A(d)(4)).

[123] Brokers currently are exempt from complying with certain information obligations under Exchange Act Rule 15c2–11 (17 CFR 240.15c2–11) when a foreign company has established and maintains the Rule 12g3–2(b) exemption. See Release No. 34–41110 (February 25,1999), 64 FR 11124 (March 8, 1999).

[124] See Reproposed Rule 12g3–2(e)(3).

[125] An issuer that does not want to claim the Rule 12g3–2(b) exemption immediately following its deregistration under Rule 12h–6 could abstain from posting its home country documents on its Web site at that time.

1. Extension of the Rule 12g3–2(b) Exemption Under Reproposed Rule 12g3–2(e)

As reproposed, because Rule 12g3–2(e) applies to any issuer that has terminated its reporting under Rule 12h–6, the rule amendment would effectively extend the Rule 12g3–2(b) exemption to:

- A foreign private issuer of equity securities immediately upon its termination of reporting pursuant to Rule 12h–6(a);
- A successor issuer immediately upon its termination of reporting pursuant to Rule 12h–6(c); and
- A prior Form 15 filer immediately upon its termination of reporting pursuant to Rule 12h–6(h).

Currently Rule 12g3–2(d)(2) precludes extending the Rule 12g3–2(b) exemption to a foreign private issuer, other than a Canadian issuer using the MJDS forms, that has issued securities in a merger or other similar transaction to acquire a company that has registered a class of securities under section 12 or has a reporting obligation under section 15(d). As reproposed, we would amend Rule 12g3–2(d)(2) effectively to extend the Rule 12g3–2(b) exemption to a successor issuer that has terminated its Exchange Act reporting obligations under Rule 12h–6(c). Since we have proposed to permit a successor issuer to rely on its predecessor's reporting history for the purpose of Rule 12h–6, we believe the issuer should also benefit from claiming the Rule 12g3–2(b) exemption immediately upon the effectiveness of its Form 15F.

We also propose to extend the Rule 12g3–2(b) amendment immediately upon the termination of reporting pursuant to Rule 12h–6(h) to a foreign private issuer that, before the effective date of Rule 12h–6, terminated its registration or suspended its reporting obligations regarding a class of equity securities after filing a Form 15. This is consistent with our proposed expansion of the scope of Rule 12h–6 to encompass prior Form 15 filers. Without this change, a prior Form 15 filer would find itself subject to the 18 month waiting period that currently exists under Rule 12g3–2(d), although the issuer qualified for termination of reporting under Rule 12h–6(h).

We further propose to permit a foreign private issuer that filed a Form 15F solely to terminate its reporting obligations regarding a class of debt securities to apply for the Rule 12g3–2(b) exemption for a class of equity securities any time after the effectiveness of its termination of reporting regarding the class of debt securities.[126] Since we are reproposing to abolish the 18 month ''waiting period'' for equity securities issuers that have terminated their Exchange Act reporting obligations pursuant to Rule 12h–6, it would serve no useful purpose to impose this waiting period on a debt securities issuer that has terminated its reporting obligations regarding a class of debt securities under Rule 12h–6 and, sometime thereafter, determines that it will need the Rule 12g3–2(b) exemption for a class of equity securities.

However, contrary to the suggestions of some commenters, we are not proposing to permit a debt securities issuer to claim the Rule 12g3–2(b) exemption immediately upon the effectiveness of termination of its debt securities under Rule 12h–6 on the possibility that, at some future date, it may require the exemption for a class of equity securities. When that date arrives, the issuer may submit an application for the Rule 12g3–2(b) exemption, which will provide the Commission with current information about the outstanding class of equity securities, including U.S. ownership information.

Comment Solicited

We solicit comment on the reproposed amendments to Rule 12g3–2:

- Would it be appropriate to extend the Rule 12g3–2(b) amendment to an issuer immediately upon the effectiveness of its termination of Exchange Act reporting obligations under Rule 12h–6, as reproposed?
- Would it be appropriate to extend the Rule 12g3–2(b) amendment to successor issuers and prior Form 15 filers that are eligible to file a Form 15F under Rule 12h–6, as reproposed?
- What are the estimated annual costs of electronically publishing the material home country documents required by Rule 12g3–2(b), as proposed?

2. Electronic Publishing of Home Country Documents

Currently foreign companies claim the Rule 12g3–2(b) exemption by submitting to the Commission on an ongoing basis the material required by the rule. This material may only be submitted in paper format.[127] Because paper submissions are more difficult to access, we are reproposing Rule 12g3–2(e), which relies on electronic access to a foreign company's home country securities documents, although not through the Commission's electronic database.

As part of the condition requiring an issuer to publish its home country documents required under Rule 12g3–2(b)(1)(iii) on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, reproposed Rule 12g3–2(e) would require an issuer to publish English translations of the following documents on its web site:

- Its annual report, including or accompanied by annual financial statements;
- Interim reports that include financial statements;
- Press releases; and
- All other communications and documents distributed directly to security holders of each class of securities to which the exemption relates.[128]

Reproposed Rule 12g3–2(e) would further require a foreign private issuer of equity securities to disclose in the Form 15F the address of its Internet Web site or that of the electronic information delivery system in its primary trading market on which it will publish the information required under Rule 12g3–2(b)(1)(iii).[129] The purpose of this requirement is to alert investors and the Commission regarding where investors and others may find the company's home country documents should a problem arise concerning the Internet location of those documents.

Currently non-reporting issuers that seek the Rule 12g3–2(b) exemption must submit their letter application for the exemption and their home country documents to the Commission in paper. We agree with the commenters who stated that the same primary reason for requiring an issuer to publish its home country documents on its Internet Web site after it terminates its reporting obligations under Rule 12h–6 applies equally to current Rule 12g3–2(b)

[126] Reproposed Rule 12g3–2(e)(4).

[127] A non-Exchange Act reporting issuer that has successfully filed an application for the Rule 12g3–2(b) exemption must currently furnish its home country documents in paper because the application is analogous to one submitted for an exemption under Exchange Act section 12(h). See Regulation S–T Rule 101(c)(16) (17 CFR 232.101(c)(16)). Although the Commission's EDGAR database contains an entry signifying the receipt of paper documents, materials received in paper are not accessible through the EDGAR system.

[128] Reproposed Note 1 to Rule 12g3–2(e). Rule 12g3–2(b) requires an exempt issuer to submit substantially the same categories of home country documents as a reporting issuer must furnish to the Commission under cover of Form 6–K. Moreover, both Rule 12g3–2(b) and Form 6–K state that only material information need be furnished under the rule and form. See Rule 12g3–2(b)(3) (17 CFR 240.12g3–2(b)(3)) and General Instruction B to Form 6–K.

[129] Note 3 to reproposed Rule 12g3–2(e). An issuer would not have to update the Form 15F to reflect a change in that address.

exempt companies and the non-reporting companies that eventually will apply for the exemption. In each case, the electronic posting of an issuer's home country documents would increase an investor's ability to access those documents.

Therefore, we propose to amend Rule 12g3–2 to permit a foreign private issuer that, upon application to the Commission and not after filing Form 15F, has obtained or will obtain the Rule 12g3–2(b) exemption to publish its home country documents that it is required to furnish on a continuous basis under Rule 12g3–2(b)(1)(iii) on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market.[130] As a condition to this electronic posting, an issuer that wishes to use this procedure would have to comply with the English translation requirements of reproposed Rule 12g3–2(e). It also would have to provide the Commission with the address of its Internet Web site or that of the electronic information delivery system in its primary trading market in its application for the Rule 12g3–2(b) exemption or in an amendment to that application.

Because currently the Commission does not have an established means for a non-reporting company to submit electronically to the Commission its initial documents under Rule 12g3–2(b)(1)(i) and (ii),[131] an applicant would have to continue to submit its letter application and the home country documents submitted in support of its initial application to the Commission in paper.[132] Commenters provided several suggestions in response to our request for comments relating to the operation of Rule 12g3–2(b) in general. We will consider these suggestions in future rulemaking, as appropriate.

Some commenters suggested that the Commission impose a specific time limit, for example 3 years, governing how long an issuer must keep its home country documents on its Internet Web site. We decline to propose a specific time limit primarily because different types of home country documents may require different periods of electronic posting. While an issuer would be required to post electronically a home country document for a reasonable period of time, what constitutes a reasonable period would depend on the nature and purpose of the home country document. At a minimum, we suggest companies provide Web site access to their home country reports for at least a 12 month period.

We solicit comment on the reproposed electronic publishing requirement:

- Is it appropriate to require an issuer, which has claimed the Rule 12g3–2(b) exemption immediately upon the effectiveness of its termination of Exchange Act reporting obligations under Rule 12h–6, to publish in English its material home country documents required by Rule 12g3–2(b) on its Internet web site or through an electronic information delivery system generally available to the public in its primary trading market, as reproposed?
- Is it appropriate to permit an issuer that has obtained the Rule 12g3–2(b) exemption upon application to the Commission, and not under reproposed Rule 12h–6, to publish in English its material home country documents required by Rule 12g3–2(b) on its Internet web site or through an electronic information delivery system generally available to the public in its primary trading market, as reproposed?

General Request for Comments

We solicit comment on reproposed Rule 12h–6, reproposed Form 15F, reproposed amendments to Rules 12g–4, 12h–3, and 12g3–2, as well as to all other aspects of the reproposed rule amendments. Here and throughout the release, when we solicit comment, we are interested in hearing from all interested parties, including members and representatives of the investing public, representatives of foreign companies and foreign industry groups, representatives of broker-dealers, domestic issuers, and other participants in U.S. securities markets. We are further interested in learning from all parties what aspects of the rule reproposal they deem essential, what aspects they believe are preferred but not essential, and what aspects they believe should be modified. We also would like to know whether there are any facts or considerations not discussed in the comment letters submitted in response to the Original Proposing Release that, in your opinion, make adoption of reproposed Rule 12h–6 and the accompanying reproposed rule amendments inappropriate? We are still interested in commenters' views on the questions posed in the Original Proposing Release, as we are still considering those questions in light of the reproposal. Due to the advanced stage of this rulemaking, we intend to act expeditiously on the reproposed rules, so we encourage you to submit your comments promptly.

III. Paperwork Reduction Act Analysis

The reproposed rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[133] The titles of the affected collection of informations are Form 20–F (OMB Control No. 3235–0288), Form 40–F (OMB Control No. 3235–0381), Form 6–K (OMB Control No. 3235–0116), new Form 15F, and submissions under Exchange Act Rule 12g3–2 (OMB Control No. 3235–0119).[134] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information such as Form 20–F or new Form 15F unless it displays a currently valid OMB control number. Compliance with the disclosure requirements of new Form 15F and new Rule 12h–6, which will affect the above collections of information, is mandatory.

