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Presidential Documents

Title 3—

The President

Executive Order 13425 of February 14, 2007

Trial of Alien Unlawful Enemy Combatants by Military Commission

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Military Commissions Act of 2006 (Public Law 109–366), the Authorization for Use of Military Force (Public Law 107–40), and section 948b(b) of title 10, United States Code, it is hereby ordered as follows:

Section 1. *Establishment of Military Commissions.* There are hereby established military commissions to try alien unlawful enemy combatants for offenses triable by military commission as provided in chapter 47A of title 10.

Sec. 2. *Definitions.* As used in this order:

(a) ''unlawful enemy combatant'' has the meaning provided for that term in section 948a(1) of title 10; and

(b) ''alien'' means a person who is not a citizen of the United States.

Sec. 3. *Supersedure.* This order supersedes any provision of the President's Military Order of November 13, 2001 (66 *Fed. Reg.* 57,833), that relates to trial by military commission, specifically including:

(a) section 4 of the Military Order; and

(b) any requirement in section 2 of the Military Order, as it relates to trial by military commission, for a determination of:

(i) reason to believe specified matters; or

(ii) the interest of the United States.

Sec. 4. *General Provisions.* (a) This order shall be implemented in accordance with applicable law and subject to the availability of appropriations.

(b) The heads of executive departments and agencies shall provide such information and assistance to the Secretary of Defense as may be necessary to implement this order and chapter 47A of title 10.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

THE WHITE HOUSE,
February 14, 2007.

[FR Doc. 07–780
Filed 2–16–07; 8:45 am]
Billing code 3195–01–P

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THE WHITE HOUSE,
February 14, 2007.

[FR Doc. 07–780
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Rules and Regulations

Federal Register

Vol. 72, No. 33

Tuesday, February 20, 2007

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 65 and 91

Technical Corrections

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendments.

SUMMARY: This action makes minor corrections to two final rules. The rules were published in the **Federal Register** on August 9, 1979 and August 18, 1989, respectively. This action corrects the paragraph reference which describes the requisite qualifications to obtain a repairman certificate. This action also corrects the appendix references which describe requirements for altimeter system and altitude reporting equipment tests and inspections. The intent of this action is to ensure that the regulations are clear and accurate.

EFFECTIVE DATES: Effective on February 20, 2007.

FOR FURTHER INFORMATION CONTACT: Kim Barnette, Aircraft Maintenance Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202–493–4922); facsimile: (202–267–5115); e-mail: *kim.a.barnette@faa.gov*.

SUPPLEMENTARY INFORMATION: On August 9, 1979, the Federal Aviation Administration (FAA) published in the **Federal Register** (44 FR 46778) a final rule that amended 14 CFR 65.101 by designating the unnumbered paragraph as paragraph (a) and redesignating paragraphs (a) through (f) as paragraphs (a)(1) through (a)(6), respectively. However, the reference in paragraph (a)(6) to paragraph (c) was inadvertently not changed to reflect the redesignated numbering. This document makes the appropriate amendatory change to § 65.101(a)(6) to replace the incorrect reference (paragraph (c)) with the correct reference (paragraph (a)(3)).

On August 18, 1989, the FAA published in the **Federal Register** (54 FR 34284) a final rule that included revisions to part 91, subpart E. One of the revisions was to redesignate § 91.171 (Altimeter system and altitude reporting equipment tests and inspections), as § 91.411. In making this change, the appendix references in paragraphs (a)(1) and (a)(2) were inadvertently reversed. That is, in paragraph (a)(1) we referenced appendix E, and in paragraph (a)(2), we referenced appendices E and F. However, the correct references are appendices E and F for paragraph (a)(1) and appendix E for paragraph (a)(2). This action revises § 91.411 to include the correct appendix references.

Technical Amendment

This technical amendment will change the paragraph reference in § 65.101(a)(6) from paragraph (c) to paragraph (a)(3). And, it will revise § 91.411 to reference appendices E and F in paragraph (a)(1) and appendix E in paragraph (a)(2).

These corrections to parts 65 and 91 will not impose any additional requirements on operators affected by these regulations.

List of Subjects

14 CFR Part 65

Air traffic controllers, Aircraft, Airmen, Airports, Alcohol abuse, Aviation safety, Drug abuse, Reporting and recordkeeping requirements and Security measures.

14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Ethiopia, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements, Yugoslavia.

■ Accordingly, Title 14 of the Code of Federal Regulations (CFR) parts 65 and 91 are amended as follows:

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

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

Authority: 5 U.S.C. 8335(a); 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 44701–44703; 49 U.S.C. 44707; 49 U.S.C. 44709–44711; 49 U.S.C. 45102–45103; 49 U.S.C. 45301–45302.

■ 2. Amend § 65.101 by revising paragraph (a)(6) to read as follows:

§ 65.101 Eligibility requirements: General.

(a) * * *

(6) Be able to read, write, speak, and understand the English language, or, in the case of an applicant who does not meet this requirement and who is employed outside the United States by a certificated repair station, a certificated U.S. commercial operator, or a certificated U.S. air carrier, described in paragraph (a)(3) of this section, have this certificate endorsed ''Valid only outside the United States.''

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 3. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

■ 4. Amend § 91.411 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 91.411 Altimeter system and altitude reporting equipment tests and inspections.

(a) * * *

(1) Within the preceding 24 calendar months, each static pressure system, each altimeter instrument, and each automatic pressure altitude reporting system has been tested and inspected and found to comply with appendices E and F of part 43 of this chapter;

(2) Except for the use of system drain and alternate static pressure valves, following any opening and closing of the static pressure system, that system has been tested and inspected and found to comply with paragraph (a), appendix E, of part 43 of this chapter; and

* * * * *

Issued in Washington, DC, on February 9, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking, Aviation Safety.

[FR Doc. E7–2802 Filed 2–16–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

Operations: Foreign Air Carriers and Foreign Operators of U.S.-Registered Aircraft Engaged in Common Carriage; Correcting Amendment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action corrects a typographical error that appeared in the final rule, Foreign Air Carriers and Operators of Certain Large U.S.-Registered Airplanes, which the FAA published in the **Federal Register** on May 28, 1987. In that final rule, the FAA inadvertently misstated the word ''markings'' as ''marketing.'' The intent of this action is to correct the error in the regulations to ensure the requirement is clear and accurate.

EFFECTIVE DATES: Effective on February 20, 2007.

FOR FURTHER INFORMATION CONTACT: Kim Barnette, Aircraft Maintenance Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202–493–4922); facsimile: (202–267–5115); e-mail: *kim.a.barnette@faa.gov*.

SUPPLEMENTARY INFORMATION: On May 28, 1987, the FAA published in the **Federal Register** (52 FR 20026) a final rule that amended § 129.11, among other changes, by adding a new paragraph (a)(4). In adding the new paragraph, the word ''marketings'' instead of ''markings'' was inadvertently used. This document corrects § 129.11(a)(4) to include the correct word. This correction will not impose any additional requirements on the affected operators.

Technical Amendment

This technical amendment will make a minor editorial correction to § 129.11(a)(4).

List of Subjects in 14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Security measures, Smoking.

■ For the reasons set forth above, the Federal Aviation Administration correctly amends 14 CFR part 129 as follows:

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

■ 1. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub. L. 107–71 sec. 104.

■ 2. Amend § 129.11 by revising paragraph (a)(4) to read as follows:

§ 129.11 Operations specifications.

(a) * * *

(4) Registration markings of each U.S.-registered aircraft.

* * * * *

Issued in Washington, DC, on February 12, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking, Aviation Safety.

[FR Doc. 07–741 Filed 2–16–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration.

14 CFR Parts 401, 415, 431, 435, 440, and 460

[Docket No. FAA–2005–23449]

RIN 2120–AI57

Human Space Flight Requirements for Crew and Space Flight Participants

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: When the FAA issued a final rule on human space flight, it described one rule as consistent with the Second Amendment of the Constitution because, among other things, the right to bear arms under the Second Amendment is a collective right. The FAA now withdraws that characterization and amends its description.

DATES: This correction is effective February 20, 2007.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Kenneth Wong, Deputy Manager, Licensing and Safety Division, Commercial Space Transportation, AST–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8465; facsimile (202) 267–3686, e-mail *ken.wong@faa.gov*. For legal information, contact Laura Montgomery, Senior Attorney, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3150; facsimile (202) 267–7971, e-mail *laura.montgomery@faa.gov*.

SUPPLEMENTARY INFORMATION: As required by the Commercial Space Launch Amendments Act of 2004, the FAA established *Human Space Flight Requirements for Crew and Space Flight Participants*, 71 FR 75616 (Dec. 15, 2006). The FAA's new requirements for commercial human space flight include a rule on security mandating that operators ''implement security requirements to prevent any space flight participant from jeopardizing the safety of the flight crew or the public'' and prohibiting a space flight participant from carrying on board ''any explosives, firearms, knives or other weapons.'' 14 CFR 460.53. In explaining this rule in response to a comment, the FAA characterized the right to bear arms under the Second Amendment of the Constitution as ''a collective right.'' 71 FR at 75626. The FAA now withdraws that characterization of the right to bear arms. The prohibition on the carriage of firearms by participants in commercial space flights remains unchanged.

The Executive Branch, through the Department of Justice, interprets the Second Amendment as securing a right of individuals to keep and bear arms. (See Memorandum for the Attorney General from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, *et al.*, Re: Whether The Second Amendment Secures An Individual Right (Aug. 24, 2004), available at *http://www.usdoj.gov/olcsecondoamendment2.pdf*). In light of this interpretation, the FAA is withdrawing the statement made in the final rule.

Regardless of the nature of the right, however, it remains true, as we noted, that the right is, like any other, not unfettered. The Justice Department itself made this abundantly clear in its analysis and through its historical review. (*See generally id.* at 1–5, 6 n.19, 8 n.29, 18 n.68, 61–68, 73, 81–82, 87–98, 102–04.) Similarly, the Fifth Circuit, which treats the right to bear arms as an

individual right, has stated, ''Although, as we have held, the Second Amendment does protect individual rights, that does not mean that those rights may never be made subject to any limited, narrowly tailored specific exceptions or restrictions for particular cases that are reasonable and not inconsistent with the right of Americans generally to individually keep and bear their private arms as historically understood in this country.'' *U.S.* v. *Emerson*, 270 F.3d 203 (5th Cir. 2001).

The FAA continues to believe that the possession of weapons by space flight participants on board a suborbital rocket poses an unacceptably high risk to the integrity of the vehicle and the safety of the public, and that the rule is consistent with the Second Amendment. In proposing the rule, we pointed out that ''[s]ecurity restrictions currently apply to passengers for airlines. Some of the restrictions prohibit a person carrying explosives, firearms, knives, or other weapons from boarding an airplane. Similar types of security restrictions for launch or reentry vehicles would contribute to the safety of the public by preventing a space flight participant from potentially interfering with the flight crew's ability to protect the public.'' 70 FR 77262–01, 77271. In response to the comment regarding the Second Amendment, we added that ''in 1958, Congress made it a criminal offense to knowingly carry a firearm onto an airplane engaged in air transportation. 49 U.S.C. 46505.'' 71 FR at 75626. The FAA thus has authority to issue this rule.

Correction

In final rule FR Doc. No FAA–2005–23449, published on December 15, 2006 (71 FR 75616), make the following correction:

On page 75626, in the third column, fourth full paragraph, lines 16 through 20, correct, ''Additionally, nearly all courts have also held that the Second Amendment is a collective right, rather than a personal right. Therefore, despite the Second Amendment collective right to bear arms, the FAA has'' to read ''By analogy, and for the reasons given when the FAA issued its human space flight requirements, the FAA has, consistent with the right to bear arms secured by the Second Amendment.''

* * * * *

Issued in Washington, DC, on February 14, 2007.

Rebecca MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. E7–2851 Filed 2–16–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 657 and 658

[FHWA Docket No. FHWA–2006–24134]

RIN 2125–AF17

Size and Weight Enforcement and Regulations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing the enforcement of commercial vehicle size and weight to incorporate provisions enacted in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU); the Energy Policy Act of 2005, and; the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006. This final rule adds various definitions; corrects obsolete references, definitions, and footnotes; eliminates redundant provisions; amends numerical route changes to the National Highway designations; and incorporates statutorily mandated weight and length limit provisions.

DATES: This final rule is effective March 22, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. William Mahorney, Office of Freight Management and Operations, (202) 366–6817, or Mr. Raymond Cuprill, Office of the Chief Counsel (202) 366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

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Background

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144), the Energy Policy Act of 2005 (Pub. L. 109–58, 119 Stat. 544), and the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006 (Pub. L. 109–115, 119 Stat. 2396) enacted size and weight provisions concerning auxiliary power units, custom harvesters, over-the-road buses, and drive-away saddlemount vehicle combinations.

Additionally, the transfer of motor carrier safety functions to the Federal Motor Carrier Safety Administration (FMCSA) established by the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748) affected the internal organizational structure of the FHWA. Although the responsibility for commercial motor vehicle size and weight limitation remained in the FHWA, the references in the regulations to the old FHWA's Office of Motor Carriers (OMC) and its officials are obsolete. This action updates these references to reflect the changes in the agency's organizational structure.

Discussion of Comments Received to the Notice of Proposed Rulemaking (NPRM)

On May 1, 2006, the FHWA published an NPRM in the **Federal Register** at 71 FR 25516 to provide an opportunity for public comment on the proposed changes to 23 CFR Parts 657 and 658. In response to the NPRM, the FHWA received 39 comments. Commenters included 8 State enforcement agencies, 9 industry associations, 4 members of Congress, 14 individuals, a union (multiple members), a law firm representing a trucking company, one intercity bus company, and an association of State transportation officials. The FHWA considered each of these comments in adopting this final rule. The changes made in response to those comments are identified and addressed under the appropriate sections below.

Section-by-Section Discussion of the Proposals

Part 657

Section 657.1 Purpose

Michigan DOT (MDOT) expressed concerns about using the terms ''Federal-aid Interstate, Federal-aid primary, Federal-aid Secondary, or Federal-aid Urban Systems,'' which are

no longer used, to describe the size and weight enforcement program, and suggested using the term ''National Highway System'' in their place.

FHWA Response: MDOT is correct that the terms identified are no longer generally used. However, to ensure the clarity and applicability of section 657.1, we chose to retain the terms because they are still used in 23 U.S.C. 141(a), and thus in 23 CFR 657.3, to define the extent of each State's enforcement obligation. We believe that using the term National Highway System, which did not exist on October 1, 1991, is not used in 23 U.S.C. 141, and is no longer identical to the highways systems listed in proposed section 657.1, would generate substantial confusion.

Part 658

Section 658.5 Definitions

Commercial Motor Vehicle

The FHWA proposed to clarify that recreational vehicle movements that include transportation to or from the manufacturer for customer delivery, sale, or display purposes are not covered by the definition of commercial motor vehicle for the purposes of these regulations. Five commenters, including Former Congressman Bud Shuster, the National RV Dealers Association, the National Automobile Dealers Association (NADA), the Ohio State Police, and the Illinois DOT, expressed support for the proposal to exclude recreational vehicles even when operated for a commercial purpose. Two commenters suggested that the section should be clarified to include recreational vehicle dealers as well as manufacturers.

The NADA and the Texas DOT raised concerns regarding what constitutes a recreational vehicle. Texas DOT asked whether travel trailers, and companies who transport them, were to be excluded as well. Additionally, the NADA suggested that FHWA include a definition of recreational vehicle, and the Ohio State Police requested a 3-year grace period for States to comply with any new definition.

FHWA Response: The FHWA believes that the same rationale applies equally to recreational vehicle dealers and manufacturers. We are therefore including dealers as well as manufacturers in this provision. Further, it is our intent to include motorized vehicles operating under their own power used only for camping or other recreational activities in this provision. However, we do not intend to exclude all third party commercial entities that transport recreational vehicles from the width regulations. For example, a company that transports recreational vehicles via tow-bars or on a flat-bed on behalf of a dealer would not be exempt because the recreational vehicle, in this instance, becomes freight when not being operated by its own power. This would also apply equally to travel trailers, which do not travel under their own power. We do not believe that a grace period is necessary to comply with this rulemaking action because the change simply involves excluding certain vehicles from coverage by the width regulations, and relieves the State agencies of the burden of enforcing these regulations against these vehicles.

Non-Divisible Load or Vehicle

The NPRM proposed to expand the definition of non-divisible load to include vehicles loaded with salt, sand, chemicals or a combination of these materials, to be used in spreading the materials on any winter roads, and when operating as emergency response vehicles. Four commenters expressed support for this proposal, citing the need for additional flexibility during poor weather conditions. The American Trucking Associations (ATA) opposed modifying the definition of non-divisible loads to include ''military vehicle transporting marked military equipment or materiel.'' Further, the ATA suggested that all emergency response vehicles should be eligible for classification as non-divisible loads. The American Association of State Highway Transportation Officials (AASHTO) also recommended that the FHWA work with AASHTO to develop a proposed exception to the current non-divisible load requirement that would allow, but not require, a State to issue a permit to an overweight vehicle certified to be carrying an urgently needed disaster relief load during a declared emergency. The MDOT, while supporting the proposal, asked whether a permit would be required as a result of this determination.

FHWA Response: The FHWA believes that the limiting factors for the specific vehicles mentioned in the NPRM are adequate to ensure that they are used only during an emergency. Since the proposal would allow these vehicles to be considered non-divisible loads, no permit would be necessary.

The suggestions to create a more expansive definition to accommodate additional non-divisible loads during declared emergencies are beyond the scope of this rulemaking and therefore will not be addressed at this time. The ATA's opposition to the inclusion of ''military vehicles transporting marked military equipment or materiel'' in the definition of non-divisible loads is also outside the scope of this rulemaking. Such military vehicles were the subject of a previous rulemaking action, which is now finalized.