Form 20–F sets forth the disclosure requirements for a foreign private issuer's annual report and registration statement under the Exchange Act as well as many of the disclosure requirements for a foreign private issuer's registration statements under the Securities Act. We adopted Form 20–F pursuant to the Exchange Act and the Securities Act in order to provide investors with information about foreign private issuers that have registered securities with the Commission.

Form 40–F sets forth the disclosure requirements regarding the annual report and registration statement under the Exchange Act for a Canadian issuer that is qualified to use the Multijurisdictional Disclosure System (''MJDS''). We adopted Form 40–F pursuant to the Exchange Act in order to permit qualified Canadian issuers to prepare their Exchange Act annual reports and registration statements based primarily in accordance with Canadian requirements.

Form 6–K is used by a foreign private issuer to report material information that it:

[130] Reproposed Rule 12g3–2(f).

[131] 17 CFR 240.12g3–2(b)(1)(i) and (ii).

[132] As under current practice, the applicant should send these initial materials to the Commission's Office of International Corporate Finance in the Division of Corporation Finance.

[133] 44 U.S.C. 3501 *et seq.*

[134] 134 A limited number of foreign private issuers file annual reports on Form 10–K (17 CFR 249.310) and a limited number of foreign private issuers file annual reports on Form 10–KSB (17 CFR 249.310b). In voluntarily electing to file periodic reports using domestic issuer forms, these issuers seem to have closely aligned themselves with the U.S. market. Accordingly, for the purpose of the Paperwork Reduction Act Analysis, these issuers do not appear likely to terminate their Exchange Act registration under new Rule 12h–6, and we have assumed that none of these companies will seek to use Rule 12h–6. Foreign private issuers that file periodic reports using domestic issuer forms will be eligible, nonetheless, to use Rule 12h–6.

• Makes or is required to make public under the laws of the jurisdiction of its incorporation, domicile or organization (its ''home country'');

• Files or is required to file with its home country stock exchange that is made public by that exchange; or

• Distributes or is required to distribute to its security holders.

A foreign private issuer may attach annual reports to security holders, statutory reports, press releases and other documents as exhibits or attachments to the Form 6–K. We adopted Form 6–K under the Exchange Act in order to keep investors informed on an ongoing basis about foreign private issuers that have registered securities with the Commission.

As reproposed, new Form 15F is the form that a foreign private issuer would have to file when terminating its Exchange Act reporting obligations under new Exchange Act Rule 12h–6. Form 15F would require a filer to disclose information that would help investors understand the foreign private issuer's decision to terminate its Exchange Act reporting obligations and assist Commission staff in assessing whether the Form 15F filer is eligible to terminate its Exchange Act reporting obligations pursuant to Rule 12h–6.

Exchange Act Rule 12g3–2 is an exemptive rule that, under paragraph (b) of that rule, provides an exemption from Exchange Act section 12(g) registration for a foreign private issuer that, in addition to satisfying other requirements, submits copies of its material home country documents to the Commission on an ongoing basis. We adopted paragraph (b) of Rule 12g3–2 in order to provide information for U.S. investors concerning foreign private issuers with limited securities trading in U.S. capital markets.

The hours and costs associated with preparing, filing and sending Forms 20–F, 40–F, 6–K and 15F, and making submissions under Exchange Act Rule 12g3–2(b) constitute reporting and cost burdens imposed by those collections of information. We based our estimates of the effects that the reproposed rule amendments would have on those collections of information primarily on our review of the most recently completed PRA submissions for Forms 20–F, 40–F, and 6–K, and for submissions under Rule 12g3–2(b), on the particular requirements for those forms and submissions, and on relevant information, for example, concerning comparative trading volume for numerous filers of those forms.

Reproposed Rule 12h–6 would permit a foreign private issuer to terminate its Exchange Act reporting obligations, including the obligation to file an annual report on Form 20–F or 40–F and the obligation to submit interim Form 6–K reports, after filing a Form 15F. Reproposed Rule 12h–6 and the accompanying rule amendments would also enable a foreign private issuer to claim the Rule 12g3–2(b) exemption immediately upon the effectiveness of its termination of reporting pursuant to the reproposed, new exit rule, and to publish copies of its home country documents required by Rule 12g3–2(b) on its Internet Web site instead of submitting them in paper to the Commission. We have based the annual burden and cost estimates of the adopted rule amendments on Forms 20–F, 40–F, 6–K and 15F, and on the home country submissions required under Rule 12g3–2(b), on the following estimates and assumptions:

• A foreign private issuer incurs or will incur 25% of the annual burden required to produce each Form 20–F or 40–F report or Form 15F;

• Outside firms, including legal counsel, accountants and other advisors, incur or will incur 75% of the burden required to produce each Form 20–F or 40–F report or Form 15F at an average cost of $400 per hour;

• A foreign private issuer incurs or will incur 75% of the annual burden required to produce each Form 6–K report and Rule 12g3–2(b) submission, not including English translation work, and 25% of the annual burden required to perform the English translation work for Form 6–K reports and Rule 12g3–2(b) submissions; and

• Outside firms, including legal counsel, accountants and other advisors, incur or will incur 25% of the burden required to produce each Form 6–K report and Rule 12g3–2(b) submission, not including English translation work, at an average cost of $400 per hour, and 75% of the annual burden resulting from the English translation work for Form 6–K reports and Rule 12g3–2(b) submissions, at an average cost of $125 per hour.[135]

As was the case with the originally proposed rule amendments, the estimated effects of the reproposed rule amendments reflect the initial phase-in period of the Exchange Act termination process under new Rule 12h–6 and Form 15F during the first year of use. We expect that most of these estimated effects would occur on a one-time, rather than a recurring, basis. While we expect that some issuers would terminate their Exchange Act reporting under Rule 12h–6 and file Form 15F in subsequent years, we do not expect the resulting burdens and costs to be of the same magnitude as the burdens and costs currently expected during the first year. Moreover, we expect that, over time the number of foreign private issuers that are encouraged to enter the Exchange Act reporting system as a result of the reproposed rule amendments would increase so that, on an annual basis, the number of foreign companies entering the Exchange Act reporting regime would exceed the number exiting that regime.

We published a notice requesting comment on the collection of information requirements in the Original Proposing Release and submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[136] OMB subsequently approved the proposed requirements without change. As discussed in Part II above, we received several comment letters regarding the proposed rule amendments, although none addressed their estimated effects on the collection of information requirements. We have revised proposed Rule 12h–6 and the accompanying proposed rule amendments in response to these comments. Because of these changes, we have revised the estimated reporting and cost burdens of the reproposed rule amendments, as discussed below.

A. Form 20–F

During the first year of effectiveness of reproposed Rule 12h–6, we estimate that as many as 25% of Form 20–F filers could terminate their Exchange Act reporting obligations under the new rule, compared to the 15% previously estimated under the earlier, proposed rule amendments.[137] However, we continue to believe that Rule 12h–6 would encourage some foreign companies to enter the Exchange Act

[135] We relied on most of these estimates and assumptions for the proposed rulemaking. However, at the original proposing stage, we used an estimated hourly rate of $300 for work performed by an outside firm, not including English translation work. We recently increased the estimated outside firm rate to $400/hour after consulting with several private law firms. We have used the $400/hour rate for outside firms in this reproposing rulemaking.

[136] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[137] This estimate has increased due to a number of revisions to the proposed rule, which should enable more foreign private issuers to qualify for termination of Exchange Act reporting under reproposed Rule 12h–6 than under the proposed rule. A review by the Commission's Office of Economic Analysis of trading volume data on a sample of foreign Exchange Act reporting companies that filed Form 20–F during 2004 suggests that approximately 30% of filers would meet the U.S. trading volume threshold of the reproposed rule. That percentage may vary by region.

registration and reporting regime for the first time. Consequently, during the first effective year of Rule 12h–6, the number of Form 20–F annual reports filed could increase by 5%, leading to a net decrease of 20% for Form 20–Fs filed over this same period. This net decrease would cause:

- The number of Form 20–Fs filed to decrease to 880, which is 110 less than the 990 estimated under the originally proposed rule; [138]
- The total number of burden hours required to produce Form 20–F [139] to decrease to 2,314,400 total hours, which is 289,300 hours less than the decrease to 2,603,700 total hours estimated under the originally proposed rule; [140]
- The total number of burden hours required by foreign private issuers to produce Form 20–F to decrease to 578,600 total hours, which is 72,325 hours less than the decrease to 650,925 total hours estimated under the orginally proposed rule; [141] and
- The cost incurred by outside firms to produce Form 20–F to total $694,320,000,[142] which is $108,487,500 more than the $585,832,500 estimated under the originally proposed rule.[143]

B. Form 40–F

During the first year of effectiveness of reproposed Rule 12h–6, we estimate that as many as 10% of Form 40–F filers could terminate their Exchange Act reporting obligations under the new rule, which is the same percentage previously estimated under the originally proposed rule amendments.[144] However, the reproposed rule could encourage some foreign companies to enter the Exchange Act registration and reporting regime for the first time, including some that would be eligible to use the MJDS forms, including the Form 40–F annual report. Consequently, over this same period, the number of Form 40–F annual reports filed could increase by approximately 3%, resulting in a net decrease of 7% for Form 40–Fs filed over this same period.[145] This net decrease would cause:

- The number of Form 40–Fs filed to total 125; [146]
- The number of burden hours required to produce Form 40–F [147] to total 53,375 total hours; [148]
- The number of burden hours required by foreign private issuers to produce Form 40–F to total 13,344 hours; [149] and
- The cost incurred by outside firms to produce Form 40–F to total $16,012,500, which is $4,003,125 [150] more than the $12,009,375 estimated under the originally proposed rule.[151]

C. Form 6–K

During the first year of effectiveness of reproposed Rule 12h–6, we estimate that as many as 23% of foreign private issuers that furnish Form 6–K reports could terminate their Exchange Act reporting obligations under the new rule,[152] compared to the 14% previously estimated under the originally proposed rule amendments. However, the reproposed rule could encourage some foreign companies to enter the Exchange Act registration and reporting regime for the first time, including those that would furnish Form 6–K reports. Consequently, over this same period, the number of Form 6–K reports furnished could increase by as much as 5%,[153] resulting in a net decrease of 18% for Form 6–Ks furnished over this same period. This net decrease would cause:

- The number of Form 6–K reports furnished to decrease to 12,022, which is 1,320 less than the 13,342 estimated under the originally proposed rule;[154]
- The total number of burden hours required to produce the Form 6–Ks [155] to decrease to 104,591 total hours,[156] which is 12,054 hours less than the decrease to 116,645 total hours estimated under the originally proposed rule;
- The total number of burden hours required by foreign private issuers to produce Form 6–K [157] to decrease to 65,369 hours,[158] which is 17,572 hours

[138] 1,100 Form 20–Fs filed annually (prior to this rulemaking) × .20 = 220; 1,100—220 = 880 Form 20–Fs filed annually.

[139] As in the Original Proposing Release, we estimate that a foreign private issuer requires on average 2,630 hours to produce each Form 20–F.

[140] 880 Form 20–Fs filed annually × 2,630 hours per Form 20–F = 2,314,400 hours.

[141] 880 Form 20–Fs × 2,630 hours per Form 20–F × .25 = 578,600 hours. Thus, we estimate that, during the first year of effectiveness of Rule 12h–6, foreign private issuers could incur a reduction of 144,650 hours in the number of burden hours required to produce Form 20–F. 220 Form 20–Fs × 2,630 hrs × .25 = 144,650 hours. Using an estimated hourly rate of $175 for in-house work, foreign private issuers could incur Form 20–F cost savings of $25,313,750 during Rule 12h–6's first year of effectiveness. 144,650 hrs. × $175/hr. = $25,313,750.

[142] 880 Form 20–Fs × 2,630 hours × .75 × $400/hour = $694,320,000. The $108,487,500 increase reflects the increase in the estimated outside firm hourly rate from $300 to $400.

[143] We further estimate cost savings of $173,580,000 regarding outside firms' production of Form 20–Fs during Rule 12h–6's first year of effectiveness. 220 Form 20–Fs × 2,630 hrs. × .75 × $400/hr. = $173,580,000. Thus, during the first year of its effectiveness, Rule 12h–6 could result in total estimated Form 20–F cost savings of $198,893,750. $25,313,750 + $173,580,000 = $198,893,750.

[144] We do not expect the expanded scope of reproposed Rule 12h–6 to have as great an effect on MJDS filers as other foreign reporting companies since, typically, the percentage of an MJDS filer's shares held by U.S. residents and the U.S. trading volume relating to those shares is significant. Moreover, because of their close proximity to U.S. capital markets, we believe MJDS filers are less likely to seek to terminate their Exchange Act reporting obligations than other foreign private issuers. Accordingly, based on current experience, we expect no more than 10% of Form 40–F filers would terminate their Exchange Act reporting obligations under reproposed Rule 12h–6.

[145] This is the same percentage previously estimated under the originally proposed rule amendments.

[146] 134 Form 40–Fs filed annually (prior to this rulemaking) × .07 = 9; 134 − 9 = 125 Form 40–Fs filed annually.

[147] As in the Original Proposing Release, we estimate that it takes 427 hours on average to produce a Form 40–F report.

[148] 125 Form 40–Fs filed annually × 427 hours per Form 40–F = 53,375 hours.

[149] 125 Form 40–Fs filed annually × 427 hours per Form 40–F × .25 = 13,344 hours. Thus, we estimate that, during the first year of effectiveness of reproposed Rule 12h–6, foreign private issuers could incur a reduction of 961 hours in the number of burden hours required to produce Form 40–F. 9 Form 40–Fs × 427 hrs. × .25 × = 961 hrs. This could result in estimated Form 40–F cost savings for foreign private issuers of $168,175. 961 hrs. × $175/hr. = $168,175.

[150] The $4,003,125 increase results from an increase in the estimated outside firm hourly rate from $300 to $400.

[151] 125 Form 40–Fs filed annually × 427 hours per Form 40–F x .75 × $400/hour = $16,012,500. This estimate corresponds to estimated cost savings of $1,152,900 in connection with outside firms' production of Form 40–F during reproposed Rule 12h–6's first year of effectiveness. 9 × 427 hrs. × .75 × $400/hr. = $1,152,900. Thus, during the first year of its effectiveness, Rule 12h–6 could result in estimated total Form 40–F cost savings of $168,175 + $1,152,900 = $1,321,075.

[152] This estimate is based on the estimated number of Form 20–F and Form 40–F filers that are expected to terminate their Exchange Act reporting obligations under reproposed Rule 12h–6. 1,100 Form 20–Fs × .25 = 275; 134 Form 40–Fs × .10 = 13; 288 = .23 × 1,234.

[153] This estimate is based on the estimated number of foreign private issuers that are expected to enter the Exchange Act reporting regime and file Form 20–Fs or Form 40–Fs as a result of this reproposed rulemaking during the first year of effectiveness. 1,100 Form 20–Fs × .05 = 55; 134 Form 40–Fs × .03 = 4; 59 = .05 × 1,234.

[154] 14,661 Form 6–K reports × .18 = 2,639; 14,661–2,639 = 12,022 Form 6–K reports.

[155] In the Original Proposing Release, we estimated that, prior to this rulemaking, it took a total of 127,197 annual burden hours to produce the 14,661 Form 6–Ks, or approximately 8.7 hours per Form 6–K (for work performed by foreign private issuers and outside firms). We continue to use this 8.7 hour estimate for the reproposed rule amendments.

[156] 12,022 Form 6–K reports × 8.7 hours = 104,591 hours.

[157] In the Original Proposing Release, we estimated that the amount of time required to translate foreign language materials into English constitutes approximately 8% of the total hours required to produce Form 6–K. We have revised this estimate to 25% based on updated information provided by financial printer representatives.

[158] 104,591 hours × .25 = 26,148 hours for English translation work; 104,591 hours − 26,148 hours = 78,443 hours for non-English translation work; 78,443 hours × .75 = 58,832 hours for non-English translation work performed by foreign private

less than the decrease to 82,941 total hours estimated under the originally proposed rule;[159] and

• The cost incurred by outside firms to produce Form 6–K to total $10,295,775,[160] which is $2,078,475 more than the $8,217,300 estimated under the originally proposed rule.[161]

D. Form 15F

During the first year of effectiveness of reproposed Rule 12h–6, we estimate that as many as 351 foreign private issuers [162] could file a Form 15F to terminate their Exchange Act reporting obligations compared to the 178 previously estimated under the originally proposed rule amendments. This increase in the estimated number of Form 15F filers could cause:

• The number of burden hours required to produce Form 15F [163] to total 10,530 hours,[164] which is 5,190 hours more than the 5,340 hours estimated under the originally proposed rule amendments;

• Foreign private issuers to incur a total of 2,633 hours to produce Form 15F,[165] which is 1,298 hours more than the 1,335 hours estimated under the originally proposed rule amendments; and

• Outside firms to incur a total cost of $3,159,200 to produce Form 15F,[166] which is $1,174,700 more than the $1,984,500 estimated under the originally proposed rule amendments.[167]

E. Rule 12g3–2(b) Submissions

We estimate that 685 foreign private issuers currently have obtained the Rule 12g3–2(b) exemption.[168] In addition, we estimate that each Rule 12g3–2(b) exempt issuer currently makes 12 Rule 12g3–2(b) submissions per year for a total of 8,220 Rule 12g3–2(b) submissions. We further estimate that it takes a total of 32,880 annual burden hours, or 4 annual burden hours per submission (for work performed by foreign private issuers and outside firms), to produce the 8,220 Rule 12g3–2(b) submissions.[169]

During the first year of effectiveness of reproposed Rule 12h–6, we estimate that as many as 351 foreign private issuers could claim the Rule 12g3–2(b) exemption immediately upon the effectiveness of their termination of reporting under reproposed Rule 12h–6.[170] This increase in the number of Rule 12g3–2(b) exempt issuers would cause:

• The number of issuers claiming the Rule 12g3–2(b) exemption to total 1,036;

• The number of Rule 12g3–2(b) submissions made annually to total 12,432;

• The number of annual burden hours required to produce these Rule 12g3–2(b) submissions to total 49,728 hours;

• Foreign private issuers to incur a total of 31,080 annual burden hours to produce these Rule 12g3–2(b) submissions, or 2.5 annual burden hours per submission;[171] and

• Outside firms to incur a total cost of $4,909,275 [172] to produce the Rule 12g3–2(b) submissions.[173]

issuers; 26,148 hours × .25 = 6,537 hours of English translation work performed by foreign private issuers; 58,832 hours + 6,537 hours = 65,369 total hours for Form 6–K work performed by foreign private issuers, or 5.4 hours for foreign private issuer work per Form 6–K.

[159] We further estimate that, during the first year of effectiveness of reproposed Rule 12h–6, foreign private issuers could incur a reduction of 14,349 hours in the number of burden hours required to produce Form 6–K. 2,639 Form 6–Ks × 8.7 hours = 22,959 hours; 22,959 hours × .25 = 5,740 hours of English translation work; 5,740 hours × .25 = 1,435 hours of English translation work for foreign private issuers; 22,959 × .75 = 17,219 hours of non-English translation work; 17,219 × .75 = 12,914 hours of non-English translation work for foreign private issuers; 1,435 + 12,914 = 14,349 hours. This could result in estimated Form 6–K cost savings of $2,511,075 for foreign private issuers during the first year of reproposed Rule 12h–6's effectiveness. 14,349 hrs. × $175/hr. = $2,511,075.

[160] 78,443 hours × .25 = 19,611 hours × $400/hour = $7,844,400 for non-translation work; 26,148 hours × .75 = 19,611 hours × $125/hour = $2,451,375 for English translation work; $7,844,400 + $2,451,375 = $10,295,775 for total work performed by outside firms. The $2,078,475 increase reflects the increase in the estimated outside firm hourly rate from $300 to $400.and the increase in the estimated outside firm rate for English translation work from $75 to $125/hour based on current information provided by financial printer representatives.

[161] This estimate corresponds to estimated cost savings of $2,260,025 in connection with outside firms' production of Form 6–K during Rule 12h–6's first year of effectiveness. 5,740 hrs. × .75 × $125/hour = $538,125 for English translation work; 17,219 × .25 × $400/hour = $1,721,900 for non-English translation work. $538,125 + $1,721,900 = $2,260,025 in Form 6–K cost savings for outside firms. Thus, Rule 12h–6 could result in total estimated Form 6–K cost savings of $4,771,100. $2,511,075 + $2,260,025 = $4,771,100.

[162] We derived this estimate from the number of Form 20–F filers (275) and Form 40–F filers (13) estimated to elect to terminate their Exchange Act reporting obligations under reproposed Rule 12h–6 during the first year of the rule's effectiveness. We then added to this sum (288) the number of prior Form 15 filers (63) estimated to file a Form 15F during the first year of reproposed Rule 12h–6's effectiveness in order to make their Form 15 termination or suspension of reporting obligations. The latter number is based on the approximate number of foreign private issuers that filed a Form 15 from 2003 through the present.

[163] In the Original Proposing Release, we estimated that the production of each Form 15F would require 30 hours. Although we have revised some aspects of the originally proposed Form 15F, we do not believe these changes are significant enough to affect materially this 30 hour estimate. Therefore, we continue to use this estimate for the reproposed rule amendments.

[164] 351 Form 15Fs × 30 = 10,530 hours.