Drive-Away Saddlemount Combination

The FHWA proposed to amend 23 CFR 658.13(e)(1)(iii) to extend to 97 feet the length limit on drive-away saddlemount combinations that are specifically designed to tow up to three trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the forward vehicle of the truck or truck tractor in front of it. This provision generated 22 comments. The comments focused on the wording of section 4141 of SAFETEA–LU, specifically whether or not the language was intended to include all saddlemount combinations in the new 97-foot limit, or only those that include a fullmount. The question arose because of the title of newly created 49 U.S.C. 31111(a)(4), ''Drive-away saddlemount with fullmount vehicle transporter combination.'' Section 4141 of SAFETEA–LU defined this term as ''a vehicle combination designed and specifically used to tow up to 3 trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the forward vehicle of the truck or truck tractor in front of it.'' The definition does not refer to a fullmount in the vehicle combination.

Several commenters expressed the view that the statutory language should be interpreted to include only saddlemounts with fullmount. Congressman David G. Reichert, AASHTO, and the law firm of Schwerin Campbell Barnard LLP believe that the congressional language shows clear intent to limit the application of the law to saddlemount combinations ''with fullmount.'' In support of this position, several commenters expressed concerns about the safety of this configuration. Congressman Reichert noted that the ''fullmount saddlemount vehicle, had no wheels on the ground, which tends to make the entire vehicle combination more stable.'' This view was also shared by Schwerin Campbell Barnard LLP, on behalf of General Teamsters Local 174, a Seattle-based affiliate of the International Brotherhood of Teamsters. Additionally, AASHTO stated, ''the legislated change in the rule governing saddlemount vehicles has raised serious concerns among some State enforcement officials concerning possible safety and infrastructure issues.'' The California Department of Transportation asked about the scope of the legislation, specifically whether the new length

regulations would apply on service access routes. Additionally, FHWA received 20 general comments from individual Local 174 Teamster members, all expressing various safety concerns with regard to FHWA's interpretation and the proposed regulatory language.

Other commenters took the view that the language included, or was intended to include, all saddlemount combinations, with or without fullmount. In a July 18, 2006, letter to Maria Cino, Acting Secretary of the Department of Transportation, Congressman Don Young, Chairman of the House Transportation and Infrastructure Committee, stated that the NPRM language ''accurately reflects the Congressional intent of section 4141.'' Congressman Young indicated that as Chairman of this committee, he was directly involved in the development of this language during the three years leading up to passage of SAFETEA–LU. He further states that: ''It was our intention that the term 'drive-away saddlemount vehicle transporter combination' would include all saddlemount combinations, with or without fullmount.'' Three other members of Congress also submitted letters stating their involvement in the development of the language, and their support for the language as proposed in the NPRM.

The Automobile Carriers Conference (ACC) supported the proposed regulatory language and noted that the safety concerns expressed by other commenters were unfounded. The ACC refers to a study prepared by the University of Michigan Transportation Research Institute (UMTRI) [''Consideration of an Increase in the Overall Length of Triple Saddlemount Driveaway Combinations'' (January 2006)]:

> Extensive studies have been performed that prove the safety of these combinations. Combinations up to 97 feet have a proven track record for complying with brake stopping distances as prescribed in FMCSR 393.52. According to the University of Michigan Transportation Research Institute, rollover threshold is virtually unaffected when increasing the length of a saddlemount combination from 75 feet. UMTRI goes on to state that the extended length saddlemount combination shows better rearward amplification than a corresponding 75 foot combination. UMTRI concludes that one could expect that the extended length saddlemount combination would exhibit improved handling, on the order of 23% reduction in rearward amplification, relative to a corresponding 75 foot combination.

Further, ACC states that ''[s]ince the enactment of SAFETEA–LU, actual operational experience in the running [of] saddlemount combinations at [a] length up to 97 feet in the United States and parts of Canada have had no adverse impact on safety.'' On behalf of JHT Holding, Holland and Knight agreed, noting ''that after 107 million miles of saddlemount operations since the enactment of SAFETEA–LU, driveaway saddlemount combinations continue to experience a crash rate that is significantly less than the national average for large truck crashes in the United States.''

FHWA Response: The FHWA believes that the use of the words ''with fullmount'' in the section heading and in the term defined in the section is not dispositive of the matter. The FHWA believes that it is important to examine the entire language of the provision, and in particular the statutory definition of the term itself, which are both necessary to make a reasonable interpretation of the congressional intent behind this provision. The FHWA believes that restricting this provision to saddlemounts with fullmount would ignore the express statutory definition used by the legislators, which is indicative of an intent to make the provisions of this section applicable to all saddlemount combinations. The definition contains no reference as to whether the saddlemount combination must contain a fullmount vehicle, which in effect makes the definition, and therefore the provision, applicable to saddlemounts that contain a fullmount as well as those that do not. The fact that the defined term contains the words ''with fullmount'' is not sufficient to override the definition itself, which makes no such limitations. This conclusion is supported by the letter from Congressman Young, Chairman of the House Transportation and Infrastructure Committee, who indicates that he was involved in the development of the language in question, as well as letters from Congressmen Paul Ryan, Michael Burgess, and Kenny Marchant.

In view of the above, the FHWA maintains that its reading of the statute is reasonable, and is retaining in this final rule the language proposed in the NPRM, which prohibits the States from enforcing an overall length limit of more or less than 97 feet on driveaway saddlemount vehicle combinations with up to 3 towed units, with or without fullmount.

Definition of Over-the-Road Buses

The FHWA proposed to incorporate into 23 CFR 658.5 a previously established definition of ''over-the-road'' buses found in 42 U.S.C. 12181(5).

The American Bus Association and Greyhound Lines, Inc. stated that the NPRM's definition of ''over-the-road buses'' was accurate and needed nothing further. However, these entities suggested that the FHWA should clarify that the definition of a ''covered State'' includes any State that enforced an axle weight limit described in the NPRM at any time described in the legislation. Both commenters suggested using the term ''in'' as opposed to ''during'' in the proposed language in section 658.17(k) in order to clarify the statute and regulation.

FHWA Response: We agree. Section 115 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006 (119 Stat. 2408) used the term ''in,'' as opposed to ''during,'' and is therefore correct. We also agree with the assertion that the proposed definition of ''covered States'' does include all States that enforced such a limit at any time during the specified period.

Section 658.13 Length

As discussed above, the FHWA is amending the specialized equipment provision in section 658.13(e)(1)(iii) to incorporate the statutory length limit that is now applicable to drive-away saddlemount vehicle transporter combinations. Additionally, the FHWA is amending the definition to clarify that such combinations must comply with all applicable Federal Motor Carrier Safety Regulations, not just the provisions contained in 49 CFR Part 393.71.

Section 658.15 Width

The NPRM proposed to amend 23 CFR 658.5 to eliminate any Federal role in regulating the width of recreational vehicles while operating under their own power as commercial motor vehicles. As discussed above, the FHWA is clarifying that recreational vehicle movements that include transportation under their own power to or from the manufacturer for customer delivery, sale, or display purposes are not covered by the definition of commercial motor vehicle. As such, we proposed to change paragraph (c), to exempt recreational vehicles operating under their own power from width limitations. The FHWA received no comments to this proposal, and will retain the language proposed in the NPRM.

Section 658.17 Weight

Over-the-Road Buses

The NPRM proposed to extend the temporary exemption granted by Congress for over-the-road buses until October 1, 2009, and to change the regulations to reflect the new, 24,000 lb. axle weight mandated by Congress (Sec. 115, Pub. L. 109–115, 119 Stat. at 2408). Several States provided comments and questions regarding the applicability of the proposed regulations. The Texas Department of Public Safety and the California DOT asked several questions regarding the proposed language, the relationship of the exemption listed in section 1309 of SAFEATEA–LU, and the language contained in the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006. Specifically, the commenters asked whether either provision was mandatory for States, and whether the 24,000 lb. provision applied to the steering axle of a motorcoach.

Auxiliary Power Units

Comments relating to the idle reduction systems or auxiliary power units (APU) focused on three general areas: whether the APU itself was limited to 400 lbs., how the regulation should be enforced, and whether the States must allow the 400 lb. tolerance contained in the statute.

Several commenters pointed out that the language proposed by FHWA would limit the weight of the auxiliary power unit to 400 lbs., which they believed to be inconsistent with the legislative language. They believe instead that the 400 lbs. limit related to the additional weight of the vehicle, not the APU itself.

Several State and industry groups expressed concern or asked how a State would enforce the 400 lb. limit with regard to axle, tandem, gross weight, and the bridge formula. How would a State determine load distribution? What documentation or proof would or should be necessary for compliance? What constitutes proof that a unit is ''fully functional at all times?'' Additional concerns were raised with regard to the possibility of fraudulent certifications and APU look-alike devices that might allow additional freight in violation of the rule.

The ATA stated that the NPRM was inconsistent with congressional intent by allowing States the option of allowing either a gross weight limit, an axle weight limit exemption, or both. The ATA felt that ''the regulation should make it clear that all States must allow the additional weight on gross, vehicle, axle and bridge formula limits. The regulation should also clarify that the additional authorized weight may be inclusive of or in addition to existing state weight enforcement tolerances.''

The ATA, while agreeing with the weight certification requirement, also expressed concern that the proposed rule included fuel weight in the calculation of the APU's weight. The Owner-Operators Independent Drivers Association (OOIDA) urged the FHWA to be flexible in this area, suggesting that an acceptable certification would include a certificate from the manufacturer, other business records, certification by the weight of individual APU components (to allow for units that are self-manufactured), or a certified scale ticket representing vehicle weight before and after the unit is installed.

Commenters also expressed concern regarding the requirement that the APU be ''fully functional at all times,'' stating that they were unsure how such a requirement can be certified or documented, and requested that FHWA clarify this issue. The OOIDA suggested that the operator be able to satisfy this requirement verbally. The OOIDA and the Truck Manufacturers Association also believe that the certification requirement verifying the APU's weight will eliminate most, if not all, enforcement concerns since the driver would gain no freight advantage while transporting a non-functioning unit. This would especially be true if the unit is temporarily broken. Further, OOIDA requested that the rule make it clear that a driver would be required to make the necessary certifications only in response to the finding that the vehicle is overweight. Several respondents also requested that FHWA provide a list of manufacturers of these products, and provide guidance to the States regarding enforcement.

Finally, several commenters asked whether the States are required to adopt the 400 lb. exemption.

FHWA Response: Over-the-Road Buses—Section 1309 of SAFETEA–LU is not preemptive. Its purpose is to allow the States to waive the axle weight limits on both transit and over-the-road buses at their discretion until October 1, 2009. The language in Sec. 115 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006 (119 Stat. 2396, at 2408) is preemptive in nature, but applies only to those States defined as ''covered States.'' If a State meets the definition of a covered State, it must adhere to the new provision on all individual axle weights, including the steering axle. It is important to note, however, that this legislation and the supporting regulation do not impair a State's ability to weigh over-the-road buses. Further, the regulatory language only prohibits the citing of single axle weight violations, not violations of the gross, tandem, or other weight limits while on the Interstate system.

Auxiliary Power Units

Section 756 of the Energy Policy Act of 2005 amended 23 U.S.C. 127(a) to allow an increase in the Federal weight limits by up to 400 lbs. to account for APUs installed in any heavy-duty vehicle (119 Stat. 594, at 829). The intent of this provision is to promote the use of technologies that reduce fuel consumption and emissions that result from engine idling.

We agree with several of the commenters and have adjusted the regulatory language accordingly. FHWA has revised the language to eliminate the weight requirement for the APU itself, while allowing up to a total of 400 lbs. in axle, tandem, gross, or bridge weight formula (which is an axle weight calculation), or the weight of the APU unit, whichever is less. For example, a vehicle equipped with an APU that has a certified weight of 750 lbs. would be allowed the maximum of 400 lbs. additional weight. However, a vehicle with an APU that has a certified weight of 300 pounds would be allowed a 300 lb. exemption. This is consistent with the statutory language.

The FHWA understands the concerns of enforcement agencies and users about the weight certification requirements. The FHWA believes that the certification of the APU's weight must be in writing, but can include a wide range of options, including a manufacturer's certification (sticker, specification plate, etc), certified scale tickets listing the vehicle's weight both before and after the unit's installation, a component parts list with listed weights of each component if the unit is manufactured by the owner or operator, etc., so long as it accurately reflects the weight of the unit and is available to roadside enforcement officers. As for the inclusion of fuel in the overall weight calculation of the unit, we have concluded upon further consideration that the empty weight of the APU is more appropriate, given that many of these units will utilize the truck tractor's fuel supply.

The statutory requirement for a ''demonstration or certification'' that the unit is ''fully functional at all times'' is more problematic. We believe that a manual demonstration, or a certification letter which clearly states the unit's

operational characteristics if the unit is temporarily broken down, should provide sufficient proof. FHWA agrees with several commenters that there will be little or no incentive for a driver to install and transport a non-working APU. We also believe that there would be little need to require a driver to provide proof of weight and operability unless the vehicle is over the weight thresholds specified in the regulations. Additionally, we agree that the increased weight must be allowed in addition to any enforcement tolerances that are currently authorized under Federal law.

It is important to note that section 756 of the Energy Policy Act of 2005 which amended 23 U.S.C. 127 does not preempt State enforcement of its weight limits on all highways; rather, it prevents the FHWA from imposing funding sanctions if a State authorizes the 400 lb. weight limit on their Interstate system. Therefore, it remains for each State to decide whether it will allow the increased weight limits for APUs. However, a State must adhere to the provisions of section 658.17 if it chooses to allow the additional weight.

Section 658.23 LCV Freeze; Cargo-carrying Unit Freeze

The NPRM proposed to replace obsolete references to the Office of Motor Carriers with references to the FHWA. In drafting the replacement regulatory text in the NPRM, the FHWA inadvertently changed the word ''must'' to ''may'' in the last sentence of subsection (c). We did not propose, nor did we intend, to change the substantive requirements contained in this subsection. The FHWA did not receive any comments in response to the proposals contained in this section. Therefore we have corrected the regulatory text to reflect the current regulatory requirements and to update the obsolete references to the Office of Motor Carriers.

Appendix A to 23 CFR Part 658—National Network—Federally-Designated Routes

The FHWA proposed to change route designations within the State of New Mexico on certain portions of the National Network. The State of New Mexico submitted a comment clarifying the changes to route number designations for routes on its portion of the National Network. These changes are numerical only and will not add or remove routes from the original network. Additional changes include: changing NM 491 to U.S. 491; changing U.S. 516 to NM 516, and; deleting U.S. 666 in its entirety. The FHWA is therefore amending Appendix A to reflect these route number changes.

Appendix B to 23 CFR Part 658—Grandfathered Semitrailer Lengths

One commenter pointed out that Appendix B refers to 23 CFR 658.13(h), which no longer exists, and suggests making the appropriate modifications to correct the error.

FHWA Response: As stated in the NPRM, the FHWA is aware that section 658.13 was reorganized in a previous rulemaking action, at 67 FR 15110, March 29, 2002, and that the provisions that formerly appeared in paragraph (h) are now found in paragraph (g). Therefore, the FHWA is adopting the language proposed in the NPRM to correct this error.

Miscellaneous Comments

General Comments on FHWA's Size and Weight Program

Several individuals submitted general comments on the FHWA's size and weight program. Among the comments were suggestions to eliminate double and triple vehicle combinations on the highways, restricting the length of landscape trucks and trailers, mandating pavement standards to provide for 10 ton-per-axle weight limits in all weather conditions, allowing 90,000 lbs. gross weight on six axle tractor-semitrailers, and generally revising section 658.15 and section 658.17 to accommodate larger, heavier, hybrid vehicles that are currently not allowed on the Interstates or National Network.

FHWA Response: These comments address issues that were not raised in the NPRM, and are therefore outside the scope of this rulemaking. Additionally, the vehicle weight limits for Interstate highways are statutory (23 U.S.C. 127), as are the vehicle width and length limits on the National Network (49 U.S.C. 31111-31115). None of them can be changed by FHWA.

FHWA Authority

One commenter questions the FHWA's legal authority to amend the regulations as proposed in the NPRM. The commenter indicates several of the proposals, including those that propose to replace references in the regulations to the old Office of Motor Carriers with references to the FHWA, are illegal because section 101(a) of the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, 113 Stat. 1748) (MCSIA) requires the Federal Motor Carrier Safety Administrator to carry out any duties and powers related to motor carriers or motor carrier safety. He indicates that after the creation of FMCSA, various driver and vehicle safety inspection functions were transferred from FHWA's Office of Motor Carriers to FMCSA in a final rule published on October 19, 1999 (64 FR 56270), but that the final rule failed to transfer, and maintained within the FHWA in violation of the statute, the enforcement of commercial motor vehicle size and weight laws and regulations affecting the safe design of trucks.

The FHWA disagrees with the commenter's interpretation of the provisions of the MCSIA and its alleged effect on FHWA's authority over the commercial vehicle size and weight program. The provision in question is now codified at 49 U.S.C. 113(f)(1). This provision, which describes the powers and duties of the Federal Motor Carrier Administrator, reads as follows:

> ''(f) Powers and Duties.—The Administrator shall carry out—(1) duties and powers *related to motor carriers or motor carrier safety* vested in the Secretary by chapters 5, 51, 55, 57, 59, 133 through 149, *311,* 313, 315, and 317 and by section 18 of the Noise Control Act of 1972 (42 U.S.C. 4917; 86 Stat. 1249–1250); except as otherwise delegated by the Secretary to any agency of the Department of Transportation other than the Federal Highway Administration, as of October 8, 1999 * * *'' (emphasis added)

For purposes of this discussion, it is clear that the FMCSA's Administrator is delegated by statute the duties and powers related to motor carriers and motor carrier safety vested in the Secretary by, among other provisions, chapter 311 of title 49, United States Code. However, we note that this statutory delegation is limited to duties and powers ''related to motor carriers and motor carrier safety'' in that chapter. This clearly refers to the motor carrier and motor carrier safety functions that were delegated to the FMCSA in the 1999 final rule cited by the commenter (64 FR 56270), which are very different from the commercial motor vehicle size and weight limitations, duties, and functions, which are in part located in 49 U.S.C. Chapter 311, and which remained delegated to the FHWA. Duties and powers under other subchapters of chapter 311 which are related to motor carrier and motor carrier safety functions such as the Motor Carrier Safety Assistance Program and State grants, and the Federal Motor Carrier Safety Regulations that affect motor carriers and drivers, were delegated to the FMCSA by the 1999 final rule. Duties and powers relating to the commercial motor vehicle size and weight limitations, which are

established by law, not only in Chapter 311 of title 49 United States Code, but also in Chapter 1 of title 23 U.S.C. (sections 127 and 141), remained delegated to the FHWA Administrator (see 71 FR 30828).