[165] 10,530 hours × .25 = 2,633 hours. This could result in estimated Form 15F costs for foreign private issuers of $460,775 during reproposed Rule 12h–6's first year of effectiveness. 2,633 hrs. × $175 = $460,775.

[166] 10,530 hours × .75 = 7,898 hours; 7,898 hours × $400/hour = $3,159,200. The $3,159,200 increase reflects the increase in the number of estimated Form 15F filers and the increase in the estimated outside firm hourly rate from $300 to $400.

[167] Thus, reproposed Rule 12h–6 could result in total estimated Form 15F costs of $3,619,975 during its first year of effectiveness. $460,775 + $3,159,200 = $3,619,975.

[168] This estimate is based on Commission staff's most recent annual review of the number of current Rule 12g3–2(b) exempt companies, which will be available soon on our Internet Web site at *http://www.sec.gov/divisions/corpfin.shtml.*

[169] These estimates represent an adjustment of 31,080 hours from the 1,800 total hours previously reported for Rule 12g3–2(b) submissions. As part of this rulemaking, we have re-evaluated the number of foreign private issuers that currently claim the Rule 12g3–2(b) exemption, the number of Rule 12g3–2(b) submissions made by them, and the number of burden hours required for their production, in addition to assessing the effects on Rule 12g3–2(b) submissions expected to result from adoption of the final rule amendments. We believe these estimates more accurately reflect the current burden hours required for the collections of information submitted under Rule 12g3–2(b).

[170] This amount includes the estimated 288 Form 20–F and 40–F filers expected to terminate their Exchange Act reporting obligations under reproposed Rule 12h–6 as well as the estimated 63 prior Form 15 filers expected to file a Form 15F to make their prior termination or suspension of reporting under Rule 12h–6.

[171] Because the home country document submission requirement under Rule 12g3–2(b) is similar to the home country document submission requirement under Form 6–K, we have used the same assumptions regarding the English and non-English translation work required under Rule 12g3–2(b) that we adopted for Form 6–K submissions. Accordingly: 49,728 hours × .25 = 12,432 total annual burden hours for English translation work; 49,728 − 12,432 = 37,296 total annual burden hours required for non-English translation work; 37,296 hours × .75 = 27,972 total annual burden hours incurred by foreign private issuers for non-English translation work; 12,432 hours × .25 = 3,108 total annual hours incurred by foreign private issuers for English translation work; 27,972 + 3,108 = 31,080 total annual burden hours incurred by foreign private issuers for Rule 12g3–2(b) submissions, or 2.5 annual burden hours per submission. Of the 31,080 hours, 10,530 hours would result from adoption of the reproposed rules and 20,550 hours represents an adjustment from the previous PRA estimates for Rule 12g3–2 submissions.

[172] 49,728 hours × .25 = 12,432 hours for English translation work; 12,432 hours × .75 = 9,324 hours; 9,324 hours × $125 = $1,165,500 for English translation work; 49,728 hours − 12,432 hours = 37,296 hours for non-English translation work; 37,296 hours × .25 = 9,324 hours; 9,324 hours × $400 = $3,729,600 for non-English translation work; $1,165,500 + $3,729,600 = $4,895,100 for total work performed by outside firms. Of that total amount, $1,658,475 would result from adoption of the reproposed rules and $3,236,625 constitutes an adjustment from the previous PRA estimates for Rule 12g3–2 submissions.

[173] We further estimate that reproposed Rule 12h–6 and the accompanying rule amendments could result in total estimated Rule 12g3–2(b) costs of $3,501,225 during the first year of their effectiveness. 351 issuers × 12 submissions/issuer × 2.5 hrs./submission = 10,530 hours; 10,530 hours × $175/hr. = $1,842,750 in Rule 12g3–2(b) submission

Continued

Comment Solicited

We solicit comment on the expected effects of reproposed Rule 12h–6 and the accompanying reproposed rule amendments on Form 20–F, Form 40–F, Form 6–K and Rule 12g3–2(b) submissions and on the expected effects of reproposed Form 15F under the PRA. In particular, we solicit comment on:

- The extent to which foreign private issuers would respond to reproposed Rule 12h–6 by electing to file Form 15F to terminate their registration and reporting in the U.S.;
- How many foreign private issuers would join the Exchange Act registration and reporting regime for the first time as a result of the reproposed rule;
- How accurate are our burden hour and cost estimates for Forms 20–F, 40–F, and 6–K, and Rule 12g3–2(b) submissions expected to result from the reproposed rule amendments;
- How accurate are our burden hour and cost estimates for reproposed Form 15F; and
- Whether most of the effects of reproposed Rule 12h–6 would occur during the first year, as expected, or over a longer period, for example, during the first two or three years.

We further solicit comment in order to:

- Evaluate whether the reproposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- Evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Evaluate whether the reproposed rule amendments will have any effects on any other collections of information not previously identified in this section.

Any member of the public may direct to us any comments concerning these burden and cost estimates and any suggestions for reducing the burdens and costs. Persons who desire to submit comments on the collections of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, with reference to File No. S7–12–05. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–12–05, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

IV. Cost-Benefit Analysis

A. Expected Benefits

Reproposed Rule 12h–6 and the accompanying rule amendments would benefit U.S. investors to the extent that they remove a possible disincentive for foreign companies that are not currently Exchange Act reporting companies to register their equity and debt securities with the Commission. In response to foreign companies' concerns about Exchange Act reporting and other obligations, these rules would fine-tune the criteria by which a foreign company may terminate those obligations. In so doing, the reproposed rule amendments should over time remove an impediment to foreign company access and participation in U.S. public capital markets while still providing U.S. investors with the protections afforded by our Exchange Act reporting regime.

The reproposed rule amendments should remove a disincentive for foreign firms to enter our Exchange Act reporting regime by lowering the cost of exiting from that regime. Investors are expected to benefit from the amendments by being able to purchase shares in foreign firms that have been registered with the Commission and that, therefore, provide a high level of investor protection. In addition, U.S. investors may incur lower transaction costs when trading a foreign company's shares on a U.S. exchange relative to a foreign exchange.

To remove a disincentive for foreign companies to enter U.S. public capital markets, the reproposed rule amendments would benefit U.S. investors by enabling a foreign Exchange Act reporting company to lower its costs of compliance in connection with Exchange Act deregistration. This reduction in the cost of compliance would directly benefit both foreign companies and their investors, including those resident in the United States.

The reproposed rule amendments would result in foreign private issuers incurring lower costs of Exchange Act compliance in four possible ways. First, rather than require a foreign private issuer to determine the number of its U.S. holders, as is the case under the current exit rules, reproposed Rule 12h–6 would enable a foreign private issuer to rely solely on trading volume data regarding its securities in the United States and its primary trading market when determining whether it may terminate its Exchange Act reporting obligations. Because trading volume data is more easily obtainable than information regarding its U.S. shareholders, the reproposed rule should lower the costs of Exchange Act termination for foreign private issuers.

Second, reproposed Rule 12h–6 would allow a foreign firm to terminate its Exchange Act reporting obligations regarding a class of equity securities and immediately obtain the Rule 12g3–2(b) exemption. Accordingly, such a terminating foreign private issuer would be able to avoid the costs associated with continued annual verification that its number of holders of record remains below 300.

Third, the reproposed rule would permit an issuer to rely on the assistance of an independent information services provider when determining whether it falls below the 300 U.S. holder standard. The option to hire an independent information services provider may be a more efficient and cost-effective mechanism to make that determination. Moreover, a foreign company may save costs when assessing its eligibility to terminate its registration and reporting under the 300 record holder provision of reproposed Rule 12h–6, since the rule would limit the number of jurisdictions in which a foreign private issuer must search for the amount of securities represented by accounts of customers resident in the United States held by brokers, dealers, banks and other nominees. The current rules require a foreign private issuer to conduct a worldwide search for such U.S. customer accounts.

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costs for foreign private issuers. For outside firm costs: 351 issuers × 12 submissions/issuer × 4 hrs./submission = 16,848 hours; 16,848 × .25 = 4,212 hours of English translation work; 4,212 × .75 × $125 = $394,875 of English translation costs for outside firms. 16,848 hours × .75 = 12,636 hours of non-English translation work; 12,636 × .25 × $400 = $1,263,600 of non-English translation costs for outside firms. $394,875 + $1,263,600 = $1,658,475 in total Rule 12g3–2(b) submission costs for outside firms. $1,842,750 + $1,658,475 = $3,501,225 in total estimated Rule 12g3–2(b) costs.

Fourth, once having terminated its reporting obligations under reproposed Rule 12h–6, a foreign company would no longer be required to incur costs associated with producing an Exchange Act annual report or interim Form 6–K reports.[174] Based on estimates and assumptions used for the purpose of the Paperwork Reduction Act, these estimated cost savings could total approximately $200,000,000 for the first year of reproposed Rule 12h–6's effectiveness.[175]

B. Expected Costs

Investors could incur costs from the reproposed rule amendments to the extent that currently registered foreign companies respond to the rule changes by terminating their Exchange Act registration and reporting obligations with respect to their equity and debt securities. If Exchange Act disclosure requirements provide more information or protection to U.S. or other investors than is provided in an issuer's primary trading market, then all investors, both U.S. and foreign, may suffer the costs of losing that information and protection upon Exchange Act termination.[176] If this is the case, the announcement that a foreign firm is terminating its Exchange Act reporting may result in a loss of share value and the incurrence by investors of higher costs from trading in the firm's equity and debt securities.

There are costs associated with the filing of reproposed Form 15F, which is a requirement for a foreign private issuer that terminates its Exchange Act registration and reporting under Rule 12h–6.[177] A foreign private issuer will also incur costs in connection with having to post on its Internet Web site in English its material home country documents required to maintain the Rule 12g3–2(b) exemption that it will have received upon the effectiveness of its termination of reporting under reproposed Rule 12h–6.[178]

We expect that reproposed Rule 12h–6 would enable some foreign registrants to avoid other recent U.S. regulation, such as the Sarbanes-Oxley Act.[179] Investors would lose the benefits afforded by the Sarbanes-Oxley Act to the extent a current foreign registrant is not fully subject to that Act.

Some U.S. investors might seek to trade in the equity securities of a foreign company following its termination of Exchange Act reporting under reproposed Rule 12h–6. U.S. investors seeking to trade the former reporting company's securities in the U.S. may be forced to trade in over-the-counter markets such as the one administered by Pink Sheets, LLC, which could result in higher transaction costs than if the foreign company had continued to have a class of securities registered with the Commission.

U.S. investors seeking to trade the former reporting company's securities in its primary trading market also could incur additional costs. For example, U.S. investors who held the securities in the form of ADRs could incur costs associated with the depositary's conversion of the ADRs into ordinary shares.[180] Moreover, some U.S. investors could incur costs associated with finding and contracting with a new broker-dealer who is able to trade in the foreign reporting company's primary trading market. U.S. investors may face additional costs due to the cost of currency conversion and higher transaction costs trading the securities in a foreign market.

Some investors who wish to make investment decisions regarding former Exchange Act reporting foreign companies also may incur costs to the extent that the information provided by such companies pursuant to any home country regulations is different from that which currently is required under the Exchange Act. Such investors could incur costs associated with hiring an attorney or investment adviser, to the extent that they have not already done so, to explain the material differences, if any, between a foreign company's home country reporting requirements, as reflected in its home country annual report posted on its Internet Web site, and Exchange Act reporting requirements.

Comment Solicited

We solicit comment on the costs and benefits to U.S. and other investors, foreign private issuers, and others who may be affected by reproposed Rule12h–6, reproposed Form 15F and the associated reproposed rule amendments. We request your views on the costs and benefits described above as well as on any other costs and benefits that could result from adoption of the reproposed rules. We also request data to quantify the costs and value of the benefits identified. In particular, we solicit comment on:

- The number of current foreign private issuers that are expected to terminate their Exchange Act registration and reporting as a result of reproposed Rule 12h–6 and the accompanying reproposed rule amendments and the timing of such termination;
- The number of prospective foreign companies that are expected to join the Exchange Act reporting regime as a result of the reproposed rules and the timing of such intial registration and reporting; and
- How investors would be affected both directly and indirectly from the rule proposals, as discussed in this section.

V. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation Analysis

When adopting rules under the Exchange Act, Section 23(a)(2) of the Exchange Act[181] requires us to consider the impact that any new rule would have on competition. Section 23(a)(2) also prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, Section 3(f) of the Exchange Act[182] requires the Commission to

[174] We recognize that, as a result of terminating their Exchange Act reporting obligations under reproposed Rule 12h–6, foreign firms may accrue other cost savings that are not specifically quantified in this section. One such example is an investment in an internal control system in order to comply with the Sarbanes-Oxley Act.

[175] As discussed in Part III of this release, for the first year of reproposed Rule 12h–6's effectiveness, estimated cost savings in connection with Forms 20–F, 40–F and 6–K could amount to, respectively, $198,893,750, $1,321,075, and $4,771,100, for a total of $204,985,925.

[176] Conversely, in countries that have similar regulatory regimes and levels of investor protection, the impact of U.S. deregistration may be mitigated.

[177] As discussed in Part III of this release, based on estimates and assumptions adopted for the purpose of the Paperwork Reduction Act, these costs could total $3,619,975 during the first year of the reproposed form's use.

[178] As discussed in Part III of this release, based on estimates and assumptions adopted for the Paperwork Reduction Act, these resulting Rule 12g3–2(b) costs could amount to $3,501,225.

[179] 15 U.S.C. 7201 *et seq.*

[180] A foreign company may terminate its ADR facility whether or not it is an Exchange Act registrant, and reproposed Rule 12h–6 does not require the termination of ADR facilities. In fact, by granting foreign private issuers the Rule 12g3–2(b) exemption immediately upon their termination of reporting with regard to a class of equity securities, Rule 12h–6 would enable foreign private issuers to retain their ADR facilities as unlisted facilities following their termination of reporting under Rule 12h–6. As reproposed, Rule 12h–6 would require an issuer that has terminated a sponsored ADR facility to wait a year before it may file a Form 15F in reliance on the trading volume provision of reproposed Rule 12h–6.

[181] 15 U.S.C. 78w(a)(2).

[182] 15 U.S.C. 78c(f).

consider whether the action will promote efficiency, competition and capital formation.

In the Original Proposing Release, we considered proposed Rule 12h–6 and the accompanying proposed rule amendments in light of the standards set forth in the above statutory sections. We solicited comment on whether, if adopted, proposed Rule 12h–6 and the other proposed rule amendments would result in any anti-competitive effects or promote efficiency, competition and capital formation. We further encouraged commenters to provide empirical data or other facts to support their views on any anti-competitive effects or any burdens on efficiency, competition or capital formation that might result from adoption of proposed Rule 12h–6 and the other proposed rule amendments.

Although most commenters did not submit any empirical data to support their views, many commenters maintained that proposed Rule 12h–6 would not achieve its intended purpose—to facilitate the exit from the Exchange Act reporting system of a foreign private issuer in which there is relatively little U.S. market interest and thereby remove a disincentive for other foreign companies to join that system. According to these commenters, because a significant number of foreign reporting companies would not benefit from the proposed new rules, other foreign companies would avoid registering their securities with the Commission out of concern that once an issuer became an Exchange Act reporting company, it would remain one indefinitely. Consequently, according to these commenters, contrary to the Commission's intention, the rule proposals would not promote competition and capital formation by foreign private issuers in the U.S. securities markets.

In response to these concerns, we have revised the rule proposals in several respects, including proposing a provision that would enable a foreign registrant to terminate its Exchange Act reporting obligations based solely on trading volume data, which should be more easily obtainable than information regarding the number of a foreign registrant's U.S. holders or the percentage of shares held by such holders. We believe the reproposed rule amendments will provide a foreign reporting company with a more efficient option of exiting the Exchange Act reporting system when U.S. investor interest has become relatively scarce. In so doing, reproposed Rule 12h–6 and the other reproposed rule amendments should encourage foreign private issuers to register their equity and debt securities with the Commission by reassuring foreign private issuers that, should interest in the U.S. market for their securities decline sufficiently, they may exit the Exchange Act reporting system with little difficulty.

By providing increased flexibility for foreign private issuers regarding our Exchange Act reporting system, the reproposed rule amendments should encourage foreign companies to participate in U.S. capital markets as Exchange Act reporting companies to the benefit of investors. In so doing, the reproposed rule amendments should foster increased competition between domestic and foreign firms for investors in U.S. capital markets.

Moreover, by requiring a foreign private issuer that has terminated its Exchange Act reporting under reproposed Rule 12h–6 to publish its home country documents required under Exchange Act Rule 12g3–2(b) in English on its Internet Web site or through an electronic information delivery system that is generally available to the public in its primary trading market, the reproposed rules would help ensure that U.S. investors continue to have ready access to material information in English about the foreign private issuer.[183] Thus, reproposed Rule 12h–6 and the accompanying rule amendments should foster increased efficiency in the trading of the issuer's securities for U.S. investors following the issuer's termination of Exchange Act reporting.

Comment Solicited

We solicit comment on whether the reproposed rules would impose a burden on competition or whether they would promote efficiency, competition and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VI. Regulatory Flexibility Act Certification

The Securities and Exchange Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that reproposed Rule 12h–6 and reproposed Form 15F under the Exchange Act, the reproposed amendments to Rules 12g3–2, 12g–4 and 12h–3 under the Exchange Act, and the reproposed amendments to Rule 30–1 of its Delegation of Authority rules and Rule 101 of Regulation S–T, if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act. The reason for this certification is as follows.

Reproposed Rule 12h–6, reproposed Form 15F and the accompanying reproposed rule amendments would permit the termination of Exchange Act reporting by a foreign private issuer regarding a class of equity securities under either Exchange Act section 12(g) or section 15(d) for which U.S. markets show relatively little interest. The reproposed rules would further permit a foreign private issuer that seeks termination of reporting regarding a class of equity or debt securities to also terminate its section 15(d) reporting obligations regarding a class of debt securities as long as it meets conditions similar to those currently required for suspending reporting obligations under section 15(d). The reproposed rule amendments would also automatically extend the Exchange Act Rule 12g3–2(b) exemption to a foreign private issuer that has terminated its Exchange Act reporting obligations with regard to a class of equity securities pursuant to reproposed Rule 12h–6 on the condition that it publish material information required by its home country in English on its Internet Web site or through an electronic information delivery system that is generally available to the public in its primary trading market. The reproposed rule amendments would similarly extend an electronic publishing option to a foreign private issuer that has obtained the Rule12g3–2(b) exemption upon application and not under Rule 12h–6.

Because reproposed Rule 12h–6 and the accompanying reproposed rule amendments would only apply to foreign private issuers, they would directly affect only foreign companies and not domestic companies. Similarly, reproposed Form 15F would only affect foreign companies since only foreign private issuers would be permitted to use this form.

Based on an analysis of the language and legislative history of the Regulatory Flexibility Act, Congress did not intend that the Act apply to foreign issuers. Accordingly, the entities directly affected by the reproposed rule and form amendments will fall outside the scope of the Act. For this reason, reproposed Exchange Act Rule 12h–6, reproposed Form 15F, and the accompanying reproposed rule amendments should not have a significant economic impact on a substantial number of small entities.

[183] Similarly, by expanding the scope of proposed Rule 12h–6 to permit prior Form 15 filers to terminate their Exchange Act reporting obligations under the reproposed, new exit rule and claim the Rule 12g3–2(b) exemption immediately upon such termination, the reproposed rules would help promote the availability of material home country information in English about those issuers for U.S. investors.

We encourage written comments regarding this certification. We request in particular that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VII. Statutory Basis and Text of Proposed Rule Amendments

We are reproposing the amendments to Rule 30–1 of Part 200, Rule 101 of Regulation S–T, and Exchange Act Rules 12g3–2, 12g–4 and 12h–3, new Exchange Act Rule 12h–6 and new Exchange Act Form 15F under the authority in sections 6, 7, 10 and 19 of the Securities Act[184] and sections 3(b), 12, 13, 23 and 36 of the Exchange Act.[185]

List of Subjects

17 CFR Part 200

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

17 CFR Parts 232, 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

For the reasons set out in the preamble, we propose to amend Title 17, Chapter II of the Code of Federal Regulations as follows.

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

1. The general authority citation for part 200 is revised to read as follows:

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

* * * * *

2. Amend § 200.30–1 by adding paragraph (e)(17) to read as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(e) * * *

(17) At the request of a foreign private issuer, pursuant to Rule 12h–6 (§ 240.12h–6 of this chapter), to accelerate the termination of the registration of a class of securities under section 12(g) of the Act (15 U.S.C. 78*l*(g)) or the duty to file reports under section 13(a) of the Act (15 U.S.C. 78m(a)) or section 15(d) of the Act (15 U.S.C. 78o(d)).

* * * * *

[184] 15 U.S.C. 77f, 77g, 77j, and 77s.

[185] 15 U.S.C. 78c, 78*l*, 78m, 78w, and 78mm.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

3. The general authority citation for part 232 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

4. Amend § 232.101 by:

a. Removing the word ''and'' at the end of paragraph (a)(1)(x);

b. Removing the period and adding ''; and'' at the end of paragraph (a)(1)(xi); and

c. Adding paragraph (a)(1)(xii).