The commercial motor vehicle size and weight program is different from the motor carrier and motor carrier safety duties carried out by the FMCSA, and serve to establish limitations which the States are required to implement and enforce in order to protect and preserve the infrastructure and overall highway safety in highways that have received Federal assistance for construction and maintenance. It is not a regulation of motor carriers or their drivers, although these limitations affect the dimensions of the vehicles operated by these entities. The commercial motor vehicle size and weight program, including its regulation of the State's authority over vehicle limitations, is directly related to the Federal-aid highway program and Federal-aid highway funding. It does not involve the type of motor carrier or motor carrier safety oversight that Congress intended to be delegated to the FMCSA in the MCSIA provisions. As a result, it has appropriately remained delegated to the FHWA, as part of this agency's duties to administer the Federal-aid highway program and highway safety.

Finally, we note that Congress is fully aware that the commercial vehicle size and weight program remained in FHWA. As part of recent major highway program reauthorization acts and related oversight, congressional committees have requested and received information on FHWA's implementation of changes to the size and weight program. The Department would surely have received direction from Congress during all the years since the enactment of the MCSIA if Congress had intended this program to be delegated to an agency other than the FHWA.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 and would not be significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. This rule will not adversely affect, in a material way, any sector of the economy. This action changes out-dated references to offices within the FHWA and updates the current regulations to reflect changes made by the Congress in SAFETEA–LU and other recent legislation. Additionally, this action would add various definitions; correct obsolete references, definitions, and footnotes; eliminate redundant provisions; amend numerical route changes to the National Highway designations; and incorporate a statutorily mandated weight limit provision. There will not be any additional costs incurred by any affected group as a result of this rule. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees or loan programs. Consequently, a regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), we have evaluated the effects of this action on small entities and have determined that the action would not have a significant economic impact on a substantial number of small entities. The FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has preliminarily determined that this proposed action would not warrant the preparation of a federalism assessment. Any federalism implications arising from this rule are attributable to SAFETEA–LU sections 4112 and 4141. The FHWA has determined that this proposed action would not affect the States' ability to discharge traditional State government functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this rule does not contain collection of information requirements for the purposes of the PRA.

Unfunded Mandates Reform Act of 1995

This rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year. (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action would not cause any environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA does not anticipate that this action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

National Environmental Policy Act

The FHWA has analyzed this action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the

action would not have substantial direct effects on one or more Indian tribes; would not impose substantial compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution or use of energy. Therefore, a Statement of Energy Effects is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory section listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this section with the Unified Agenda.

List of Subjects in 23 CFR Parts 657 and 658

Grants Program—transportation, Highways and roads, Motor carriers.

Issued on: February 13, 2007.

J. Richard Capka,

Federal Highway Administrator.

■ In consideration of the foregoing, the FHWA amends Chapter I of title 23, Code of Federal Regulations, by revising Parts 657 and 658, respectively, as set forth below:

PART 657—CERTIFICATION OF SIZE AND WEIGHT ENFORCEMENT

■ 1. Revise the authority citation for part 657 to read as follows:

Authority: 23 U.S.C. 127, 141 and 315; 49 U.S.C. 31111, 31113 and 31114; sec. 1023, Pub. L. 102–240, 105 Stat. 1914; and 49 CFR 1.48(b)(19), (b)(23), (c)(1) and (c)(19).

■ 2. Revise § 657.1 to read as follows:

§ 657.1 Purpose.

To prescribe requirements for administering a program of vehicle size and weight enforcement on the Interstate System, and those routes which, prior to October 1, 1991, were designated as part of the Federal-aid primary, Federal-aid secondary, or Federal-aid urban systems, including the required annual certification by the State.

■ 3. Revise § 657.3 to read as follows:

§ 657.3 Definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. As used in this part:

Enforcing or *Enforcement* means all actions by the State to obtain compliance with size and weight requirements by all vehicles operating on the Interstate System and those roads which, prior to October 1, 1991, were designated as part of the Federal-aid Primary, Federal-aid Secondary, or Federal-aid Urban Systems.

Urbanized area means an area with a population of 50,000 or more.

■ 4. Revise the first sentence of paragraph (a) and revise paragraph (b) of § 657.11 to read as follows:

§ 657.11 Evaluation of operations.

(a) The State shall submit its enforcement plan or annual update to the FHWA Division Office by July 1 of each year. * * *

(b) The FHWA shall review the State's operation under the accepted plan on a continuing basis and shall prepare an evaluation report annually. The State will be advised of the results of the evaluation and of any needed changes in the plan itself or in its implementation. Copies of the evaluation reports and subsequent modifications resulting from the evaluation shall be forwarded to the FHWA's Office of Operations.

■ 5. Revise paragraphs (b), (e), and (f)(3)(iii) of § 657.15 to read as follows:

§ 657.15 Certification content.

* * * * *

(b) A statement by the Governor of the State, or an official designated by the Governor, that all State size and weight limits are being enforced on the Interstate System and those routes which, prior to October 1, 1991, were designated as part of the Federal-aid Primary, Urban, and Secondary Systems, and that the State is enforcing and complying with the provisions of 23 U.S.C. 127(d) and 49 U.S.C. 31112. Urbanized areas not subject to State jurisdiction shall be identified. The statement shall include an analysis of enforcement efforts in such areas.

* * * * *

(e) A copy of any State law or regulation pertaining to vehicle sizes and weights adopted since the State's last certification and an analysis of the changes made.

* * * * *

(f) * * *

(3) * * *

(iii) *Permits.* The number of permits issued for overweight loads shall be reported. The reported numbers shall specify permits for divisible and nondivisible loads and whether issued on a trip or annual basis.

■ 6. Revise § 657.17 to read as follows:

§ 657.17 Certification submittal.

(a) The Governor, or an official designated by the Governor, shall submit the certification to the FHWA division office prior to January 1 of each year.

(b) The FHWA division office shall forward the original certification to the FHWA's Office of Operations and one copy to the Office of Chief Counsel. Copies of appropriate evaluations and/or comments shall accompany any transmittal.

■ 7. Revise § 657.19 to read as follows:

§ 657.19 Effect of failure to certify or to enforce State laws adequately.

If a State fails to certify as required by this regulation or if the Secretary determines that a State is not adequately enforcing all State laws respecting maximum vehicle sizes and weights on the Interstate System and those routes which, prior to October 1, 1991, were designated as part of the Federal-aid primary, Federal-aid secondary or Federal-aid urban systems, notwithstanding the State's certification, the Federal-aid funds for the National Highway System apportioned to the State for the next fiscal year shall be reduced by an amount equal to 10 percent of the amount which would otherwise be apportioned to the State under 23 U.S.C. 104, and/or by the amount required pursuant to 23 U.S.C. 127.

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

■ 8. The authority citation for part 658 is revised to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111, 31112, and 31114; sec. 347, Pub. L. 108–7, 117 Stat. 419; sec, 756, Pub. L. 109–58, 119 Stat. 829; sec. 1309, Pub. L. 109–59, 119 Stat. 1219; sec. 115, Pub. L. 109–115, 119 Stat. 2408; 49 CFR 1.48(b)(19) and (c)(19).

■ 9. Amend § 658.5 by revising the definitions of ''commercial motor vehicle'' and paragraph (2) of the definition of ''nondivisible load or vehicle''; and adding definitions of ''drive-away saddlemount vehicle transporter combinations'' and ''over-the-road bus'' to read as follows:

§ 658.5 Definitions.

* * * * *

Commercial motor vehicle. For purposes of this regulation, a motor vehicle designed or regularly used to carry freight, merchandise, or more than ten passengers, whether loaded or empty, including buses, but not including vehicles used for vanpools, or recreational vehicles operating under their own power.

Drive-away saddlemount vehicle transporter combination. The term drive-away saddlemount vehicle transporter combination means a vehicle combination designed and specifically used to tow up to 3 trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the forward vehicle of the truck tractor in front of it. Such combinations may include up to one fullmount.

* * * * *

Nondivisible load or vehicle.

(1) * * *

(2) A State may treat as nondivisible loads or vehicles: emergency response vehicles, including those loaded with salt, sand, chemicals or a combination thereof, with or without a plow or blade attached in front, and being used for the purpose of spreading the material on highways that are or may become slick or icy; casks designed for the transport of spent nuclear materials; and military vehicles transporting marked military equipment or materiel.

Over-the-road bus. The term over-the-road bus means a bus characterized by an elevated passenger deck located over a baggage compartment, and typically operating on the Interstate System or roads previously designated as making up the Federal-aid Primary System.

* * * * *

■ 10. Amend § 658.13 by revising paragraph (e)(1)(iii) and adding paragraph (h) to read as follows:

§ 658.13 Length.

* * * * *

(e) * * *

(1) * * *

(iii) Drive-away saddlemount vehicle transporter combinations are considered to be specialized equipment. No State shall impose an overall length limit of less or more than 97 feet on such combinations. This provision applies to drive-away saddlemount combinations with up to three saddlemounted vehicles. Such combinations may include one fullmount. Saddlemount combinations must also comply with the applicable motor carrier safety regulations at 49 CFR parts 390–399.

* * * * *

(h) Truck-tractors, pulling 2 trailers or semitrailers, used to transport custom harvester equipment during harvest months within the State of Nebraska may not exceed 81 feet 6 inches.

■ 11. Revise paragraph (c) of § 658.15 to read as follows:

§ 658.15 Width.

* * * * *

(c) Notwithstanding the provisions of this section or any other provision of law, a State may grant special use permits to motor vehicles, including manufactured housing, that exceed 102 inches in width.

■ 12. Revise paragraph (k) and add paragraph (n) of section § 658.17 to read as follows:

§ 658.17 Weight.

* * * * *

(k) Any over-the-road bus, or any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus, is excluded from the axle weight limits in paragraphs (c) through (e) of this section until October 1, 2009. Any State that has enforced, in the period beginning October 6, 1992, and ending November 30, 2005, a single axle weight limitation of 20,000 pounds or greater but less than 24,000 pounds may not enforce a single axle weight limit on these vehicles of less than 24,000 lbs.

* * * * *

(n) Any vehicle subject to this subpart that utilizes an auxiliary power or idle reduction technology unit in order to promote reduction of fuel use and emissions because of engine idling, may be allowed up to an additional 400 lbs. total in gross, axle, tandem, or bridge formula weight limits.

(1) To be eligible for this exception, the operator of the vehicle must be able to prove:

(i) By written certification, the weight of the APU; and

(ii) By demonstration or certification, that the idle reduction technology is fully functional at all times.

(2) Certification of the weight of the APU must be available to law enforcement officers if the vehicle is found in violation of applicable weight laws. The additional weight allowed cannot exceed 400 lbs. or the weight certified, whichever is less.

■ 13. Revise paragraphs (c) and (e) of § 658.23 to read as follows:

§ 658.23 LCV freeze; cargo-carrying unit freeze.

* * * * *

(c) For specific safety purposes and road construction, a State may make minor adjustments of a temporary and emergency nature to route designation and vehicle operating restrictions applicable to combinations subject to 23 U.S.C. 127(d) and 49 U.S.C. 31112 and in effect on June 1, 1991 (July 6, 1991, for Alaska). Minor adjustments which last 30 days or less may be made without notifying the FHWA. Minor adjustments which exceed 30 days require approval of the FHWA. When such adjustments are needed, a State must submit to the FHWA, by the end of the 30th day, a written description of the emergency, the date on which it began, and the date on which it is expected to conclude. If the adjustment involves alternate route designations, the State shall describe the new route on which vehicles otherwise subject to the freeze imposed by 23 U.S.C. 127(d) and 49 U.S.C. 31112 are allowed to operate. To the extent possible, the geometric and pavement design characteristics of the alternate route should be equivalent to those of the highway section which is temporarily unavailable. If the adjustment involves vehicle operating restrictions, the State shall list the restrictions that have been removed or modified. If the adjustment is approved, the FHWA will publish the notice of adjustment, with an expiration date, in the **Federal Register**. Requests for extension of time beyond the originally established conclusion date shall be subject to the same approval and publications process as the original request. If upon consultation with the FHWA a decision is reached that minor adjustments made by a State are not legitimately attributable to road or bridge construction or safety, the FHWA will inform the State, and the original conditions of the freeze must be reimposed immediately. Failure to do so may subject the State to a penalty pursuant to 23 U.S.C. 141.

* * * * *

(e) States further restricting or prohibiting the operation of vehicles subject to 23 U.S.C. 127(d) and 49 U.S.C. 31112 after June 1, 1991, shall notify the FHWA within 30 days after the restriction is effective. The FHWA will publish the restriction in the **Federal Register** as an amendment to appendix C to this part. Failure to provide such notification may subject the State to a penalty pursuant to 23 U.S.C. 141.

* * * * *

Appendix A to Section 658—National Network—Federally Designated Routes

■ 14. Amend appendix A to part 658 as follows:

■ A. By removing the words ''[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and

the following additional Federal-aid Primary highways.]'' and adding, in their place, the words ''[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional highways.]'' in each place that they appear;

■ B. By removing the explanatory phrase ''No additional routes have been federally designated; STAA-dimensioned commercial vehicles may legally operate on all Federal-aid Primary highways under State law.'' for the States of Arkansas, Colorado, Indiana, Kansas, Louisiana, Mississippi, Montana, Nebraska, Nevada, Ohio, South Dakota, Texas, Utah, Washington and Wyoming, and add, in its place, the words, ''No additional routes have been federally designated; under State law STAA-dimensioned commercial vehicles may legally operate on all highways which, prior to June 1, 1991, were designated as Federal-aid primary highways.'';

■ C. By revising the entries for ''New Mexico'' to read as follows:

NEW MEXICO

US 56	I–25 Springer	OK State Line.
US 60	AZ State Line	I–25 Socorro.
US 62	US 285 Carlsbad	Tx State Line.
US 64	AZ State Line	NM 516 Farmington.
US 70	AZ State Line	I–10 Lordsburg.
US 70	I–10 Las Cruces	U.S. 54 Tularosa.
US 70	US 285 Roswell	U.S. 84 Clovis.
NM 80	AZ State Line	I–10 Road Forks.
US 84	Tx State Line Clovis	CO State Line.
US 87	US 56 Clayton	Tx State Line.
US 160	Az State Line (Four Corners)	CO State Line.
US 285	Tx State Line s. of Carlsbad	CO State Line.
US 491	1–40 Gallup	CO State Line.
NM 516	U.S. 64 Farmington	U.S. 550 Aztec.
US 550	NM 516 Aztec	CO State Line.

Appendix B To Part 658—Grandfathered Semitrailer Lengths

■ 15. Amend appendix B to Part 658 in footnotes 1, 2, and 3 by removing the reference ''23 CFR 658.13(h)'' and by adding in its place ''23 CFR 658.13(g)'' each place it appears.

[FR Doc. E7–2823 Filed 2–16–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 021407B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allocation of the 2007 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 14, 2007, until 1200 hrs, A.l.t., September 1, 2007.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allocation of the 2007 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA is 868 metric tons (mt) as established by the 2006 and 2007 harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2007 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 668 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod

apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 13, 2007.

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

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

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

Dated: February 14, 2007.

Alan D. Risenhoover,

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

[FR Doc. 07–742 Filed 2–14–07; 1:44 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 021407C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allocation of the 2007 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 14, 2007, until 2400 hrs, A.l.t., September 1, 2007.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allocation of the 2007 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA is 1,224 metric tons (mt) as established by the 2006 and 2007 harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allocation of the 2007 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 874 mt, and is setting aside the remaining 350 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 13, 2007.

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

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

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

Dated: February 14, 2007.

Alan D. Risenhoover,

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

[FR Doc. 07–743 Filed 2–14–07; 1:44 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 021407D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Non-American Fisheries Act Crab Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for the A season allowance of the 2007 Pacific cod sideboard limits apportioned to non-American Fisheries Act (AFA) crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2007 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 16, 2007, until 1200 hrs, A.l.t., September 1, 2007.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the

GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of 2007 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA is 705 metric tons (mt) for the GOA, as established by the 2006 and 2007 harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006).

In accordance with § 680.22(e)(2)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allowance of the 2007 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a sideboard directed fishing allowance for Pacific cod as 700 mt in the Gulf of Alaska. The remaining 5 mt in the Gulf of Alaska will be set aside as bycatch to support other anticipated groundfish fisheries. In accordance with § 680.22(e)(3), the Regional Administrator finds that this sideboard directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the sideboard directed fishing closure of Pacific cod apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 13, 2007.

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

This action is required by § 680.22 and is exempt from review under Executive Order 12866.

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

Dated: February 14, 2007.

Alan Risenhoover,

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

[FR Doc. 07–744 Filed 2–14–07; 1:44 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 021207C]

Fisheries of the Exclusive Economic Zone Off Alaska; Chiniak Gully Research Area for Vessels Using Trawl Gear

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

ACTION: Temporary rule.

SUMMARY: NMFS is rescinding the trawl closure in the Chiniak Gully Research Area. This action is necessary to allow vessels using trawl gear to participate in directed fishing for groundfish in the Chiniak Gully Research Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 1, 2007, through 2400 hrs, A.l.t., December 31, 2007.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Chiniak Gully Research Area is closed to vessels using trawl gear from August 1 to a date no later than September 20 under regulations at § 679.22(b)(6)(ii)(A). This closure is in support of a research project to evaluate the effects of commercial fishing on pollock distribution and abundance, as part of a comprehensive investigation of Stellar sea lion and commercial fishery interactions.