The addition reads as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xii) Forms 15 and 15F (§ 249.323 and § 249.324 of this chapter).

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The general authority citation for part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

6. Amend § 240.12g3–2 by revising paragraphs (d)(1) and (d)(2) and adding paragraphs (e) and (f) to read as follows:

§ 240.12g3–2 Exemptions for American depositary receipts and certain foreign securities.

* * * * *

(d) * * *

(1) Securities of a foreign private issuer that has or has had during the prior eighteen months any securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act (other than arising solely by virtue of the use of Form F–7, F–8, F–9, F–10 or F–80), except as provided by paragraph (e) of this section;

(2) Securities of a foreign private issuer issued in a transaction (other than a transaction registered on Form F–8, F–9, F–10 or F–80) to acquire by merger, consolidation, exchange of securities or acquisition of assets, another issuer that had securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act, except as provided by paragraph (e) of this section; and

* * * * *

(e)(1) A foreign private issuer that has filed a Form 15F (§ 249.324 of this chapter) pursuant to § 240.12h-6 shall receive the exemption provided by paragraph (b) of this section for a class of equity securities immediately upon the effectiveness of the termination of registration of that class of securities under section 12(g) of the Act (15 U.S.C. 78l(g)) or the termination of the duty to file reports regarding that class of securities under section 15(d) of the Act (15 U.S.C. 78o(d)), or both.

(2) Notwithstanding any provision of § 240.12g3–2(b), in order to satisfy the conditions of the § 240.12g3–2(b) exemption received under this paragraph, the issuer shall publish in English the information required under paragraph (b)(1)(iii) of this section on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, rather than furnish that information to the Commission.

(3) The § 240.12g3–2(b) exemption received under this paragraph will remain in effect for as long as the foreign private issuer satisfies the electronic publication condition of paragraph (e)(2) of this section or until the issuer registers a class of securities under section 12 of the Act or incurs reporting obligations under section 15(d) of the Act.

(4) Notwithstanding the time period specified in § 240.12g3–2(d)(1), a foreign private issuer that filed a Form 15F solely with respect to a class of debt securities under section 15(d) of the Act (15 U.S.C. 78o(d)) may apply for the exemption provided by paragraph (b) of this section for a class of equity securities at any time following the effectiveness of its termination of reporting regarding the class of debt securities.

Note 1 to Paragraph (e): 1. In order to maintain the § 240.12g3–2(b) exemption obtained under this paragraph, at a minimum, a foreign private issuer shall electronically publish English translations of the following documents required to be furnished under paragraph (b)(1)(iii) of this section if in a foreign language:

a. Its annual report, including or accompanied by annual financial statements;

b. Interim reports that include financial statements;

c. Press releases; and

d. All other communications and documents distributed directly to security holders of each class of securities to which the exemption relates.

Note 2 to Paragraph (e): As used in paragraph (e)(2) of this section, *primary trading market* has the same meaning as under § 240.12h-6(e).

Note 3 to Paragraph (e): A foreign private issuer that filed a Form 15F regarding a class of equity securities shall disclose in the Form 15F the address of its Internet Web site or that of the electronic information delivery system in its primary trading market on which it will publish the information required under paragraph (b)(1)(iii) of this section. An issuer need not update the Form 15F to reflect a change in that address.

Note 4 to Paragraph (e): A foreign private issuer that filed a Form 15F solely with respect to a class of debt securities must provide the Commission with the address of its Internet Web site or that of the electronic information delivery system in its primary trading market when it applies for the exemption under § 240.12g3–2(b) regarding a class of equity securities.

(f)(1) A foreign private issuer that, upon application to the Commission and not after filing a Form 15F, has obtained or will obtain the exemption under § 240.12g3–2(b), may publish the information required under paragraph (b)(1)(iii) of this section on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, rather than furnish that information to the Commission, as long as it complies with the English translation requirements provided in paragraph (e) of this section.

(2) Before a foreign private issuer may publish information electronically pursuant to this paragraph, it must provide the Commission with the address of its Internet Web site or that of the electronic information delivery system in its primary trading market in its application for the exemption under § 240.12g3–2(b) or in an amendment to that application.

7. Amend § 240.12g–4 by:

a. Removing the authority citations following the section; and

b. Revising paragraph (a) to read as follows:

§ 240.12g–4 Certifications of termination of registration under section 12(g).

(a) Termination of registration of a class of securities under section 12(g) of the Act (15 U.S.C. 78l(g)) shall take effect 90 days, or such shorter period as the Commission may determine, after the issuer certifies to the Commission on Form 15 (17 CFR 249.323) that the class of securities is held of record by:

(1) Less than 300 persons; or

(2) Less than 500 persons, where the total assets of the issuer have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years.

* * * * *

8. Amend § 240.12h–3 by:

a. Removing the authority citations following the section;

b. Adding the word ''and'' at the end of paragraph (b)(1)(ii);

c. Removing paragraph (b)(2), including the undesignated paragraph;

d. Redesignating paragraph (b)(3) as (b)(2);

e. Revising the cite ''paragraphs (b)(1)(ii) and (2)(ii)'' to read ''paragraph (b)(1)(ii)'' in paragraph (c); and

f. Revising the phrase ''criteria (i) and (ii) in either paragraph (b)(1) or (2)'' to read ''either criteria (i) or (ii) of paragraph (b)(1)'' in paragraph (d).

9. Add § 240.12h–6 to read as follows:

§ 240.12h–6 Certification by a foreign private issuer regarding the termination of registration of a class of securities under section 12(g) or the duty to file reports under section 13(a) or section 15(d).

(a) A foreign private issuer may terminate the registration of a class of securities under section 12(g) of the Act (15 U.S.C. 78l(g)) or terminate the obligation under section 15(d) of the Act (15 U.S.C. 78o(d)) to file or furnish reports required by section 13(a) of the Act (15 U.S.C. 78m(a)), or both, with respect to a class of equity securities, after certifying to the Commission on Form 15F (17 CFR 249.324) that:

(1) The foreign private issuer has had reporting obligations under section 13(a) or section 15(d) of the Act for at least the 12 months preceding the filing of the Form 15F, has filed or furnished all reports required for this period, and has filed at least one annual report pursuant to section 13(a) of the Act;

(2) The foreign private issuer's securities have not been sold in the United States in a registered offering under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) during the 12 months preceding the filing of the Form 15F, other than securities issued:

(i) To the issuer's employees;

(ii) By selling security holders in non-underwritten offerings;

(iii) Upon the exercise of outstanding rights granted by the issuer if the rights are granted pro rata to all existing security holders of the class of the issuer's securities to which the rights attach;

(iv) Pursuant to a dividend or interest reinvestment plan; or

(v) Upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer;

Note to Paragraph (a)(2): The exceptions in paragraphs (a)(2)(iii)–(v) do not apply to securities issued pursuant to a standby underwritten offering or other similar arrangement in the United States;

(3) The foreign private issuer has maintained a listing of the subject class of securities for at least the 12 months preceding the filing of the Form 15F on an exchange in a foreign jurisdiction that, either singly or together with the trading of the same class of the issuer's securities in another foreign jurisdiction, constitutes the primary trading market for those securities; and

(4)(i) The average daily trading volume of the subject class of securities in the United States during a recent 12-month period has been no greater than 5 percent of the average daily trading volume of that class of securities in the issuer's primary trading market during the same period; or

(ii) On a date within 120 days before the filing date of the Form 15F, a foreign private issuer's subject class of equity securities is either held of record by:

(A) Less than 300 persons on a worldwide basis; or

(B) Less than 300 persons resident in the United States.

Note 1 to Paragraph (a)(4): If an issuer has delisted a class of equity securities from a national securities exchange or inter-dealer quotation system in the United States, and at the time of delisting, the average daily trading volume of that class of securities in the United States exceeded 5 percent of the average daily trading volume of that class of securities in the issuer's primary trading market threshold for the preceding 12 months, the issuer must wait at least 12 months before it may file a Form 15F to terminate its section 13(a) or 15(d) reporting obligations in reliance on paragraph (a)(4)(i).

Note 2 to Paragraph (a)(4): An issuer that has terminated a sponsored American Depositary Receipts facility must wait 12 months before it may file a Form 15F to terminate its section 13(a) or 15(d) reporting obligations in reliance on paragraph (a)(4)(i).

(b) A foreign private issuer may terminate its duty to file or furnish reports pursuant to section 13(a) or section 15(d) of the Act with respect to a class of debt securities after certifying to the Commission on Form 15F that:

(1) The foreign private issuer has filed or furnished all reports required by section 13(a) or section 15(d) of the Act, including at least one annual report pursuant to section 13(a) of the Act; and

(2) On a date within 120 days before the filing date of the Form 15F, the class of debt securities is either held of record by:

(i) Less than 300 persons on a worldwide basis; or

(ii) Less than 300 persons resident in the United States.

(c)(1) Following a merger, consolidation, exchange of securities, acquisition of assets or otherwise, a foreign private issuer that has succeeded to the reporting obligations under section 13(a) of the Act of another issuer pursuant to § 240.12g–3, or to the reporting obligations of another issuer

under section 15(d) of the Act pursuant to § 240.15d–5, may file a Form 15F to terminate those reporting obligations if:

(i) Regarding a class of equity securities, the successor issuer meets the conditions under paragraphs (a)(1), (a)(3) and (a)(4) of this section; or

(ii) Regarding a class of debt securities, the successor issuer meets the conditions under paragraph (b) of this section.

(2) When determining whether it meets the prior reporting requirement under paragraph (a)(1) or paragraph (b)(1) of this section, a successor issuer may take into account the reporting history of the issuer whose reporting obligations it has assumed pursuant to § 240.12g–3 or § 240.15d–5.

(d) *Counting method.* When determining under this section the number of United States residents holding a foreign private issuer's equity or debt securities:

(1)(i) Use the method for calculating record ownership § 240.12g3–2(a), except that you may limit your inquiry regarding the amount of securities represented by accounts of customers resident in the United States to brokers, dealers, banks and other nominees located in:

(A) The United States;

(B) The foreign private issuer's jurisdiction of incorporation, legal organization or establishment; and

(C) The foreign private issuer's primary trading market, if different from the issuer's jurisdiction of incorporation, legal organization or establishment.

(ii) If you aggregate the trading volume of the issuer's securities in two foreign jurisdictions for the purpose of complying with paragraph (a)(3) of this section, you must include both of those foreign jurisdictions when conducting your inquiry under paragraph (d)(1)(i) of this section.

(2) If, after reasonable inquiry, you are unable without unreasonable effort to obtain information about the amount of securities represented by accounts of customers resident in the United States, for purposes of this section, you may assume that the customers are the residents of the jurisdiction in which the nominee has its principal place of business.

(3) You must count securities as owned by United States holders when publicly filed reports of beneficial ownership or information that is otherwise provided to you indicates that the securities are held by United States residents.