The regulations at § 679.22(b)(6)(ii)(B) provide that the Acting Regional Administrator, Alaska Region, NMFS, (Regional Administrator) shall rescind the trawl closure if relevant research activities will not be conducted. The Regional Administrator has determined that research activities will not be conducted in 2007 in the Chiniak Gully Research Area. Therefore, the Regional Administrator is rescinding the trawl closure of the Chiniak Gully Research Area. All other closures remain in full force and effect.

Classification

Pursuant to 5 U.S.C. 553 (b)(B), the Assistant Administrator for Fisheries, NOAA (AA) finds good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary. Notice and comment is unnecessary because the rescission of the trawl closure is non-discretionary; pursuant to § 679.22(b)(6)(ii)(B), the Regional Administrator has no choice but to rescind the trawl closure once it is determined that research activities will not be conducted in the area.

Pursuant to 5 U.S.C. 553(d)(1), this rule is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d) since the rule relieves a restriction.

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

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

Dated: February 12, 2007.

James P. Burgess,

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

[FR Doc. E7–2828 Filed 2–19–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket Nos.060216045–6045–01 and 060216044–6044–01; I.D. 021207I]

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish Managed Under the Individual Fishing Quota Program

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

ACTION: Temporary rule; opening.

SUMMARY: NMFS is opening directed fishing for sablefish with fixed gear managed under the Individual Fishing Quota (IFQ) Program. The season will open 1200 hrs, Alaska local time (A.l.t.), March 10, 2007, and will close 1200 hrs, A.l.t., November 15, 2007. This period is the same as the 2007 IFQ and Community Development Quota season for Pacific halibut adopted by the International Pacific Halibut Commission (IPHC). The IFQ halibut season is specified by a separate publication in the **Federal Register** of annual management measures pursuant to 50 CFR 300.62.

DATES: Effective 1200 hrs, A.l.t., March 10, 2007, until 1200 hrs, A.l.t., November 15, 2007.

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

SUPPLEMENTARY INFORMATION: Beginning in 1995, fishing for Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) with fixed gear in the IFQ regulatory areas defined in § 679.2 has been managed under the IFQ Program. The IFQ Program is a regulatory regime designed to promote the conservation and management of these fisheries and to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Persons holding quota share receive an annual allocation of IFQ. Persons receiving an annual allocation of IFQ are authorized to harvest IFQ species within specified limitations. Further information on the implementation of the IFQ Program, and the rationale supporting it, are contained in the preamble to the final rule implementing the IFQ Program published in the **Federal Register**, November 9, 1993 (58 FR 59375) and subsequent amendments.

This announcement is consistent with § 679.23(g)(1), which requires that the directed fishing season for sablefish managed under the IFQ Program be specified by the Administrator, Alaska Region, and announced by publication in the **Federal Register**. This method of season announcement was selected to facilitate coordination between the sablefish season, chosen by the Administrator, Alaska Region, and the halibut season, chosen by the IPHC. The directed fishing season for sablefish with fixed gear managed under the IFQ Program will open 1200 hrs, A.l.t., March 10, 2007, and will close 1200 hrs, A.l.t., November 15, 2007. This period runs concurrently with the IFQ season for Pacific halibut announced by the IPHC. The IFQ halibut season will be specified by a separate publication in the **Federal Register** of annual management measures pursuant to 50 CFR 300.62.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the sablefish fishery thereby increasing bycatch and regulatory discards between the sablefish fishery and the halibut fishery, and preventing the accomplishment of the management objective for simultaneous opening of these two fisheries. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 12, 2007.

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

This action is required by § 679.23 and is exempt from review under Executive Order 12866.

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

Dated: February 12, 2007.

James P. Burgess,

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

[FR Doc. E7–2830 Filed 2–19–07; 8:45 am]

BILLING CODE 3510–22–S

Rules and Regulations

Federal Register

Vol. 72, No. 33

Tuesday, February 20, 2007

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 65 and 91

Technical Corrections

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendments.

SUMMARY: This action makes minor corrections to two final rules. The rules were published in the **Federal Register** on August 9, 1979 and August 18, 1989, respectively. This action corrects the paragraph reference which describes the requisite qualifications to obtain a repairman certificate. This action also corrects the appendix references which describe requirements for altimeter system and altitude reporting equipment tests and inspections. The intent of this action is to ensure that the regulations are clear and accurate.

EFFECTIVE DATES: Effective on February 20, 2007.

FOR FURTHER INFORMATION CONTACT: Kim Barnette, Aircraft Maintenance Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202–493–4922); facsimile: (202–267–5115); e-mail: *kim.a.barnette@faa.gov*.

SUPPLEMENTARY INFORMATION: On August 9, 1979, the Federal Aviation Administration (FAA) published in the **Federal Register** (44 FR 46778) a final rule that amended 14 CFR 65.101 by designating the unnumbered paragraph as paragraph (a) and redesignating paragraphs (a) through (f) as paragraphs (a)(1) through (a)(6), respectively. However, the reference in paragraph (a)(6) to paragraph (c) was inadvertently not changed to reflect the redesignated numbering. This document makes the appropriate amendatory change to § 65.101(a)(6) to replace the incorrect reference (paragraph (c)) with the correct reference (paragraph (a)(3)).

On August 18, 1989, the FAA published in the **Federal Register** (54 FR 34284) a final rule that included revisions to part 91, subpart E. One of the revisions was to redesignate § 91.171 (Altimeter system and altitude reporting equipment tests and inspections), as § 91.411. In making this change, the appendix references in paragraphs (a)(1) and (a)(2) were inadvertently reversed. That is, in paragraph (a)(1) we referenced appendix E, and in paragraph (a)(2), we referenced appendices E and F. However, the correct references are appendices E and F for paragraph (a)(1) and appendix E for paragraph (a)(2). This action revises § 91.411 to include the correct appendix references.

Technical Amendment

This technical amendment will change the paragraph reference in § 65.101(a)(6) from paragraph (c) to paragraph (a)(3). And, it will revise § 91.411 to reference appendices E and F in paragraph (a)(1) and appendix E in paragraph (a)(2).

These corrections to parts 65 and 91 will not impose any additional requirements on operators affected by these regulations.

List of Subjects

14 CFR Part 65

Air traffic controllers, Aircraft, Airmen, Airports, Alcohol abuse, Aviation safety, Drug abuse, Reporting and recordkeeping requirements and Security measures.

14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Ethiopia, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements, Yugoslavia.

■ Accordingly, Title 14 of the Code of Federal Regulations (CFR) parts 65 and 91 are amended as follows:

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

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

Authority: 5 U.S.C. 8335(a); 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 44701–44703; 49 U.S.C. 44707; 49 U.S.C. 44709–44711; 49 U.S.C. 45102–45103; 49 U.S.C. 45301–45302.

■ 2. Amend § 65.101 by revising paragraph (a)(6) to read as follows:

§ 65.101 Eligibility requirements: General.

(a) * * *

(6) Be able to read, write, speak, and understand the English language, or, in the case of an applicant who does not meet this requirement and who is employed outside the United States by a certificated repair station, a certificated U.S. commercial operator, or a certificated U.S. air carrier, described in paragraph (a)(3) of this section, have this certificate endorsed ''Valid only outside the United States.''

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 3. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

■ 4. Amend § 91.411 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 91.411 Altimeter system and altitude reporting equipment tests and inspections.

(a) * * *

(1) Within the preceding 24 calendar months, each static pressure system, each altimeter instrument, and each automatic pressure altitude reporting system has been tested and inspected and found to comply with appendices E and F of part 43 of this chapter;

(2) Except for the use of system drain and alternate static pressure valves, following any opening and closing of the static pressure system, that system has been tested and inspected and found to comply with paragraph (a), appendix E, of part 43 of this chapter; and

* * * * *

Issued in Washington, DC, on February 9, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking, Aviation Safety.

[FR Doc. E7–2802 Filed 2–16–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

Operations: Foreign Air Carriers and Foreign Operators of U.S.-Registered Aircraft Engaged in Common Carriage; Correcting Amendment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action corrects a typographical error that appeared in the final rule, Foreign Air Carriers and Operators of Certain Large U.S.-Registered Airplanes, which the FAA published in the **Federal Register** on May 28, 1987. In that final rule, the FAA inadvertently misstated the word ''markings'' as ''marketing.'' The intent of this action is to correct the error in the regulations to ensure the requirement is clear and accurate.

EFFECTIVE DATES: Effective on February 20, 2007.

FOR FURTHER INFORMATION CONTACT: Kim Barnette, Aircraft Maintenance Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202–493–4922); facsimile: (202–267–5115); e-mail: *kim.a.barnette@faa.gov*.

SUPPLEMENTARY INFORMATION: On May 28, 1987, the FAA published in the **Federal Register** (52 FR 20026) a final rule that amended § 129.11, among other changes, by adding a new paragraph (a)(4). In adding the new paragraph, the word ''marketings'' instead of ''markings'' was inadvertently used. This document corrects § 129.11(a)(4) to include the correct word. This correction will not impose any additional requirements on the affected operators.

Technical Amendment

This technical amendment will make a minor editorial correction to § 129.11(a)(4).

List of Subjects in 14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Security measures, Smoking.

■ For the reasons set forth above, the Federal Aviation Administration correctly amends 14 CFR part 129 as follows:

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

■ 1. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub. L. 107–71 sec. 104.

■ 2. Amend § 129.11 by revising paragraph (a)(4) to read as follows:

§ 129.11 Operations specifications.

(a) * * *

(4) Registration markings of each U.S.-registered aircraft.

* * * * *

Issued in Washington, DC, on February 12, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking, Aviation Safety.

[FR Doc. 07–741 Filed 2–16–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration.

14 CFR Parts 401, 415, 431, 435, 440, and 460

[Docket No. FAA–2005–23449]

RIN 2120–AI57

Human Space Flight Requirements for Crew and Space Flight Participants

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: When the FAA issued a final rule on human space flight, it described one rule as consistent with the Second Amendment of the Constitution because, among other things, the right to bear arms under the Second Amendment is a collective right. The FAA now withdraws that characterization and amends its description.

DATES: This correction is effective February 20, 2007.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Kenneth Wong, Deputy Manager, Licensing and Safety Division, Commercial Space Transportation, AST–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8465; facsimile (202) 267–3686, e-mail *ken.wong@faa.gov*. For legal information, contact Laura Montgomery, Senior Attorney, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3150; facsimile (202) 267–7971, e-mail *laura.montgomery@faa.gov*.

SUPPLEMENTARY INFORMATION: As required by the Commercial Space Launch Amendments Act of 2004, the FAA established *Human Space Flight Requirements for Crew and Space Flight Participants*, 71 FR 75616 (Dec. 15, 2006). The FAA's new requirements for commercial human space flight include a rule on security mandating that operators ''implement security requirements to prevent any space flight participant from jeopardizing the safety of the flight crew or the public'' and prohibiting a space flight participant from carrying on board ''any explosives, firearms, knives or other weapons.'' 14 CFR 460.53. In explaining this rule in response to a comment, the FAA characterized the right to bear arms under the Second Amendment of the Constitution as ''a collective right.'' 71 FR at 75626. The FAA now withdraws that characterization of the right to bear arms. The prohibition on the carriage of firearms by participants in commercial space flights remains unchanged.

The Executive Branch, through the Department of Justice, interprets the Second Amendment as securing a right of individuals to keep and bear arms. (See Memorandum for the Attorney General from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, *et al.*, Re: Whether The Second Amendment Secures An Individual Right (Aug. 24, 2004), available at *http://www.usdoj.gov/olcsecondoamendment2.pdf*). In light of this interpretation, the FAA is withdrawing the statement made in the final rule.

Regardless of the nature of the right, however, it remains true, as we noted, that the right is, like any other, not unfettered. The Justice Department itself made this abundantly clear in its analysis and through its historical review. (*See generally id.* at 1–5, 6 n.19, 8 n.29, 18 n.68, 61–68, 73, 81–82, 87–98, 102–04.) Similarly, the Fifth Circuit, which treats the right to bear arms as an

individual right, has stated, ''Although, as we have held, the Second Amendment does protect individual rights, that does not mean that those rights may never be made subject to any limited, narrowly tailored specific exceptions or restrictions for particular cases that are reasonable and not inconsistent with the right of Americans generally to individually keep and bear their private arms as historically understood in this country.'' *U.S.* v. *Emerson*, 270 F.3d 203 (5th Cir. 2001).

The FAA continues to believe that the possession of weapons by space flight participants on board a suborbital rocket poses an unacceptably high risk to the integrity of the vehicle and the safety of the public, and that the rule is consistent with the Second Amendment. In proposing the rule, we pointed out that ''[s]ecurity restrictions currently apply to passengers for airlines. Some of the restrictions prohibit a person carrying explosives, firearms, knives, or other weapons from boarding an airplane. Similar types of security restrictions for launch or reentry vehicles would contribute to the safety of the public by preventing a space flight participant from potentially interfering with the flight crew's ability to protect the public.'' 70 FR 77262–01, 77271. In response to the comment regarding the Second Amendment, we added that ''in 1958, Congress made it a criminal offense to knowingly carry a firearm onto an airplane engaged in air transportation. 49 U.S.C. 46505.'' 71 FR at 75626. The FAA thus has authority to issue this rule.

Correction

In final rule FR Doc. No FAA–2005–23449, published on December 15, 2006 (71 FR 75616), make the following correction:

On page 75626, in the third column, fourth full paragraph, lines 16 through 20, correct, ''Additionally, nearly all courts have also held that the Second Amendment is a collective right, rather than a personal right. Therefore, despite the Second Amendment collective right to bear arms, the FAA has'' to read ''By analogy, and for the reasons given when the FAA issued its human space flight requirements, the FAA has, consistent with the right to bear arms secured by the Second Amendment.''

* * * * *

Issued in Washington, DC, on February 14, 2007.

Rebecca MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. E7–2851 Filed 2–16–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 657 and 658

[FHWA Docket No. FHWA–2006–24134]

RIN 2125–AF17

Size and Weight Enforcement and Regulations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing the enforcement of commercial vehicle size and weight to incorporate provisions enacted in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU); the Energy Policy Act of 2005, and; the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006. This final rule adds various definitions; corrects obsolete references, definitions, and footnotes; eliminates redundant provisions; amends numerical route changes to the National Highway designations; and incorporates statutorily mandated weight and length limit provisions.

DATES: This final rule is effective March 22, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. William Mahorney, Office of Freight Management and Operations, (202) 366–6817, or Mr. Raymond Cuprill, Office of the Chief Counsel (202) 366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access this document, the notice of proposed rulemaking (NPRM), and all comments received by the U.S. DOT Docket by using the universal resource locator (URL) *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: *http://www.archives.gov* or the Government Printing Office's Web page at *http://www.gpoaccess.gov/nara.*

Background

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144), the Energy Policy Act of 2005 (Pub. L. 109–58, 119 Stat. 544), and the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006 (Pub. L. 109–115, 119 Stat. 2396) enacted size and weight provisions concerning auxiliary power units, custom harvesters, over-the-road buses, and drive-away saddlemount vehicle combinations.

Additionally, the transfer of motor carrier safety functions to the Federal Motor Carrier Safety Administration (FMCSA) established by the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748) affected the internal organizational structure of the FHWA. Although the responsibility for commercial motor vehicle size and weight limitation remained in the FHWA, the references in the regulations to the old FHWA's Office of Motor Carriers (OMC) and its officials are obsolete. This action updates these references to reflect the changes in the agency's organizational structure.

Discussion of Comments Received to the Notice of Proposed Rulemaking (NPRM)

On May 1, 2006, the FHWA published an NPRM in the **Federal Register** at 71 FR 25516 to provide an opportunity for public comment on the proposed changes to 23 CFR Parts 657 and 658. In response to the NPRM, the FHWA received 39 comments. Commenters included 8 State enforcement agencies, 9 industry associations, 4 members of Congress, 14 individuals, a union (multiple members), a law firm representing a trucking company, one intercity bus company, and an association of State transportation officials. The FHWA considered each of these comments in adopting this final rule. The changes made in response to those comments are identified and addressed under the appropriate sections below.

Section-by-Section Discussion of the Proposals

Part 657

Section 657.1 Purpose

Michigan DOT (MDOT) expressed concerns about using the terms ''Federal-aid Interstate, Federal-aid primary, Federal-aid Secondary, or Federal-aid Urban Systems,'' which are

no longer used, to describe the size and weight enforcement program, and suggested using the term ''National Highway System'' in their place.

FHWA Response: MDOT is correct that the terms identified are no longer generally used. However, to ensure the clarity and applicability of section 657.1, we chose to retain the terms because they are still used in 23 U.S.C. 141(a), and thus in 23 CFR 657.3, to define the extent of each State's enforcement obligation. We believe that using the term National Highway System, which did not exist on October 1, 1991, is not used in 23 U.S.C. 141, and is no longer identical to the highways systems listed in proposed section 657.1, would generate substantial confusion.

Part 658

Section 658.5 Definitions

Commercial Motor Vehicle

The FHWA proposed to clarify that recreational vehicle movements that include transportation to or from the manufacturer for customer delivery, sale, or display purposes are not covered by the definition of commercial motor vehicle for the purposes of these regulations. Five commenters, including Former Congressman Bud Shuster, the National RV Dealers Association, the National Automobile Dealers Association (NADA), the Ohio State Police, and the Illinois DOT, expressed support for the proposal to exclude recreational vehicles even when operated for a commercial purpose. Two commenters suggested that the section should be clarified to include recreational vehicle dealers as well as manufacturers.

The NADA and the Texas DOT raised concerns regarding what constitutes a recreational vehicle. Texas DOT asked whether travel trailers, and companies who transport them, were to be excluded as well. Additionally, the NADA suggested that FHWA include a definition of recreational vehicle, and the Ohio State Police requested a 3-year grace period for States to comply with any new definition.