(4) When calculating under this section the number of your United States resident security holders, you may rely in good faith on the assistance of an independent information services provider that in the regular course of its business assists issuers in determining the number of, and collecting other information concerning, their security holders.

(e) *Definitions.* For the purpose of this section:

(1) *Debt security* means any security other than an equity security as defined under § 240.3a11–1, including non-participatory preferred stock, which is defined as non-convertible capital stock, the holders of which are entitled to a preference in payment of dividends and in distribution of assets on liquidation, dissolution, or winding up of the issuer, but are not entitled to participate in residual earnings or assets of the issuer.

(2) *Employee* has the same meaning as the definition of employee provided in Form S–8 (§ 239.16b).

(3) *Equity security* has the same meaning as under § 240.3a11–1.

(4) *Foreign private issuer* has the same meaning as under § 240.3b-4.

(5) *Primary trading market* means that:

(i) At least 55 percent of the trading in a foreign private issuer's class of securities that is the subject of Form 15F took place in, on or through the facilities of a securities market in a single foreign jurisdiction or in no more than two foreign jurisdictions during a recent 12-month period; and

(ii) If a foreign private issuer aggregates the trading of its subject class of securities in two foreign jurisdictions for the purpose of this section, the trading market for the issuer's securities in at least one of the two foreign jurisdictions must be larger than the United States trading market for the same class of the issuer's securities.

(6) *Recent 12-month period* means a 12-calendar-month period that ended no more than 60 days before the filing date of the Form 15F.

(f)(1) Suspension of a foreign private issuer's duty to file reports under section 13(a) or section 15(d) of the Act shall occur immediately upon filing the Form 15F with the Commission if filing pursuant to paragraph (a), (b) or (c) of this section. If there are no objections from the Commission, 90 days, or such shorter period as the Commission may determine, after the issuer has filed its Form 15F, the effectiveness of any of the following shall occur:

(i) The termination of registration of a class of securities under section 12(g); and

(ii) The termination of a foreign private issuer's duty to file reports under section 13(a) or section 15(d) of the Act.

(2) If the Form 15F is subsequently withdrawn or denied, the issuer shall, within 60 days after the date of the withdrawal or denial, file with or submit to the Commission all reports that would have been required had the issuer not filed the Form 15F.

(g) As a condition to termination of reporting under paragraph (a), (b) or (c) of this section, a foreign private issuer must, either before or on the date that it files its Form 15F, publish a notice in the United States that discloses its intent to terminate its reporting obligations under section 13(a) or section 15(d) of the Act or both. The issuer must publish the notice through a means reasonably designed to provide broad dissemination of the information to the public in the United States. The issuer must also submit a copy of the notice to the Commission, either under cover of a Form 6–K (17 CFR 249.306) before or at the time of filing of the Form 15F, or as an exhibit to the Form 15F.

(h)(1) A foreign private issuer that, before the effective date of this section, terminated the registration of a class of securities under section 12(g) of the Act or suspended its reporting obligations regarding a class of equity or debt securities under section 15(d) of the Act may file a Form 15F in order to:

(i) Terminate under this section the registration of a class of equity securities that was the subject of a Form 15 (§ 249.323 of this chapter) filed by the issuer pursuant to § 240.12g–4; or

(ii) Terminate its reporting obligations under section 15(d) of the Act, which had been suspended by the terms of that section or by the issuer's filing of a Form 15 pursuant to § 240.12h–3, regarding a class of equity or debt securities.

(2) In order to be eligible to file a Form 15F under this paragraph:

(i) An issuer must currently not be required to register a class of securities under section 12(g) of the Act or be required to file reports under section 15(d) of the Act; and

(ii) If a foreign private issuer terminated the registration of a class of securities pursuant to § 240.12g–4 or suspended its reporting obligations pursuant to § 240.12h–3 or section 15(d) of the Act regarding a class of equity securities, for at least the 12 months before the filing of its Form 15F, the issuer must have maintained a listing of the subject class of equity securities on an exchange in a foreign jurisdiction that, either singly or together with one other foreign jurisdiction, constitutes the primary trading market for the issuer's class of equity securities.

(3)(i) If the Commission does not object, 90 days after the filing of a Form 15F under this paragraph, or such shorter period as the Commission may determine, the effectiveness of any of the following shall occur:

(A) The termination under this section of the registration of a class of equity securities, which was the subject of a Form 15 filed pursuant to § 240.12g–4, and the duty to file reports required by section 13(a) of the Act regarding that class of securities; or

(B) The termination of a foreign private issuer's reporting obligations under section 15(d) of the Act, which had previously been suspended by the terms of that section or by the issuer's filing of a Form 15 pursuant to § 240.12h–3, regarding a class of equity or debt securities.

(ii) If the Form 15F is subsequently withdrawn or denied, the foreign private issuer shall, within 60 days after the date of the withdrawal or denial, file with or submit to the Commission all reports that would have been required had the issuer not filed the Form 15F.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

10. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

11. Add § 249.324 to read as follows:

§ 249.324 Form 15F, certification by a foreign private issuer regarding the termination of registration of a class of securities under section 12(g) or the duty to file reports under section 13(a) or section 15(d).

This form shall be filed by a foreign private issuer to disclose and certify the information on the basis of which it meets the requirements specified in Rule 12h–6 (§ 240.12h–6 of this chapter) to terminate the registration of a class of securities under section 12(g) of the Act (15 U.S.C. 78l(g)) or the duty to file reports under section 13(a) of the Act (15 U.S.C. 78m(a)) or section 15(d) of the Act (15 U.S.C. 78(o)(d)). In each instance, unless the Commission objects, termination occurs 90 days, or such shorter time as the Commission may direct, after the filing of Form 15F.

12. Add Form 15F (referenced in § 249.324) to read as follows:

(Note: The text of Form 15F will not appear in the Code of Federal Regulations.)

OMB APPROVAL

OMB Number: 3235–0621.

Expires:

Estimated average burden hours per response: 30.0.

United States Securities and Exchange Commission, Washington, DC 20549

Form 15F—Certification of a Foreign Private Issuer's Termination of Registration of a Class of Securities Under Section 12(g) of the Securities Exchange Act of 1934 or Its Termination of the Duty to File Reports Under Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934

Commission File Number_____

_____

(Exact name of registrant as specified in its charter)

_____

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

_____

(Title of each class of securities covered by this Form)

Place an X in the appropriate box(es) to indicate the provision(s) relied upon to terminate the duty to file reports under the Securities Exchange Act of 1934:

Rule 12h–6(a)	☐	Rule 12h–6(c)	☐
Rule 12h–6(b)	☐	Rule 12h–6(h)	☐

General Instructions

A. Who May Use Form 15F and When

1. A foreign private issuer may file Form 15F, pursuant to Rule 12h–6(a) (17 CFR 240.12h–6(a)) under the Securities Exchange Act of 1934 (''Exchange Act''), when seeking to terminate:

- The registration of a class of securities under section 12(g) of the Exchange Act and the corresponding duty to file or furnish reports required by section 13(a) of the Exchange Act; or
- The obligation under section 15(d) of the Exchange Act to file or furnish reports required by section 13(a) of the Act regarding a class of equity securities; or
- Both.

2. A foreign private issuer may file Form 15F, pursuant to Rule 12h–6(b) (17 CFR 240.12h–6(b)), when seeking to terminate its reporting obligations under section 13(a) or section 15(d) of the Exchange Act regarding a class of debt securities.

3. A foreign private issuer may file Form 15F, pursuant to Rule 12h–6(c) (17 CFR 240.12h–6(c)), when seeking to terminate reporting obligations under section 13(a) or section 15(d) of the Exchange Act to which it has succeeded pursuant to Rule 12g–3 (17 CFR 240.12g–3) or Rule 15d–5 (17 CFR 240.15d–5).

4. A foreign private issuer may file Form 15F, pursuant to Rule 12h–6(h) (17 CFR 240.12h–6(h)), if, before the effective date of Rule 12h–6, it terminated the registration of a class of securities under section 12(g) of the Act, or suspended its reporting obligations regarding a class of equity or debt securities under section 15(d) of the Act, in order to:

- Terminate under Rule 12h–6 the registration of a class of equity securities that was the subject of a Form 15 (§ 249.323 of this chapter) filed by the issuer pursuant to § 240.12g–4; or
- Terminate its reporting obligations under section 15(d) of the Act, which had been suspended by the terms of that section or by the issuer's filing of a Form 15 pursuant to § 240.12h–3, regarding a class of equity or debt securities.

B. Certification Effected by Filing Form 15F

By completing and signing this Form, the issuer certifies that:

- It meets all of the conditions for termination of Exchange Act reporting specified in Rule 12h–6 (17 CFR 240.12h–6); and
- There are no classes of securities other than those that are the subject of this Form 15F regarding which the issuer has Exchange Act reporting obligations.

C. Effective Date

For an issuer filing Form 15F under Rule 12h–6(a), (b) or (c), the duty to file any reports required under section 13(a) of the Exchange Act will be suspended immediately upon filing the Form 15F. If there are no objections from the Commission, 90 days, or within a shorter period as the Commission may determine, after the issuer has filed its Form 15F, there shall take effect:

- The termination of registration of a class of securities under section 12(g) of the Act;
- The termination of the issuer's duty to file or submit reports under section 13(a) or section 15(d) of the Act; or
- Both.

For an issuer that has already terminated its registration of a class of equity securities pursuant to Rule 12g–4 or suspended its reporting obligations under section 15(d) or Rule 12h–3, the effectiveness of its termination of section 12(g) registration under Rule 12h–6 and the corresponding duty to file reports required by section 13(a) of the Act, or the termination of its previously suspended reporting obligations under section 15(d) of the Act, shall also occur 90 days after the issuer has filed its Form 15F under Rule 12h–6(h), or within a shorter period as the Commission may determine, if there are no objections from the Commission.

Regardless of the particular Rule 12h–6 provision under which it is filing the Form 15F, an issuer that seeks an effective date sooner than 90 days after the filing of its Form 15F must submit its request to the Commission in writing.

D. Other Filing Requirements

You must file Form 15F and related materials, including correspondence, in electronic format via our Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232). The Form 15F and related materials must be in the English language as required by Regulation S–T Rule 306 (17 CFR 232.306). You must provide the signature required for Form 15F in accordance with Regulation S–T Rule 302 (17 CFR 232.302). If you have technical questions about EDGAR, call the EDGAR Filer Support Office at (202) 551–8900. If you have questions about the EDGAR

rules, call the Office of EDGAR and Information Analysis at (202) 551–3610.