FHWA Response: The FHWA believes that the same rationale applies equally to recreational vehicle dealers and manufacturers. We are therefore including dealers as well as manufacturers in this provision. Further, it is our intent to include motorized vehicles operating under their own power used only for camping or other recreational activities in this provision. However, we do not intend to exclude all third party commercial entities that transport recreational vehicles from the width regulations. For example, a company that transports recreational vehicles via tow-bars or on a flat-bed on behalf of a dealer would not be exempt because the recreational vehicle, in this instance, becomes freight when not being operated by its own power. This would also apply equally to travel trailers, which do not travel under their own power. We do not believe that a grace period is necessary to comply with this rulemaking action because the change simply involves excluding certain vehicles from coverage by the width regulations, and relieves the State agencies of the burden of enforcing these regulations against these vehicles.

Non-Divisible Load or Vehicle

The NPRM proposed to expand the definition of non-divisible load to include vehicles loaded with salt, sand, chemicals or a combination of these materials, to be used in spreading the materials on any winter roads, and when operating as emergency response vehicles. Four commenters expressed support for this proposal, citing the need for additional flexibility during poor weather conditions. The American Trucking Associations (ATA) opposed modifying the definition of non-divisible loads to include ''military vehicle transporting marked military equipment or materiel.'' Further, the ATA suggested that all emergency response vehicles should be eligible for classification as non-divisible loads. The American Association of State Highway Transportation Officials (AASHTO) also recommended that the FHWA work with AASHTO to develop a proposed exception to the current non-divisible load requirement that would allow, but not require, a State to issue a permit to an overweight vehicle certified to be carrying an urgently needed disaster relief load during a declared emergency. The MDOT, while supporting the proposal, asked whether a permit would be required as a result of this determination.

FHWA Response: The FHWA believes that the limiting factors for the specific vehicles mentioned in the NPRM are adequate to ensure that they are used only during an emergency. Since the proposal would allow these vehicles to be considered non-divisible loads, no permit would be necessary.

The suggestions to create a more expansive definition to accommodate additional non-divisible loads during declared emergencies are beyond the scope of this rulemaking and therefore will not be addressed at this time. The ATA's opposition to the inclusion of ''military vehicles transporting marked military equipment or materiel'' in the definition of non-divisible loads is also outside the scope of this rulemaking. Such military vehicles were the subject of a previous rulemaking action, which is now finalized.

Drive-Away Saddlemount Combination

The FHWA proposed to amend 23 CFR 658.13(e)(1)(iii) to extend to 97 feet the length limit on drive-away saddlemount combinations that are specifically designed to tow up to three trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the forward vehicle of the truck or truck tractor in front of it. This provision generated 22 comments. The comments focused on the wording of section 4141 of SAFETEA–LU, specifically whether or not the language was intended to include all saddlemount combinations in the new 97-foot limit, or only those that include a fullmount. The question arose because of the title of newly created 49 U.S.C. 31111(a)(4), ''Drive-away saddlemount with fullmount vehicle transporter combination.'' Section 4141 of SAFETEA–LU defined this term as ''a vehicle combination designed and specifically used to tow up to 3 trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the forward vehicle of the truck or truck tractor in front of it.'' The definition does not refer to a fullmount in the vehicle combination.

Several commenters expressed the view that the statutory language should be interpreted to include only saddlemounts with fullmount. Congressman David G. Reichert, AASHTO, and the law firm of Schwerin Campbell Barnard LLP believe that the congressional language shows clear intent to limit the application of the law to saddlemount combinations ''with fullmount.'' In support of this position, several commenters expressed concerns about the safety of this configuration. Congressman Reichert noted that the ''fullmount saddlemount vehicle, had no wheels on the ground, which tends to make the entire vehicle combination more stable.'' This view was also shared by Schwerin Campbell Barnard LLP, on behalf of General Teamsters Local 174, a Seattle-based affiliate of the International Brotherhood of Teamsters. Additionally, AASHTO stated, ''the legislated change in the rule governing saddlemount vehicles has raised serious concerns among some State enforcement officials concerning possible safety and infrastructure issues.'' The California Department of Transportation asked about the scope of the legislation, specifically whether the new length

regulations would apply on service access routes. Additionally, FHWA received 20 general comments from individual Local 174 Teamster members, all expressing various safety concerns with regard to FHWA's interpretation and the proposed regulatory language.

Other commenters took the view that the language included, or was intended to include, all saddlemount combinations, with or without fullmount. In a July 18, 2006, letter to Maria Cino, Acting Secretary of the Department of Transportation, Congressman Don Young, Chairman of the House Transportation and Infrastructure Committee, stated that the NPRM language ''accurately reflects the Congressional intent of section 4141.'' Congressman Young indicated that as Chairman of this committee, he was directly involved in the development of this language during the three years leading up to passage of SAFETEA–LU. He further states that: ''It was our intention that the term 'drive-away saddlemount vehicle transporter combination' would include all saddlemount combinations, with or without fullmount.'' Three other members of Congress also submitted letters stating their involvement in the development of the language, and their support for the language as proposed in the NPRM.

The Automobile Carriers Conference (ACC) supported the proposed regulatory language and noted that the safety concerns expressed by other commenters were unfounded. The ACC refers to a study prepared by the University of Michigan Transportation Research Institute (UMTRI) [''Consideration of an Increase in the Overall Length of Triple Saddlemount Driveaway Combinations'' (January 2006)]:

> Extensive studies have been performed that prove the safety of these combinations. Combinations up to 97 feet have a proven track record for complying with brake stopping distances as prescribed in FMCSR 393.52. According to the University of Michigan Transportation Research Institute, rollover threshold is virtually unaffected when increasing the length of a saddlemount combination from 75 feet. UMTRI goes on to state that the extended length saddlemount combination shows better rearward amplification than a corresponding 75 foot combination. UMTRI concludes that one could expect that the extended length saddlemount combination would exhibit improved handling, on the order of 23% reduction in rearward amplification, relative to a corresponding 75 foot combination.

Further, ACC states that ''[s]ince the enactment of SAFETEA–LU, actual operational experience in the running [of] saddlemount combinations at [a] length up to 97 feet in the United States and parts of Canada have had no adverse impact on safety.'' On behalf of JHT Holding, Holland and Knight agreed, noting ''that after 107 million miles of saddlemount operations since the enactment of SAFETEA–LU, driveaway saddlemount combinations continue to experience a crash rate that is significantly less than the national average for large truck crashes in the United States.''

FHWA Response: The FHWA believes that the use of the words ''with fullmount'' in the section heading and in the term defined in the section is not dispositive of the matter. The FHWA believes that it is important to examine the entire language of the provision, and in particular the statutory definition of the term itself, which are both necessary to make a reasonable interpretation of the congressional intent behind this provision. The FHWA believes that restricting this provision to saddlemounts with fullmount would ignore the express statutory definition used by the legislators, which is indicative of an intent to make the provisions of this section applicable to all saddlemount combinations. The definition contains no reference as to whether the saddlemount combination must contain a fullmount vehicle, which in effect makes the definition, and therefore the provision, applicable to saddlemounts that contain a fullmount as well as those that do not. The fact that the defined term contains the words ''with fullmount'' is not sufficient to override the definition itself, which makes no such limitations. This conclusion is supported by the letter from Congressman Young, Chairman of the House Transportation and Infrastructure Committee, who indicates that he was involved in the development of the language in question, as well as letters from Congressmen Paul Ryan, Michael Burgess, and Kenny Marchant.

In view of the above, the FHWA maintains that its reading of the statute is reasonable, and is retaining in this final rule the language proposed in the NPRM, which prohibits the States from enforcing an overall length limit of more or less than 97 feet on driveaway saddlemount vehicle combinations with up to 3 towed units, with or without fullmount.

Definition of Over-the-Road Buses

The FHWA proposed to incorporate into 23 CFR 658.5 a previously established definition of ''over-the-road'' buses found in 42 U.S.C. 12181(5).

The American Bus Association and Greyhound Lines, Inc. stated that the NPRM's definition of ''over-the-road buses'' was accurate and needed nothing further. However, these entities suggested that the FHWA should clarify that the definition of a ''covered State'' includes any State that enforced an axle weight limit described in the NPRM at any time described in the legislation. Both commenters suggested using the term ''in'' as opposed to ''during'' in the proposed language in section 658.17(k) in order to clarify the statute and regulation.

FHWA Response: We agree. Section 115 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006 (119 Stat. 2408) used the term ''in,'' as opposed to ''during,'' and is therefore correct. We also agree with the assertion that the proposed definition of ''covered States'' does include all States that enforced such a limit at any time during the specified period.

Section 658.13 Length

As discussed above, the FHWA is amending the specialized equipment provision in section 658.13(e)(1)(iii) to incorporate the statutory length limit that is now applicable to drive-away saddlemount vehicle transporter combinations. Additionally, the FHWA is amending the definition to clarify that such combinations must comply with all applicable Federal Motor Carrier Safety Regulations, not just the provisions contained in 49 CFR Part 393.71.

Section 658.15 Width

The NPRM proposed to amend 23 CFR 658.5 to eliminate any Federal role in regulating the width of recreational vehicles while operating under their own power as commercial motor vehicles. As discussed above, the FHWA is clarifying that recreational vehicle movements that include transportation under their own power to or from the manufacturer for customer delivery, sale, or display purposes are not covered by the definition of commercial motor vehicle. As such, we proposed to change paragraph (c), to exempt recreational vehicles operating under their own power from width limitations. The FHWA received no comments to this proposal, and will retain the language proposed in the NPRM.

Section 658.17 Weight

Over-the-Road Buses

The NPRM proposed to extend the temporary exemption granted by Congress for over-the-road buses until October 1, 2009, and to change the regulations to reflect the new, 24,000 lb. axle weight mandated by Congress (Sec. 115, Pub. L. 109–115, 119 Stat. at 2408). Several States provided comments and questions regarding the applicability of the proposed regulations. The Texas Department of Public Safety and the California DOT asked several questions regarding the proposed language, the relationship of the exemption listed in section 1309 of SAFEATEA–LU, and the language contained in the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006. Specifically, the commenters asked whether either provision was mandatory for States, and whether the 24,000 lb. provision applied to the steering axle of a motorcoach.

Auxiliary Power Units

Comments relating to the idle reduction systems or auxiliary power units (APU) focused on three general areas: whether the APU itself was limited to 400 lbs., how the regulation should be enforced, and whether the States must allow the 400 lb. tolerance contained in the statute.

Several commenters pointed out that the language proposed by FHWA would limit the weight of the auxiliary power unit to 400 lbs., which they believed to be inconsistent with the legislative language. They believe instead that the 400 lbs. limit related to the additional weight of the vehicle, not the APU itself.

Several State and industry groups expressed concern or asked how a State would enforce the 400 lb. limit with regard to axle, tandem, gross weight, and the bridge formula. How would a State determine load distribution? What documentation or proof would or should be necessary for compliance? What constitutes proof that a unit is ''fully functional at all times?'' Additional concerns were raised with regard to the possibility of fraudulent certifications and APU look-alike devices that might allow additional freight in violation of the rule.

The ATA stated that the NPRM was inconsistent with congressional intent by allowing States the option of allowing either a gross weight limit, an axle weight limit exemption, or both. The ATA felt that ''the regulation should make it clear that all States must allow the additional weight on gross, vehicle, axle and bridge formula limits. The regulation should also clarify that the additional authorized weight may be inclusive of or in addition to existing state weight enforcement tolerances.''

The ATA, while agreeing with the weight certification requirement, also expressed concern that the proposed rule included fuel weight in the calculation of the APU's weight. The Owner-Operators Independent Drivers Association (OOIDA) urged the FHWA to be flexible in this area, suggesting that an acceptable certification would include a certificate from the manufacturer, other business records, certification by the weight of individual APU components (to allow for units that are self-manufactured), or a certified scale ticket representing vehicle weight before and after the unit is installed.

Commenters also expressed concern regarding the requirement that the APU be ''fully functional at all times,'' stating that they were unsure how such a requirement can be certified or documented, and requested that FHWA clarify this issue. The OOIDA suggested that the operator be able to satisfy this requirement verbally. The OOIDA and the Truck Manufacturers Association also believe that the certification requirement verifying the APU's weight will eliminate most, if not all, enforcement concerns since the driver would gain no freight advantage while transporting a non-functioning unit. This would especially be true if the unit is temporarily broken. Further, OOIDA requested that the rule make it clear that a driver would be required to make the necessary certifications only in response to the finding that the vehicle is overweight. Several respondents also requested that FHWA provide a list of manufacturers of these products, and provide guidance to the States regarding enforcement.

Finally, several commenters asked whether the States are required to adopt the 400 lb. exemption.

FHWA Response: Over-the-Road Buses—Section 1309 of SAFETEA–LU is not preemptive. Its purpose is to allow the States to waive the axle weight limits on both transit and over-the-road buses at their discretion until October 1, 2009. The language in Sec. 115 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006 (119 Stat. 2396, at 2408) is preemptive in nature, but applies only to those States defined as ''covered States.'' If a State meets the definition of a covered State, it must adhere to the new provision on all individual axle weights, including the steering axle. It is important to note, however, that this legislation and the supporting regulation do not impair a State's ability to weigh over-the-road buses. Further, the regulatory language only prohibits the citing of single axle weight violations, not violations of the gross, tandem, or other weight limits while on the Interstate system.

Auxiliary Power Units

Section 756 of the Energy Policy Act of 2005 amended 23 U.S.C. 127(a) to allow an increase in the Federal weight limits by up to 400 lbs. to account for APUs installed in any heavy-duty vehicle (119 Stat. 594, at 829). The intent of this provision is to promote the use of technologies that reduce fuel consumption and emissions that result from engine idling.

We agree with several of the commenters and have adjusted the regulatory language accordingly. FHWA has revised the language to eliminate the weight requirement for the APU itself, while allowing up to a total of 400 lbs. in axle, tandem, gross, or bridge weight formula (which is an axle weight calculation), or the weight of the APU unit, whichever is less. For example, a vehicle equipped with an APU that has a certified weight of 750 lbs. would be allowed the maximum of 400 lbs. additional weight. However, a vehicle with an APU that has a certified weight of 300 pounds would be allowed a 300 lb. exemption. This is consistent with the statutory language.

The FHWA understands the concerns of enforcement agencies and users about the weight certification requirements. The FHWA believes that the certification of the APU's weight must be in writing, but can include a wide range of options, including a manufacturer's certification (sticker, specification plate, etc), certified scale tickets listing the vehicle's weight both before and after the unit's installation, a component parts list with listed weights of each component if the unit is manufactured by the owner or operator, etc., so long as it accurately reflects the weight of the unit and is available to roadside enforcement officers. As for the inclusion of fuel in the overall weight calculation of the unit, we have concluded upon further consideration that the empty weight of the APU is more appropriate, given that many of these units will utilize the truck tractor's fuel supply.

The statutory requirement for a ''demonstration or certification'' that the unit is ''fully functional at all times'' is more problematic. We believe that a manual demonstration, or a certification letter which clearly states the unit's

operational characteristics if the unit is temporarily broken down, should provide sufficient proof. FHWA agrees with several commenters that there will be little or no incentive for a driver to install and transport a non-working APU. We also believe that there would be little need to require a driver to provide proof of weight and operability unless the vehicle is over the weight thresholds specified in the regulations. Additionally, we agree that the increased weight must be allowed in addition to any enforcement tolerances that are currently authorized under Federal law.

It is important to note that section 756 of the Energy Policy Act of 2005 which amended 23 U.S.C. 127 does not preempt State enforcement of its weight limits on all highways; rather, it prevents the FHWA from imposing funding sanctions if a State authorizes the 400 lb. weight limit on their Interstate system. Therefore, it remains for each State to decide whether it will allow the increased weight limits for APUs. However, a State must adhere to the provisions of section 658.17 if it chooses to allow the additional weight.

Section 658.23 LCV Freeze; Cargo-carrying Unit Freeze

The NPRM proposed to replace obsolete references to the Office of Motor Carriers with references to the FHWA. In drafting the replacement regulatory text in the NPRM, the FHWA inadvertently changed the word ''must'' to ''may'' in the last sentence of subsection (c). We did not propose, nor did we intend, to change the substantive requirements contained in this subsection. The FHWA did not receive any comments in response to the proposals contained in this section. Therefore we have corrected the regulatory text to reflect the current regulatory requirements and to update the obsolete references to the Office of Motor Carriers.

Appendix A to 23 CFR Part 658—National Network—Federally-Designated Routes

The FHWA proposed to change route designations within the State of New Mexico on certain portions of the National Network. The State of New Mexico submitted a comment clarifying the changes to route number designations for routes on its portion of the National Network. These changes are numerical only and will not add or remove routes from the original network. Additional changes include: changing NM 491 to U.S. 491; changing U.S. 516 to NM 516, and; deleting U.S. 666 in its entirety. The FHWA is therefore amending Appendix A to reflect these route number changes.

Appendix B to 23 CFR Part 658—Grandfathered Semitrailer Lengths

One commenter pointed out that Appendix B refers to 23 CFR 658.13(h), which no longer exists, and suggests making the appropriate modifications to correct the error.

FHWA Response: As stated in the NPRM, the FHWA is aware that section 658.13 was reorganized in a previous rulemaking action, at 67 FR 15110, March 29, 2002, and that the provisions that formerly appeared in paragraph (h) are now found in paragraph (g). Therefore, the FHWA is adopting the language proposed in the NPRM to correct this error.

Miscellaneous Comments

General Comments on FHWA's Size and Weight Program

Several individuals submitted general comments on the FHWA's size and weight program. Among the comments were suggestions to eliminate double and triple vehicle combinations on the highways, restricting the length of landscape trucks and trailers, mandating pavement standards to provide for 10 ton-per-axle weight limits in all weather conditions, allowing 90,000 lbs. gross weight on six axle tractor-semitrailers, and generally revising section 658.15 and section 658.17 to accommodate larger, heavier, hybrid vehicles that are currently not allowed on the Interstates or National Network.

FHWA Response: These comments address issues that were not raised in the NPRM, and are therefore outside the scope of this rulemaking. Additionally, the vehicle weight limits for Interstate highways are statutory (23 U.S.C. 127), as are the vehicle width and length limits on the National Network (49 U.S.C. 31111-31115). None of them can be changed by FHWA.

FHWA Authority

One commenter questions the FHWA's legal authority to amend the regulations as proposed in the NPRM. The commenter indicates several of the proposals, including those that propose to replace references in the regulations to the old Office of Motor Carriers with references to the FHWA, are illegal because section 101(a) of the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, 113 Stat. 1748) (MCSIA) requires the Federal Motor Carrier Safety Administrator to carry out any duties and powers related to motor carriers or motor carrier safety. He indicates that after the creation of FMCSA, various driver and vehicle safety inspection functions were transferred from FHWA's Office of Motor Carriers to FMCSA in a final rule published on October 19, 1999 (64 FR 56270), but that the final rule failed to transfer, and maintained within the FHWA in violation of the statute, the enforcement of commercial motor vehicle size and weight laws and regulations affecting the safe design of trucks.

The FHWA disagrees with the commenter's interpretation of the provisions of the MCSIA and its alleged effect on FHWA's authority over the commercial vehicle size and weight program. The provision in question is now codified at 49 U.S.C. 113(f)(1). This provision, which describes the powers and duties of the Federal Motor Carrier Administrator, reads as follows:

> ''(f) Powers and Duties.—The Administrator shall carry out—(1) duties and powers *related to motor carriers or motor carrier safety* vested in the Secretary by chapters 5, 51, 55, 57, 59, 133 through 149, *311,* 313, 315, and 317 and by section 18 of the Noise Control Act of 1972 (42 U.S.C. 4917; 86 Stat. 1249–1250); except as otherwise delegated by the Secretary to any agency of the Department of Transportation other than the Federal Highway Administration, as of October 8, 1999 * * *'' (emphasis added)

For purposes of this discussion, it is clear that the FMCSA's Administrator is delegated by statute the duties and powers related to motor carriers and motor carrier safety vested in the Secretary by, among other provisions, chapter 311 of title 49, United States Code. However, we note that this statutory delegation is limited to duties and powers ''related to motor carriers and motor carrier safety'' in that chapter. This clearly refers to the motor carrier and motor carrier safety functions that were delegated to the FMCSA in the 1999 final rule cited by the commenter (64 FR 56270), which are very different from the commercial motor vehicle size and weight limitations, duties, and functions, which are in part located in 49 U.S.C. Chapter 311, and which remained delegated to the FHWA. Duties and powers under other subchapters of chapter 311 which are related to motor carrier and motor carrier safety functions such as the Motor Carrier Safety Assistance Program and State grants, and the Federal Motor Carrier Safety Regulations that affect motor carriers and drivers, were delegated to the FMCSA by the 1999 final rule. Duties and powers relating to the commercial motor vehicle size and weight limitations, which are

established by law, not only in Chapter 311 of title 49 United States Code, but also in Chapter 1 of title 23 U.S.C. (sections 127 and 141), remained delegated to the FHWA Administrator (see 71 FR 30828).

The commercial motor vehicle size and weight program is different from the motor carrier and motor carrier safety duties carried out by the FMCSA, and serve to establish limitations which the States are required to implement and enforce in order to protect and preserve the infrastructure and overall highway safety in highways that have received Federal assistance for construction and maintenance. It is not a regulation of motor carriers or their drivers, although these limitations affect the dimensions of the vehicles operated by these entities. The commercial motor vehicle size and weight program, including its regulation of the State's authority over vehicle limitations, is directly related to the Federal-aid highway program and Federal-aid highway funding. It does not involve the type of motor carrier or motor carrier safety oversight that Congress intended to be delegated to the FMCSA in the MCSIA provisions. As a result, it has appropriately remained delegated to the FHWA, as part of this agency's duties to administer the Federal-aid highway program and highway safety.

Finally, we note that Congress is fully aware that the commercial vehicle size and weight program remained in FHWA. As part of recent major highway program reauthorization acts and related oversight, congressional committees have requested and received information on FHWA's implementation of changes to the size and weight program. The Department would surely have received direction from Congress during all the years since the enactment of the MCSIA if Congress had intended this program to be delegated to an agency other than the FHWA.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 and would not be significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. This rule will not adversely affect, in a material way, any sector of the economy. This action changes out-dated references to offices within the FHWA and updates the current regulations to reflect changes made by the Congress in SAFETEA–LU and other recent legislation. Additionally, this action would add various definitions; correct obsolete references, definitions, and footnotes; eliminate redundant provisions; amend numerical route changes to the National Highway designations; and incorporate a statutorily mandated weight limit provision. There will not be any additional costs incurred by any affected group as a result of this rule. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees or loan programs. Consequently, a regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), we have evaluated the effects of this action on small entities and have determined that the action would not have a significant economic impact on a substantial number of small entities. The FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has preliminarily determined that this proposed action would not warrant the preparation of a federalism assessment. Any federalism implications arising from this rule are attributable to SAFETEA–LU sections 4112 and 4141. The FHWA has determined that this proposed action would not affect the States' ability to discharge traditional State government functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this rule does not contain collection of information requirements for the purposes of the PRA.

Unfunded Mandates Reform Act of 1995

This rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year. (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action would not cause any environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA does not anticipate that this action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

National Environmental Policy Act

The FHWA has analyzed this action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the

action would not have substantial direct effects on one or more Indian tribes; would not impose substantial compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution or use of energy. Therefore, a Statement of Energy Effects is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory section listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this section with the Unified Agenda.

List of Subjects in 23 CFR Parts 657 and 658

Grants Program—transportation, Highways and roads, Motor carriers.

Issued on: February 13, 2007.

J. Richard Capka,

Federal Highway Administrator.

■ In consideration of the foregoing, the FHWA amends Chapter I of title 23, Code of Federal Regulations, by revising Parts 657 and 658, respectively, as set forth below:

PART 657—CERTIFICATION OF SIZE AND WEIGHT ENFORCEMENT

■ 1. Revise the authority citation for part 657 to read as follows:

Authority: 23 U.S.C. 127, 141 and 315; 49 U.S.C. 31111, 31113 and 31114; sec. 1023, Pub. L. 102–240, 105 Stat. 1914; and 49 CFR 1.48(b)(19), (b)(23), (c)(1) and (c)(19).

■ 2. Revise § 657.1 to read as follows:

§ 657.1 Purpose.

To prescribe requirements for administering a program of vehicle size and weight enforcement on the Interstate System, and those routes which, prior to October 1, 1991, were designated as part of the Federal-aid primary, Federal-aid secondary, or Federal-aid urban systems, including the required annual certification by the State.

■ 3. Revise § 657.3 to read as follows:

§ 657.3 Definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. As used in this part:

Enforcing or *Enforcement* means all actions by the State to obtain compliance with size and weight requirements by all vehicles operating on the Interstate System and those roads which, prior to October 1, 1991, were designated as part of the Federal-aid Primary, Federal-aid Secondary, or Federal-aid Urban Systems.

Urbanized area means an area with a population of 50,000 or more.

■ 4. Revise the first sentence of paragraph (a) and revise paragraph (b) of § 657.11 to read as follows:

§ 657.11 Evaluation of operations.

(a) The State shall submit its enforcement plan or annual update to the FHWA Division Office by July 1 of each year. * * *

(b) The FHWA shall review the State's operation under the accepted plan on a continuing basis and shall prepare an evaluation report annually. The State will be advised of the results of the evaluation and of any needed changes in the plan itself or in its implementation. Copies of the evaluation reports and subsequent modifications resulting from the evaluation shall be forwarded to the FHWA's Office of Operations.

■ 5. Revise paragraphs (b), (e), and (f)(3)(iii) of § 657.15 to read as follows:

§ 657.15 Certification content.

* * * * *

(b) A statement by the Governor of the State, or an official designated by the Governor, that all State size and weight limits are being enforced on the Interstate System and those routes which, prior to October 1, 1991, were designated as part of the Federal-aid Primary, Urban, and Secondary Systems, and that the State is enforcing and complying with the provisions of 23 U.S.C. 127(d) and 49 U.S.C. 31112. Urbanized areas not subject to State jurisdiction shall be identified. The statement shall include an analysis of enforcement efforts in such areas.

* * * * *

(e) A copy of any State law or regulation pertaining to vehicle sizes and weights adopted since the State's last certification and an analysis of the changes made.

* * * * *

(f) * * *

(3) * * *

(iii) *Permits.* The number of permits issued for overweight loads shall be reported. The reported numbers shall specify permits for divisible and nondivisible loads and whether issued on a trip or annual basis.

■ 6. Revise § 657.17 to read as follows:

§ 657.17 Certification submittal.

(a) The Governor, or an official designated by the Governor, shall submit the certification to the FHWA division office prior to January 1 of each year.

(b) The FHWA division office shall forward the original certification to the FHWA's Office of Operations and one copy to the Office of Chief Counsel. Copies of appropriate evaluations and/or comments shall accompany any transmittal.

■ 7. Revise § 657.19 to read as follows:

§ 657.19 Effect of failure to certify or to enforce State laws adequately.

If a State fails to certify as required by this regulation or if the Secretary determines that a State is not adequately enforcing all State laws respecting maximum vehicle sizes and weights on the Interstate System and those routes which, prior to October 1, 1991, were designated as part of the Federal-aid primary, Federal-aid secondary or Federal-aid urban systems, notwithstanding the State's certification, the Federal-aid funds for the National Highway System apportioned to the State for the next fiscal year shall be reduced by an amount equal to 10 percent of the amount which would otherwise be apportioned to the State under 23 U.S.C. 104, and/or by the amount required pursuant to 23 U.S.C. 127.

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

■ 8. The authority citation for part 658 is revised to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111, 31112, and 31114; sec. 347, Pub. L. 108–7, 117 Stat. 419; sec, 756, Pub. L. 109–58, 119 Stat. 829; sec. 1309, Pub. L. 109–59, 119 Stat. 1219; sec. 115, Pub. L. 109–115, 119 Stat. 2408; 49 CFR 1.48(b)(19) and (c)(19).

■ 9. Amend § 658.5 by revising the definitions of ''commercial motor vehicle'' and paragraph (2) of the definition of ''nondivisible load or vehicle''; and adding definitions of ''drive-away saddlemount vehicle transporter combinations'' and ''over-the-road bus'' to read as follows:

§ 658.5 Definitions.

* * * * *

Commercial motor vehicle. For purposes of this regulation, a motor vehicle designed or regularly used to carry freight, merchandise, or more than ten passengers, whether loaded or empty, including buses, but not including vehicles used for vanpools, or recreational vehicles operating under their own power.

Drive-away saddlemount vehicle transporter combination. The term drive-away saddlemount vehicle transporter combination means a vehicle combination designed and specifically used to tow up to 3 trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the forward vehicle of the truck tractor in front of it. Such combinations may include up to one fullmount.

* * * * *

Nondivisible load or vehicle.

(1) * * *

(2) A State may treat as nondivisible loads or vehicles: emergency response vehicles, including those loaded with salt, sand, chemicals or a combination thereof, with or without a plow or blade attached in front, and being used for the purpose of spreading the material on highways that are or may become slick or icy; casks designed for the transport of spent nuclear materials; and military vehicles transporting marked military equipment or materiel.

Over-the-road bus. The term over-the-road bus means a bus characterized by an elevated passenger deck located over a baggage compartment, and typically operating on the Interstate System or roads previously designated as making up the Federal-aid Primary System.

* * * * *

■ 10. Amend § 658.13 by revising paragraph (e)(1)(iii) and adding paragraph (h) to read as follows:

§ 658.13 Length.

* * * * *

(e) * * *

(1) * * *

(iii) Drive-away saddlemount vehicle transporter combinations are considered to be specialized equipment. No State shall impose an overall length limit of less or more than 97 feet on such combinations. This provision applies to drive-away saddlemount combinations with up to three saddlemounted vehicles. Such combinations may include one fullmount. Saddlemount combinations must also comply with the applicable motor carrier safety regulations at 49 CFR parts 390–399.

* * * * *

(h) Truck-tractors, pulling 2 trailers or semitrailers, used to transport custom harvester equipment during harvest months within the State of Nebraska may not exceed 81 feet 6 inches.

■ 11. Revise paragraph (c) of § 658.15 to read as follows:

§ 658.15 Width.

* * * * *

(c) Notwithstanding the provisions of this section or any other provision of law, a State may grant special use permits to motor vehicles, including manufactured housing, that exceed 102 inches in width.

■ 12. Revise paragraph (k) and add paragraph (n) of section § 658.17 to read as follows:

§ 658.17 Weight.

* * * * *

(k) Any over-the-road bus, or any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus, is excluded from the axle weight limits in paragraphs (c) through (e) of this section until October 1, 2009. Any State that has enforced, in the period beginning October 6, 1992, and ending November 30, 2005, a single axle weight limitation of 20,000 pounds or greater but less than 24,000 pounds may not enforce a single axle weight limit on these vehicles of less than 24,000 lbs.

* * * * *

(n) Any vehicle subject to this subpart that utilizes an auxiliary power or idle reduction technology unit in order to promote reduction of fuel use and emissions because of engine idling, may be allowed up to an additional 400 lbs. total in gross, axle, tandem, or bridge formula weight limits.

(1) To be eligible for this exception, the operator of the vehicle must be able to prove:

(i) By written certification, the weight of the APU; and

(ii) By demonstration or certification, that the idle reduction technology is fully functional at all times.

(2) Certification of the weight of the APU must be available to law enforcement officers if the vehicle is found in violation of applicable weight laws. The additional weight allowed cannot exceed 400 lbs. or the weight certified, whichever is less.

■ 13. Revise paragraphs (c) and (e) of § 658.23 to read as follows:

§ 658.23 LCV freeze; cargo-carrying unit freeze.

* * * * *

(c) For specific safety purposes and road construction, a State may make minor adjustments of a temporary and emergency nature to route designation and vehicle operating restrictions applicable to combinations subject to 23 U.S.C. 127(d) and 49 U.S.C. 31112 and in effect on June 1, 1991 (July 6, 1991, for Alaska). Minor adjustments which last 30 days or less may be made without notifying the FHWA. Minor adjustments which exceed 30 days require approval of the FHWA. When such adjustments are needed, a State must submit to the FHWA, by the end of the 30th day, a written description of the emergency, the date on which it began, and the date on which it is expected to conclude. If the adjustment involves alternate route designations, the State shall describe the new route on which vehicles otherwise subject to the freeze imposed by 23 U.S.C. 127(d) and 49 U.S.C. 31112 are allowed to operate. To the extent possible, the geometric and pavement design characteristics of the alternate route should be equivalent to those of the highway section which is temporarily unavailable. If the adjustment involves vehicle operating restrictions, the State shall list the restrictions that have been removed or modified. If the adjustment is approved, the FHWA will publish the notice of adjustment, with an expiration date, in the **Federal Register**. Requests for extension of time beyond the originally established conclusion date shall be subject to the same approval and publications process as the original request. If upon consultation with the FHWA a decision is reached that minor adjustments made by a State are not legitimately attributable to road or bridge construction or safety, the FHWA will inform the State, and the original conditions of the freeze must be reimposed immediately. Failure to do so may subject the State to a penalty pursuant to 23 U.S.C. 141.

* * * * *

(e) States further restricting or prohibiting the operation of vehicles subject to 23 U.S.C. 127(d) and 49 U.S.C. 31112 after June 1, 1991, shall notify the FHWA within 30 days after the restriction is effective. The FHWA will publish the restriction in the **Federal Register** as an amendment to appendix C to this part. Failure to provide such notification may subject the State to a penalty pursuant to 23 U.S.C. 141.

* * * * *

Appendix A to Section 658—National Network—Federally Designated Routes

■ 14. Amend appendix A to part 658 as follows:

■ A. By removing the words ''[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and

the following additional Federal-aid Primary highways.]'' and adding, in their place, the words ''[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional highways.]'' in each place that they appear;

■ B. By removing the explanatory phrase ''No additional routes have been federally designated; STAA-dimensioned commercial vehicles may legally operate on all Federal-aid Primary highways under State law.'' for the States of Arkansas, Colorado, Indiana, Kansas, Louisiana, Mississippi, Montana, Nebraska, Nevada, Ohio, South Dakota, Texas, Utah, Washington and Wyoming, and add, in its place, the words, ''No additional routes have been federally designated; under State law STAA-dimensioned commercial vehicles may legally operate on all highways which, prior to June 1, 1991, were designated as Federal-aid primary highways.'';

■ C. By revising the entries for ''New Mexico'' to read as follows:

NEW MEXICO

US 56	I–25 Springer	OK State Line.
US 60	AZ State Line	I–25 Socorro.
US 62	US 285 Carlsbad	Tx State Line.
US 64	AZ State Line	NM 516 Farmington.
US 70	AZ State Line	I–10 Lordsburg.
US 70	I–10 Las Cruces	U.S. 54 Tularosa.
US 70	US 285 Roswell	U.S. 84 Clovis.
NM 80	AZ State Line	I–10 Road Forks.
US 84	Tx State Line Clovis	CO State Line.
US 87	US 56 Clayton	Tx State Line.
US 160	Az State Line (Four Corners)	CO State Line.
US 285	Tx State Line s. of Carlsbad	CO State Line.
US 491	1–40 Gallup	CO State Line.
NM 516	U.S. 64 Farmington	U.S. 550 Aztec.
US 550	NM 516 Aztec	CO State Line.

Appendix B To Part 658—Grandfathered Semitrailer Lengths

■ 15. Amend appendix B to Part 658 in footnotes 1, 2, and 3 by removing the reference ''23 CFR 658.13(h)'' and by adding in its place ''23 CFR 658.13(g)'' each place it appears.

[FR Doc. E7–2823 Filed 2–16–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 021407B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allocation of the 2007 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 14, 2007, until 1200 hrs, A.l.t., September 1, 2007.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allocation of the 2007 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA is 868 metric tons (mt) as established by the 2006 and 2007 harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2007 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 668 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod

apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 13, 2007.