If the Form 15F is subsequently withdrawn or denied, you must, within 60 days after the date of the withdrawal or denial, file with or submit to the Commission all reports that would have been required had you not filed the Form 15F. See Rule 12h–6(f)(2) (17 CFR 240.12h–6(f)(2)) and Rule 12h–6(h)(3)(ii) (17 CFR 240.12h–6(h)(3)(ii)).

E. Rule 12g3–2(b) Exemption

Regardless of the particular Rule 12h–6 provision under which it is proceeding, a foreign private issuer that has filed a Form 15F regarding a class of equity securities shall receive the exemption under Rule 12g3–2(b) (17 CFR 240.12g3–2(b)) for the subject class of equity securities immediately upon the effective date of its termination of registration and reporting under Rule 12h–6. Refer to Rule 12g3–2(e) or (f) (17 CFR 240.12g3–2(e) or (f)) for the conditions that a foreign private issuer must meet in order to maintain the Rule 12g3–2(b) exemption following its termination of Exchange Act registration and reporting.

Part I

The purpose of this part is to assist the Commission in assessing whether you meet the requirements for terminating your Exchange Act reporting under Rule 12h–6. If, pursuant to Rule 12h–6, there is an item that does not apply to you, mark that item as inapplicable.

Item 1. Exchange Act Reporting History

A. State when you first incurred the duty to file reports under section 13(a) or section 15(d) of the Exchange Act.

B. State whether you have filed or submitted all reports required under Exchange Act section 13(a) or section 15(d) and corresponding Commission rules for the 12 months preceding the filing of this form, and whether you have filed at least one annual report under section 13(a).

Instruction to Item 1

If you are a successor issuer that has filed this Form 15F pursuant to Rule 12h–6(c), and are relying on the reporting history of the issuer to which you have succeeded under Rule 12g–3 (17 CFR 12g–3) or Rule 15d–5 (17 CFR 240.15d–5), identify that issuer and provide the information required by this section for that issuer.

Item 2. Recent United States Market Activity

State when your securities were last sold in the United States in a registered offering under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act'').

Instructions to Item 2

1. Do not include registered offerings involving the issuance of securities:

a. To your employees, as that term is defined in Form S–8 (17 CFR 239.16b);

b. By selling security holders in non-underwritten offerings;

c. Upon the exercise of outstanding rights granted by the issuer if the rights are granted pro rata to all existing security holders of the class of the issuer's securities to which the rights attach;

d. Pursuant to a dividend or interest reinvestment plan; or

e. Upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer.

However, you must include registered offerings described in paragraphs (c) through (e) of this instruction if undertaken pursuant to a standby underwritten offering or other similar arrangement in the United States.

2. If you have registered equity securities on a shelf or other Securities Act registration statement under which securities remain unsold, disclose the last sale of securities under that registration statement. If no sale has occurred during the preceding 12 months, disclose whether you have filed a post-effective amendment to terminate the registration of unsold securities under that registration statement.

Item 3. Primary Trading Market

A. Identify the exchange outside the United States, and the foreign jurisdiction in which that exchange is located, on which you have maintained a listing of the class of securities that is the subject of this Form.

B. Provide the date of initial listing on that foreign exchange. In addition, disclose whether you have maintained a listing of the subject class of securities on that foreign exchange for at least the 12 months preceding the filing of this Form.

C. Disclose the percentage of trading in the subject class of securities that occurred in the jurisdiction of your foreign listing as of a recent 12-month period.

Instruction to Item 3

When responding to this item, refer to the definition of ''primary trading market'' in Rule 12h–6(e) (17 CFR 240.12h–6(e)). In accordance with that definition, if your primary trading market consists of two foreign jurisdictions, provide the information required by this section for each foreign jurisdiction. In addition, disclose whether the trading market for your securities in at least one of those two foreign jurisdictions is larger than the trading market for your securities in the United States as of the same recent 12-month period. Disclose the first and last days of that recent 12-month period.

Item 4. Comparative Trading Volume Data

If relying on Rule 12h–6(a)(4)(i) (17 CFR 240.12h–6(a)(4)(i)), provide the following information:

A. Identify the first and last days of the recent 12-month period used to meet the requirements of that rule provision.

B. For the same recent 12-month period, disclose the average daily trading volume of the class of securities that is the subject of this Form both in the United States and in your primary trading market.

C. For the recent 12-month period, disclose the average daily trading volume of the subject class of securities in the United States as a percentage of the average daily trading volume for that class of securities in your primary trading market.

D. Disclose whether you have delisted the subject class of securities from a national securities exchange or inter-dealer quotation system in the United States. If so, provide the date of delisting, and, as of that date, disclose the average daily trading volume of the subject class of securities in the United States as a percentage of the average daily trading volume for that class of securities in your primary trading market for the preceding 12-month period.

E. Disclose whether you have terminated a sponsored American depositary receipt (ADR) facility regarding the class of subject securities. If so, provide the date of the ADR facility termination.

Instructions to Item 4

1. ''Recent 12-month period'' means a 12-calendar-month period that ended no more than 60 days before the filing date of this form, as defined under Rule 12h–6(e). You may disclose the comparative trading volume data in response to this item in tabular format and attached as an exhibit to this Form.

2. An issuer is ineligible to rely on paragraph (a)(4)(i) of Rule 12h–6 if, as of the date of delisting, the average daily trading volume of the subject class of securities in the United States exceeded 5 percent of the average daily trading volume of that class of securities in the issuer's primary trading market, as measured over the preceding 12 months, and 12 months has not elapsed from the date of delisting.

3. An issuer is ineligible to rely on paragraph (a)(4)(i) of Rule 12h–6 if it has terminated a sponsored ADR facility and 12 months has not elapsed from the date of termination.

Item 5. Alternative Record Holder Information

If relying on Rule 12h–6(a)(4)(ii) (17 CFR 240.12h–6(a)(4)(ii)):

Disclose the number of record holders of the subject class of equity securities on a worldwide basis or who are United States residents at a date within 120 days before filing this Form. Disclose the date used for the purpose of Item 5.

Item 6. Debt Securities

If relying on Rule 12h–6(b) (17 CFR 240.12h–6(b)):

Disclose the number of record holders of your debt securities either on a worldwide basis or who are United States residents at a date within 120 days before the date of filing of this Form. Disclose the date used for the purpose of Item 6.

Instructions to Items 5 and 6

1. When determining the number of record holders of your equity or debt securities who are United States residents, refer to Rule 12h–6(d) (17 CFR 240.12h–6(d)) for the appropriate counting method.

2. If you have relied upon the assistance of an independent information services provider to determine the number of your United States equity or debt securities holders, identify this party in your response.

Item 7. Notice Requirement

If filing Form 15F pursuant to Rule 12h–6(a), (b) or (c):

A. Disclose the date of publication of the notice, required by Rule 12h–6(g) (17 CFR 240.12h–6(g)), disclosing your intent to terminate your duty to file reports under

section 13(a) or 15(d) of the Exchange Act or both.

B. Identify the means, such as publication in a particular newspaper, used to disseminate the notice in the United States.

Instruction to Item 7

If you have submitted a copy of the notice under cover of a Form 6–K (17 CFR 249.306), disclose the submission date of the Form 6–K. If not, attach a copy of the notice as an exhibit to this Form. See Rule 12h–6(g).

Item 8. Prior Form 15 Filers

If relying on Rule 12h–6(h):

A. Disclose whether, before the effective date of Rule 12h–6, you filed a Form 15 (17 CFR 249.323) to terminate the registration of a class of equity securities pursuant to Rule 12g–4 (17 CFR 240.12g–4) or to suspend your reporting obligations under section 15(d) of the Act regarding a class of equity or debt securities pursuant to Rule 12h–3 (17 CFR 240.12h–3). If so, disclose the date that you filed the Form 15. If you suspended your reporting obligations by the terms of section 15(d), disclose the effective date of that suspension as well as the date that you filed a Form 15 to notify the Commission of that suspension pursuant to Rule 15d–6 (17 CFR 240.15d–6).

B. Disclose whether, since the effectiveness of your termination of registration pursuant to Rule 12g–4, or of your suspension of reporting pursuant to Rule 12h–3 or section 15(d) of the Exchange Act, your reporting obligations under section 13(a) or section 15(d) of the Exchange Act have remained terminated or suspended.

C. If you terminated the registration of a class of equity securities pursuant to Rule 12g–4 or suspended your reporting obligations regarding a class of equity securities pursuant to Rule 12h–3 or section 15(d) of the Exchange Act, provide the disclosure required by Item 3 of this Form, ''Primary Trading Market.''

Part II

Item 9. Rule 12g3–2(b) Exemption

Disclose the address of your Internet Web site or of the electronic information delivery system in your primary trading market on which you will publish the information required under Rule 12g3–2(b)(1)(iii) (17 CFR 240.12g3–2(b)(1)(iii)).

Instruction to Item 9

Refer to Note 1 to Rule 12g3–2(e) for instructions regarding providing English translations of documents published pursuant to Rule 12g3–2(b)(1)(iii) (17 CFR 240.12g3–2(b)(1)(iii).

Part III

Item 10. Exhibits

List the exhibits attached to this Form.

Instruction to Item 10

In addition to exhibits specifically mentioned on this Form, you may attach as an exhibit any document providing information that is material to your eligibility to terminate your reporting obligations under Exchange Act Rule 12h–6. You should refer to any relevant exhibit when responding to the items on this Form.

Item 11. Undertakings

Furnish the following undertaking:

The undersigned issuer hereby undertakes to withdraw this Form 15F if, at any time before the effectiveness of its termination of reporting under Rule 12h–6, it has actual knowledge of information that causes it reasonably to believe that, at the time of filing the Form 15F:

(1) The average daily trading volume of its subject class of securities in the United States during a recent 12-month period exceeded 5 percent of the average daily trading volume of that class of securities in the issuer's primary trading market during the same period, if proceeding under Rule 12h–6(a)(4)(i);

(2) Its subject class of securities was held of record by 300 or more United States residents or 300 or more persons worldwide, if proceeding under Rule 12h–6(a)(4)(ii) or Rule 12h–6(b); or

(3) It otherwise no longer qualified for termination of its Exchange Act reporting obligations under Rule 12h–6.

Instruction to Item 11

After filing this Form, an issuer has no continuing obligation to make inquiries or perform other work concerning the information contained in this Form, including its assessment of trading volume or ownership of its securities in the United States.

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934, [name of registrant as specified in charter] has duly authorized the undersigned person to sign on its behalf this certification on Form 15F. In so doing, [name of registrant as specified in charter] certifies that, as represented on this Form, it has complied with all of the conditions set forth in Rule 12h–6 for terminating its registration under section 12(g) of the Exchange Act, or its duty to file reports under section 13(a) or section 15(d) of the Exchange Act, or both.

By: _____

Title: _____

Date: _____

By the Commission.

Dated: December 22, 2006.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22405 Filed 1–10–07; 8:45 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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