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

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

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

Dated: February 14, 2007.

Alan D. Risenhoover,

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

[FR Doc. 07–742 Filed 2–14–07; 1:44 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 021407C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allocation of the 2007 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 14, 2007, until 2400 hrs, A.l.t., September 1, 2007.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allocation of the 2007 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA is 1,224 metric tons (mt) as established by the 2006 and 2007 harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allocation of the 2007 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 874 mt, and is setting aside the remaining 350 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 13, 2007.

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

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

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

Dated: February 14, 2007.

Alan D. Risenhoover,

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

[FR Doc. 07–743 Filed 2–14–07; 1:44 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 021407D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Non-American Fisheries Act Crab Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for the A season allowance of the 2007 Pacific cod sideboard limits apportioned to non-American Fisheries Act (AFA) crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2007 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 16, 2007, until 1200 hrs, A.l.t., September 1, 2007.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the

GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of 2007 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA is 705 metric tons (mt) for the GOA, as established by the 2006 and 2007 harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006).

In accordance with § 680.22(e)(2)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allowance of the 2007 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a sideboard directed fishing allowance for Pacific cod as 700 mt in the Gulf of Alaska. The remaining 5 mt in the Gulf of Alaska will be set aside as bycatch to support other anticipated groundfish fisheries. In accordance with § 680.22(e)(3), the Regional Administrator finds that this sideboard directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the sideboard directed fishing closure of Pacific cod apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 13, 2007.

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

This action is required by § 680.22 and is exempt from review under Executive Order 12866.

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

Dated: February 14, 2007.

Alan Risenhoover,

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

[FR Doc. 07–744 Filed 2–14–07; 1:44 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 021207C]

Fisheries of the Exclusive Economic Zone Off Alaska; Chiniak Gully Research Area for Vessels Using Trawl Gear

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

ACTION: Temporary rule.

SUMMARY: NMFS is rescinding the trawl closure in the Chiniak Gully Research Area. This action is necessary to allow vessels using trawl gear to participate in directed fishing for groundfish in the Chiniak Gully Research Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 1, 2007, through 2400 hrs, A.l.t., December 31, 2007.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Chiniak Gully Research Area is closed to vessels using trawl gear from August 1 to a date no later than September 20 under regulations at § 679.22(b)(6)(ii)(A). This closure is in support of a research project to evaluate the effects of commercial fishing on pollock distribution and abundance, as part of a comprehensive investigation of Stellar sea lion and commercial fishery interactions.

The regulations at § 679.22(b)(6)(ii)(B) provide that the Acting Regional Administrator, Alaska Region, NMFS, (Regional Administrator) shall rescind the trawl closure if relevant research activities will not be conducted. The Regional Administrator has determined that research activities will not be conducted in 2007 in the Chiniak Gully Research Area. Therefore, the Regional Administrator is rescinding the trawl closure of the Chiniak Gully Research Area. All other closures remain in full force and effect.

Classification

Pursuant to 5 U.S.C. 553 (b)(B), the Assistant Administrator for Fisheries, NOAA (AA) finds good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary. Notice and comment is unnecessary because the rescission of the trawl closure is non-discretionary; pursuant to § 679.22(b)(6)(ii)(B), the Regional Administrator has no choice but to rescind the trawl closure once it is determined that research activities will not be conducted in the area.

Pursuant to 5 U.S.C. 553(d)(1), this rule is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d) since the rule relieves a restriction.

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

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

Dated: February 12, 2007.

James P. Burgess,

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

[FR Doc. E7–2828 Filed 2–19–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket Nos.060216045–6045–01 and 060216044–6044–01; I.D. 021207I]

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish Managed Under the Individual Fishing Quota Program

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

ACTION: Temporary rule; opening.

SUMMARY: NMFS is opening directed fishing for sablefish with fixed gear managed under the Individual Fishing Quota (IFQ) Program. The season will open 1200 hrs, Alaska local time (A.l.t.), March 10, 2007, and will close 1200 hrs, A.l.t., November 15, 2007. This period is the same as the 2007 IFQ and Community Development Quota season for Pacific halibut adopted by the International Pacific Halibut Commission (IPHC). The IFQ halibut season is specified by a separate publication in the **Federal Register** of annual management measures pursuant to 50 CFR 300.62.

DATES: Effective 1200 hrs, A.l.t., March 10, 2007, until 1200 hrs, A.l.t., November 15, 2007.

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

SUPPLEMENTARY INFORMATION: Beginning in 1995, fishing for Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) with fixed gear in the IFQ regulatory areas defined in § 679.2 has been managed under the IFQ Program. The IFQ Program is a regulatory regime designed to promote the conservation and management of these fisheries and to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Persons holding quota share receive an annual allocation of IFQ. Persons receiving an annual allocation of IFQ are authorized to harvest IFQ species within specified limitations. Further information on the implementation of the IFQ Program, and the rationale supporting it, are contained in the preamble to the final rule implementing the IFQ Program published in the **Federal Register**, November 9, 1993 (58 FR 59375) and subsequent amendments.

This announcement is consistent with § 679.23(g)(1), which requires that the directed fishing season for sablefish managed under the IFQ Program be specified by the Administrator, Alaska Region, and announced by publication in the **Federal Register**. This method of season announcement was selected to facilitate coordination between the sablefish season, chosen by the Administrator, Alaska Region, and the halibut season, chosen by the IPHC. The directed fishing season for sablefish with fixed gear managed under the IFQ Program will open 1200 hrs, A.l.t., March 10, 2007, and will close 1200 hrs, A.l.t., November 15, 2007. This period runs concurrently with the IFQ season for Pacific halibut announced by the IPHC. The IFQ halibut season will be specified by a separate publication in the **Federal Register** of annual management measures pursuant to 50 CFR 300.62.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the sablefish fishery thereby increasing bycatch and regulatory discards between the sablefish fishery and the halibut fishery, and preventing the accomplishment of the management objective for simultaneous opening of these two fisheries. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 12, 2007.

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

This action is required by § 679.23 and is exempt from review under Executive Order 12866.

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

Dated: February 12, 2007.

James P. Burgess,

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

[FR Doc. E7–2830 Filed 2–19–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 33
Tuesday, February 20, 2007

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

[Docket No. AO–14–A77, et al.; DA–07–02]

Milk in the Northeast and Other Marketing Areas; Supplemental Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Supplemental notice of public hearing on proposed rulemaking.

SUMMARY: This document contains an additional proposal to be considered at a previously scheduled hearing to consider proposals that would amend the Class III and Class IV product price formulas applicable to all Federal milk marketing orders.

DATES: The hearing will convene at 9 a.m., Monday, February 26, 2007.

ADDRESSES: The hearing will be held at the Holiday Inn Select—Strongsville, 15471 Royalton Road, Strongsville, Ohio 44136, phone (440) 238–8800.

FOR FURTHER INFORMATION CONTACT: Jack Rower, Marketing Specialist, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Stop 0231–Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–2357, e-mail address: *jack.rower@usda.gov*.

Persons requiring a sign language interpreter or other special accommodations should contact Paul Huber, Assistant Market Administrator, at (330) 225–4758; e-mail: *phuber@fmmaclev.com* before the hearing begins.

SUPPLEMENTARY INFORMATION: This additional proposal, which supplements a proposal published on February 7, 2007 (72 FR 6179), seeks to establish cost-of-production surcharges that manufacturers could include in the selling price of their products but would not be included in the determination of National Agricultural Statistics Service (NASS) survey prices for cheese, butter, nonfat dry milk and dry whey.

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Holiday Inn Select, Strongsville, Ohio, beginning at 9 a.m. on Monday, February 26, 2007, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Initial Regulatory Flexibility Analysis

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information collection requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees (13 CFR 121.201). Most parties subject to a milk order are considered as a small business.

For the purposes of determining which dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

USDA has identified that during 2005 approximately 51,060 of the 54,652 dairy producers whose milk is pooled on Federal orders are small businesses. Small businesses represent about 93 percent of the dairy farmers who participate in the Federal milk order program.

On the processing side, during June 2005 there were approximately 350 fully regulated plants (of which 149 or 43 percent were small businesses) and 110 partially regulated plants (of which 50 or 45 percent were small businesses.) In addition, there were 48 producer-handlers, of which 29 were considered small businesses for the purposes of this initial regulatory flexibility analysis, who submitted reports under the Federal milk order program during this period.

The fluid use of milk represented about 37.6 percent of total Federal milk marketing order producer deliveries during calendar year 2006. Almost 237 million Americans, approximately 80 percent of the total U.S. population reside within the geographical boundaries of the 10 Federal milk marketing areas.

In order to accomplish the goal of imposing no additional regulatory burdens on the industry, a review of the current reporting requirements was completed pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) In light of that review, it was determined that these proposed amendments would have little or no impact on reporting, record keeping, or other compliance requirements because these requirements would remain identical to those currently in effect under the Federal order program. No new or additional reporting would be necessary.

This notice does not require additional information collection that requires clearance by the OMB beyond the currently approved information collection. Information currently collected through the use of OMB-approved forms and the primary sources of data used to complete the forms are

routinely used in business transactions. The forms require only a minimal amount of information that can be provided without data processing equipment or trained statistical staff. Thus, the information collection burden is relatively small. Requiring the same reports from all handlers does not disadvantage any handler that is smaller than the industry average.

No other burdens are expected to fall upon the dairy industry as a result of overlapping Federal rules. This proposed rulemaking does not duplicate, overlap, or conflict with any existing Federal rules.

To ensure that small businesses are not unduly or disproportionately burdened based on these proposed amendments consideration was given to mitigating any negative impacts. It is expected that small producers would not experience any particular disadvantage compared to larger producers as a result of the proposed amendments. Similarly, it is expected that small handlers would not experience any particular disadvantage compared to larger handlers as a result of the proposed amendments. Possible changes to the Class III and Class IV price formulas should not have any special impacts on small handler entities. All handlers manufacturing dairy products from milk classified as Class III or Class IV would remain subject to the same minimum prices regardless of the size of their operations. Minimum prices should not raise barriers regarding the ability of small handlers to compete in the marketplace.

Interested parties are invited to present evidence on the probable regulatory and information collection impact of the hearing proposals on small businesses. Also, such parties may suggest modifications of the proposal for tailoring its applicability to small businesses.

Executive Order 12988, Civil Justice Reform

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 8c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with (6) copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131.

Milk marketing orders.

The authority citation for 7 CFR parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131 read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

The proposed amendment, as set forth below, has not received the approval of the Department.

Proposed by Dairylea Cooperative, Inc.

Proposal No. 20

The additional proposal seeks to establish cost-of-production surcharges that manufacturers could include in the selling price of their products but would not be included in the determination of the NASS survey prices for cheese, butter, nonfat dry milk and dry whey.

1. Amend § 1000.50 by:

(a) Adding new paragraph (r);

(b) Adding new paragraph (r)(1); and

(c) Adding new paragraph (r)(2).

The additions read as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(r) *Manufacturing surcharges.* For the purposes of determining the NASS survey prices for this section, as reported by the Department, cost of production add-on surcharges, up to a maximum value as contained in part (1) of this section, shall not be included in the NASS survey prices.

(1) The maximum cost of production add-on surcharges shall be as follows:

(i) Cheese: $0.0xxx per pound;

(ii) Butter: $0.0xxx per pound;

(iii) Whey powder: $0.0xxx per pound; and

(iv) Nonfat dry milk: $0.0xxx per pound.

(2) To be excluded from the NASS survey price, cost of production factors must be shown on the appropriate invoice as a separately negotiated surcharge to the normal price charged on the invoice, up to the maximum amount shown for such product pursuant to part (1), above. Failure to show the add-on as such will result in any such values being included in the NASS survey price.

2. Amend § 1000.53 by adding new paragraph (a)(12), to read as follows:

§ 1000.53 Announcement of class prices, component prices, and advanced pricing factors.

(a) * * *

(12) The rates as determined in 1000.50(r)(1).

* * * * *

Copies of this supplemental notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, United States Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue, SW., Washington, DC 20250–9200, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture.

Office of the Administrator, Agricultural Marketing Service.

Office of the General Counsel.

Dairy Programs, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: February 14, 2007.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 07–746 Filed 2–14–07; 4:01 pm]

BILLING CODE 3410–02–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4006 and 4007

RIN 1212–AB10

Premium Rates; Payment of Premiums; Flat Premium Rates, Variable-Rate Premium Cap, and Termination Premium; Deficit Reduction Act of 2005; Pension Protection Act of 2006

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: This is a proposed rule to amend PBGC's regulations on Premium Rates and Payment of Premiums to implement certain provisions of the Deficit Reduction Act of 2005 (Pub. L. 109–171) and the Pension Protection Act of 2006 (Pub. L. 109–280) that are effective beginning in 2006 or 2007. The provisions that would be implemented by this rule change the flat premium rate, cap the variable-rate premium in some cases, and create a new ''termination premium'' that is payable in connection with certain distress and involuntary plan terminations. This rule does not address other provisions of the Pension Protection Act of 2006 that deal with PBGC premiums.

DATES: Comments must be submitted on or before April 23, 2007.

ADDRESSES: Comments, identified by RIN number 1212–AB10, may be submitted by any of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the Web site instructions for submitting comments.
- *E-mail*: *reg.comments@pbgc.gov*.
- *Fax*: 202–326–4224.
- *Mail or Hand Delivery*: Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

All submissions must include the Regulatory Information Number for this rulemaking (RIN 1212-AB10). Comments received, including personal information provided, will be posted to *www.pbgc.gov*. Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington DC 20005–4026, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: John H. Hanley, Director, Legislative and Regulatory Department; or Catherine B. Klion, Manager, or Deborah C. Murphy, Attorney, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Background

Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Pension plans covered by Title IV must pay premiums to PBGC. Section 4006 of ERISA deals with premium rates, and section 4007 of ERISA deals with the payment of premiums, including premium due dates, interest and penalties on premiums not timely paid, and persons liable for premiums.

On February 8, 2006, the President signed into law the Deficit Reduction Act of 2005, Pub. L. 109–171 (DRA 2005). Section 8101 of DRA 2005 amends section 4006 of ERISA. Section 8101(a) changes the per-participant flat premium rate for plan years beginning in 2006 from $19 to $30 for single-employer plans and from $2.60 to $8 for multiemployer plans and provides for inflation adjustments to the flat rates for future years. Section 8101(b) creates a new ''termination premium'' (in addition to the flat-rate and variable-rate premiums under section 4006(a)(3)(A) and (E) of ERISA) that is payable for three years following certain distress and involuntary plan terminations that occur after 2005.

On August 17, 2006, the President signed into law the Pension Protection Act of 2006, Pub. L. 109–280 (PPA 2006). Sections 401(b) and 402(g)(2)(B) of PPA 2006 make changes to the termination premium rules of DRA 2005. Section 405 of PPA 2006 amends section 4006 of ERISA to cap the variable-rate premium for plans of certain small employers beginning in 2007. (PPA 2006 also makes other changes affecting PBGC premiums that are not addressed in this rule.)

This rule would amend PBGC's regulations on Premium Rates (29 CFR Part 4006) and Payment of Premiums (29 CFR Part 4007) to conform to these requirements of DRA 2005 and PPA 2006 and to clarify how the requirements apply.

Flat-Rate Premium

Until the enactment of DRA 2005, the flat-rate premium had remained unchanged for single-employer plans since 1991 and for multiemployer plans since 1989. Section 8101(a) of DRA 2005 amends section 4006(a)(3)(A) of ERISA and adds new subparagraphs (F) and (G) to the end of section 4006(a)(3) of ERISA to raise the flat premium rates for 2006 for both single- and multiemployer plans and to provide for inflation indexing for future years.

Applicability

Before amendment by DRA 2005, section 4006(a)(3)(A) of ERISA provided (in part) that ''* * * the annual premium rate * * * is * * * in the case of a single-employer plan, for plan years beginning after December 31, 1990, an amount equal to the sum of $19 plus the [per-participant variable-rate premium] under subparagraph (E) for each * * * participant * * *'' Section 8101(a)(1)(A) of DRA 2005 changes ''$19'' to read ''$30.'' Thus, the amended text of ERISA, read literally, makes it appear that the $30 single-employer flat-rate premium applies to plan years beginning after 1990. However, section 8101(d)(1) of DRA 2005 (which does not amend ERISA) says that this change applies to plan years beginning after December 31, 2005. Accordingly, PBGC considers single-employer flat premium rates for plan years beginning before 2006 to be unaffected by DRA 2005.

Participant Count

Section 8101(a)(2)(A)(ii) of DRA 2005 adds a new clause (iv) to section 4006(a)(3)(A) of ERISA providing that the flat premium rate for a multiemployer plan for a post-2005 plan year is ''$8.00 for each individual who is a participant in such plan during the applicable plan year.'' PBGC interprets this to mean that the participant count is to be taken as of the premium snapshot date described in the premium rates regulation and PBGC's premium instructions (generally the last day of the plan year preceding the premium payment year). This is consistent with PBGC's interpretation of the nearly identical language in existing section 4006(a)(3)(A)(i) of ERISA.

Inflation Adjustments

Section 8101(a)(1)(B) and (2)(B) of DRA 2005 add to section 4006(a)(3) of ERISA substantially identical new subparagraphs (F) and (G) providing for inflation adjustments to the $30 and $8 flat rates for plan years beginning after 2006. The adjustments are based on changes in the national average wage index as defined in section 209(k)(1) of the Social Security Act, with a two-year lag—for example, for 2007, it will be the 2005 index that will be compared to the baseline (the 2004 index). However, new subparagraphs (F) and (G) are written in such a way that the premium rate can never go down; if the change in the national average wage index is negative, the premium rate remains the same as in the preceding year. Also, under new subparagraphs (F) and (G), premium rates are rounded to the nearest whole dollar. PBGC interprets this to mean that if the adjustment formula would produce an unrounded premium rate of some number of dollars plus 50 cents, the premium rate will be rounded up.

Regulatory Provisions

This rule would amend § 4006.3 of the premium rates regulation to reflect the changes to the flat-rate premium made by section 8101(a) of DRA 2005. Existing paragraphs (a)(1) and (a)(2) of § 4006.3 (setting forth the $19 and $2.60 flat rates) would be removed, and a cross-reference to new § 4006.3(c) would be provided instead. Paragraph (1) of new § 4006.3(c) provides pre-2006 rates ($19 and $2.60); paragraph (2) provides 2006 rates ($30 and $8); and paragraph (3) provides post-2006 rates (the greater of the preceding year's rate or the inflation-adjusted rate). The inflation adjustment is described in new § 4006.3(d).

Variable-Rate Premium

Section 405 of PPA 2006 amends section 4006(a)(3)(E)(i) of ERISA and adds new subparagraph (H) to the end of section 4006(a)(3) to cap the variable-rate premium for certain plans, effective for plan years beginning after 2006.

Plans Covered

Clause (i) of new section 4006(a)(3)(H) of ERISA says that the new variable-rate premium cap applies ''[i]n the case of an employer who has 25 or fewer employees on the first day of the plan year.'' But clause (ii) of new section 4006(a)(3)(H) of ERISA makes clear that the applicability of the new cap does not necessarily depend on the size of a single employer, but rather depends on the size of a plan's controlled group, that is, the aggregate size of ''all contributing sponsors and their controlled groups.'' (See the definition of ''controlled group'' in § 4001.2 of PBGC's regulation on Terminology (29 CFR Part 4001), which provides that ''[a]ny reference to a plan's controlled group means all contributing sponsors of the plan and all members of each contributing sponsor's controlled group''). Since a plan maintained by one contributing sponsor may or may not also be maintained by one or more other contributing sponsors that are not in the first sponsor's controlled group, the applicability of the cap must be determined plan by plan, not employer by employer.

Meaning of ''employee''

New section 4006(a)(3)(H) of ERISA does not give guidance as to the meaning of the term ''employee.'' PBGC proposes to define ''employee'' for this purpose by reference to section 410(b)(1) of the Internal Revenue Code, which deals with minimum coverage requirements for qualified plans and requires that employees be counted to evaluate the breadth of coverage of a plan. For this purpose, certain individuals may be counted as ''employees'' although they might not be considered common law employees of the employer—for example, affiliated service group employees (under Code section 414(m)) and leased employees (under Code section 414(n)). PBGC considers this approach appropriate to prevent an employer from qualifying for the cap by artificially lowering its employee count through the use of sophisticated business structuring devices. In addition, in order to ensure that all employees are counted, PBGC proposes that the employee count be determined without regard to Code section 410(b)(3), (4), and (5), which might be considered to exclude from the count collective bargaining employees, employees not meeting a plan's age and service requirements, and employees in separate lines of business.

Cap Amount

Under new section 4006(a)(3)(H)(i) of ERISA, the per-participant variable-rate premium is capped at ''$5 multiplied by the number of participants in the plan as of the close of the preceding plan year.'' PBGC interprets this to mean that the participant count is to be taken as of the premium snapshot date described in the premium rates regulation and PBGC's premium instructions (generally the last day of the plan year preceding the premium payment year). This is consistent with PBGC's interpretation of the nearly identical language in existing section 4006(a)(3)(E)(i) of ERISA. This participant count is the same as the count used as a multiplier under section 4006(a)(3)(A)(i) of ERISA for purposes of both the flat- and variable-rate premiums. Thus, an eligible plan's total variable-rate premium is capped at an amount equal to $5 multiplied by the square of the participant count.

Regulatory Provisions

This rule would revise § 4006.3(b) of the premium rates regulation to reflect the new cap on the variable-rate premium added by section 405 of PPA 2006. The existing variable-rate premium is described in new paragraph (b)(1) of § 4006.3. The cap is described in new paragraph (b)(2); plans eligible for the cap in new paragraph (b)(3); and the meaning of the term ''employee'' in new paragraph (b)(4). Paragraph (b)(2) includes an example of the computation of the cap taken from page 95 of the Technical Explanation of H.R. 4, the ''Pension Protection Act of 2006,'' as Passed by the House on July 28, 2006, and as Considered by the Senate on August 3, 2006, Prepared by the Staff of the Joint Committee on Taxation (August 3, 2006) (*http://www.house.gov/jct/x-38-06.pdf*).

Termination Premium

Section 8101(b) of DRA 2005 adds a new paragraph (7) to the end of section 4006(a) of ERISA, creating a new ''termination premium'' that applies only where certain distress and involuntary terminations occur and then only for three years. However, although only section 4006 of ERISA is amended, subparagraph (D) of new paragraph (7) in effect modifies section 4007 of ERISA as well. Sections 401(b) and 402(g)(2)(B) of PPA 2006 make changes to the termination premium rules of DRA 2005.

Termination Dates Covered

Section 8101(d)(2)(A) of DRA 2005 (which does not amend ERISA) restricts the new termination premium to ''plans terminated after December 31, 2005.'' (Section 401(b)(1) of PPA 2006 repeals new section 4006(a)(7)(E) of ERISA, added by DRA 2005, which provided that the termination premium would not apply ''with respect to any plan terminated after December 31, 2010.'')

Section 8101(d)(2)(B) of DRA 2005 further restricts the application of the new termination premium in certain bankruptcy situations. If a plan ''is terminated during the pendency of any bankruptcy reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State),'' the new premium does not

apply ''if the proceeding is pursuant to a bankruptcy filing occurring before October 18, 2005.'' Under section 402(g)(2)(B)(ii) of PPA 2006, this limitation does not apply to an ''eligible plan'' under section 402(c)(1) of PPA 2006 (generally a plan of a commercial passenger airline or airline catering service) while a funding election under section 402(a)(1) of PPA 2006 is in effect for the plan.

These time restrictions on the applicability of the new premium turn on when a plan is ''terminated.'' PBGC believes that the most natural reading of these provisions is that the date to look to is the termination date under section 4048 of ERISA. Focusing on the section 4048 termination date is also consistent with other provisions of DRA 2005 and implementing regulations discussed below.

Types of Terminations Covered

Under new section 4006(a)(7)(A) of ERISA, the termination premium applies where ''there is a termination of a single-employer plan under clause (ii) or (iii) of section 4041(c)(2)(B) [of ERISA] or section 4042 [of ERISA].'' Section 4041(c) of ERISA provides for distress terminations; ERISA section 4042 provides for involuntary terminations.

Under ERISA section 4041(c)(1), a distress termination of a plan may occur only if each contributing sponsor and each member of any contributing sponsor's controlled group meets one of the ''distress tests'' in clauses (i), (ii), and (iii) of section 4041(c)(2)(B). The tests are that the person is the subject of a bankruptcy liquidation proceeding (clause (i)), that the person is the subject of a bankruptcy reorganization proceeding (clause (ii)), or that the person is suffering business hardship (clause (iii)).

Although typically all contributing sponsors and controlled group members meet the same distress test, that is not required for a distress termination under section 4041(c). Thus, while terminations where all contributing sponsors and controlled group members meet the test in clause (i) seem to be excluded from applicability of the termination premium, it is not clear from the statutory language whether the termination premium is to apply to terminations where one or more contributing sponsors and/or controlled group members meet the clause (i) test but others meet the tests in clauses (ii) and/or (iii). Examples of such situations would be where there are two contributing sponsors, one liquidating and one reorganizing; where the sole contributing sponsor is liquidating but there are controlled group members that are reorganizing; and where the sole contributing sponsor is reorganizing but the controlled group members are liquidating.

The statutory language provides no basis for distinguishing among these examples or others that might be cited. All contributing sponsors and controlled group members are liable for plan underfunding under ERISA section 4062 and (as discussed below) for the termination premium (if it applies), and they must all satisfy one or another distress test under ERISA section 4041(c)(2)(B) for a distress termination to take place. This suggests that all these entities should be considered responsible as a group for the consequences of plan termination and that the fact that one entity among several is liquidating should not shield the others from liability. PBGC thus interprets new section 4006(a)(7)(A) of ERISA as applying the termination premium in any distress termination case where at least one contributing sponsor or controlled group member meets the distress test in either clause (ii) or (iii) of section 4041(c)(2)(B) (i.e., is not liquidating).

Payers

Section 4007(a) of ERISA places responsibility for paying PBGC premiums on the ''designated payor'' of a plan, and section 4007(e)(1)(A) of ERISA identifies the designated payor of a single-employer plan as the contributing sponsor or plan administrator. However, new section 4006(a)(7)(D)(i)(II) of ERISA, as added by section 8101(b) of DRA 2005, provides that notwithstanding section 4007, the designated payor of the new termination premium is ''the person who is the contributing sponsor as of immediately before the termination date.'' It thus appears that the designated payor is to be identified as of the day before the termination date under section 4048 of ERISA. Similarly, this rule provides for identification of members of the contributing sponsor's controlled group (which are jointly and severally liable for premiums under section 4007(e)(2) of ERISA) as of the same day.

Participants

Under new section 4006(a)(7)(A) of ERISA, the termination premium is based on the number of ''participants in the plan immediately before the termination date.'' It thus appears that participants are to be counted—for purposes of computing the termination premium—as of the day before the termination date under section 4048 of ERISA (the same day on which the contributing sponsor and controlled group members are determined). Section 4006.6 of the premium rates regulation already includes a definition of ''participant'' (which is used in computing the flat-rate premium), and DRA 2005 suggests no reason to depart from that definition for purposes of the termination premium.

Due Dates

The termination premium is payable each year for three years. Under new section 4006(a)(7)(D)(i)(I) of ERISA, as added by section 8101(b) of DRA 2005, the new premium is due within 30 days after the beginning of each of three ''applicable 12-month periods,'' which are in turn described in new section 4006(a)(7)(C). New section 4006(a)(7)(C)(i)(I) provides that in general, the first applicable 12-month period starts with ''the first month following the month in which the termination date occurs.'' (From this it is evident that calendar months are meant.) Under new section 4006(a)(7)(C)(i)(II), the second and third applicable 12-month periods are simply the two 12-month periods that follow the first applicable 12-month period.

But new section 4006(a)(7)(C)(ii) of ERISA defers the beginning of the first applicable 12-month period (and thus the due dates) in certain bankruptcy reorganization cases. This deferral rule comes into play where ''the requirements of subparagraph (B) [of new section 4006(a)(7) of ERISA] are met in connection with the termination of the plan * * *.'' (Section 401(b)(2) of PPA 2006 corrected an erroneous reference to ''subparagraph (B)(i)(I)'' in new section 4006(a)(7)(C)(ii) of ERISA.) Subparagraph (B) of new section 4006(a)(7)(B) of ERISA defers the applicability of the termination premium for distress or involuntary plan terminations that occur when bankruptcy reorganization proceedings are pending for terminations ''under section 4041(c)(2)(B)(ii) [of ERISA] or under section 4042 [of ERISA].'' Following the same reasoning discussed above regarding new section 4006(a)(7)(A) of ERISA (the general termination premium applicability provision), PBGC concludes that the bankruptcy reorganization deferral provision in new section 4006(a)(7)(B) of ERISA is meant to apply to a distress termination only when at least one contributing sponsor or controlled group member satisfies the bankruptcy reorganization test in section 4041(c)(2)(B)(ii).

In order for the due date deferral rule in new section 4006(a)(7)(C)(ii) of

ERISA to apply, the requirements of subparagraph (B) of section 4006(a)(7) of ERISA must be met ''with respect to 1 or more persons described in such subparagraph'' (that is, one or more persons must be reorganizing in bankruptcy as described in subparagraph (B)). If so, then the first applicable 12-month period begins with ''the first month following the month which includes the earliest date as of which each such person is discharged or dismissed in the case described in such clause [sic] in connection with such person.'' (The only clause mentioned in section 4006(a)(7)(C)(ii) of ERISA is clause (i)(I) of section 4006(a)(7)(C), which describes the first applicable 12-month period that applies if the special bankruptcy rule does not. Thus the reference to ''such clause'' appears to be intended to refer to ''such subparagraph''—that is, subparagraph (B)—and PBGC so interprets the reference.)

However, although subparagraph (B) of new section 4006(a)(7) of ERISA describes a case—a bankruptcy case—it does not describe a person. The only person mentioned in subparagraph (B) is ''such person,'' with no cross-reference to another place where the person is described. Nonetheless, it seems clear that the person referred to must be a person that has a relationship to both the plan and the bankruptcy proceeding mentioned in subparagraph (B). Subparagraph (B) contains parenthetical language that is essentially identical to parenthetical language that appears in section 4041(c)(2)(B)(ii) of ERISA (which describes the bankruptcy reorganization test for distress terminations). In section 4041(c)(2)(B)(ii), the words ''such person'' in the parenthetical language refer to a contributing sponsor or member of a contributing sponsor's controlled group. PBGC infers that ''such person'' in new section 4006(a)(7)(B) of ERISA is meant to refer likewise to a contributing sponsor of the terminated plan or member of a contributing sponsor's controlled group—determined (consistent with the designated payor provision in new section 4007(a)(7)(D)(i)(II)) as of the day before the termination date under section 4048 of ERISA.

This inference is supported by the observation that these same persons—contributing sponsors and controlled group members—are the persons liable for the termination premium. It appears that Congress' intent was to defer the due date for the termination premium until the persons liable to pay it were not in bankruptcy proceedings. Accordingly, where the special bankruptcy rule for due dates applies, it is necessary to identify every contributing sponsor and controlled group member that was involved in bankruptcy reorganization proceedings on the termination date and determine the date when each one left bankruptcy—through dismissal of or discharge from the proceeding—or ceased to exist. (If an entity ceases to exist, its failure to emerge from bankruptcy should not postpone the termination premium due date.) Under new section 4006(a)(7)(C)(ii), the first applicable 12-month period for the termination will then begin with the calendar month that next begins following the last such date.

One due date issue not addressed by the statute is that the agreement or court action establishing a plan's termination date under ERISA section 4048 may occur well after the termination date so established. Where a termination date is thus ''retroactively'' set, one or more statutory due dates for the termination premium may already have passed when the termination date becomes known. Thus, termination premium payments could be overdue before it was determined that they were owed.

In cases of that kind, PBGC considers it appropriate to provide that where the termination date is set retroactively, the first applicable 12-month period does not begin immediately after the month in which the termination date falls, but rather begins immediately after the month in which the termination date is established. Where the special bankruptcy rule for due dates applies, this rule would come into play if the termination date was established after all contributing sponsors and controlled group members were out of bankruptcy reorganization proceedings, and would defer the beginning of the first applicable 12-month period until immediately after the month in which the termination date was established.

Other Bankruptcy Issues

The parenthetical language in new section 4006(a)(7)(B) of ERISA—''(or a case described in section 4041(c)(2)(B)(i) filed by or against such person has been converted, as of such date, to such a case in which reorganization is sought)''—shows that Congress focused on the fact that bankruptcy proceedings can be converted back and forth between liquidation and reorganization proceedings. But neither section 4006(a)(7)(B) nor section 4006(a)(7)(C)(ii) (which describes the special first applicable 12-month period) mentions conversion of a reorganization case to a liquidation case as being sufficient to trigger the beginning of the first applicable 12-month period. It thus appears that even after such a conversion, the first applicable 12-month period would be postponed until the (liquidation) bankruptcy proceeding were dismissed or the contributing sponsor or controlled group member discharged. This could be of significance where there were other persons liable for the termination premium that were not (or were no longer) in bankruptcy.

Section 8101(d)(2)(B) of DRA 2005 (which, as discussed above, excludes from the termination premium terminations that occur during the pendency of bankruptcy reorganization proceedings pursuant to a filing before October 18, 2005) says nothing about the persons involved in such proceedings. Following the reasoning above, PBGC concludes that section 8101(d)(2)(B) is intended to apply only where the subject of a pending bankruptcy proceeding is a contributing sponsor of the terminated plan or a member of a contributing sponsor's controlled group (and that these persons are to be identified as of the day before the termination date under section 4048 of ERISA). Section 8101(d)(2)(B) also does not mention conversion of a bankruptcy case from a liquidation proceeding to a reorganization, as new section 4006(a)(7)(B) of ERISA does. But the language of section 8101(d)(2)(B) is consistent with the interpretation that—like section 4006(a)(7)(B)—it covers bankruptcy proceedings begun as liquidation proceedings and converted to reorganization proceedings before the termination date under section 4048 of ERISA.

Termination Premium Rate

Under new section 4006(a)(7) of ERISA as added by section 8101(b) of DRA 2005, the termination premium is $1,250 per participant per year for three years. But under section 402(g)(2)(B) of PPA 2006 (which does not amend ERISA), the rate is increased from $1,250 to $2,500 where a commercial passenger airline or airline catering service elects funding relief (an extended underfunding amortization period and lenient assumptions for valuing liabilities) for a frozen plan under section 402(a)(1) of PPA 2006, if the plan terminates during the first five years of the funding relief period, unless the Secretary of Labor determines that the termination resulted from extraordinary circumstances such as a terrorist attack or other similar event.

Regulatory Provisions

This rule would add a new § 4006.7 to the premium rates regulation

providing that the amount of the termination premium with respect to each applicable 12-month period is the premium rate (generally $1,250) times the number of participants, determined as of the day before the termination date, with a cross-reference from § 4006.3 (where the flat and variable premium rates are set forth). New § 4006.7(b) also explains the circumstances in which the termination premium rate is $2,500 rather than $1,250. In addition, the rule would add a new § 4007.13 to the premium payment regulation (with a cross-reference from § 4006.7), where the rest of the provisions about the termination premium are found.

New § 4007.13 contains provisions specific to the termination premium, and it supplements provisions in existing sections of Part 4007 that also apply to the termination premium. Section 4007.13(a) describes when the termination premium applies; § 4007.13 (d), (e), and (f) deal with due dates; § 4007.13(g) deals with what persons are liable for the termination premium. The provisions on these three topics reflect the discussions above.

Section 4007.13(b) makes each contributing sponsor and controlled group member (determined as of the day before the termination date under section 4048 of ERISA) responsible for filing required termination premium information and payments, and (where there is more than one such person) provides that any one can file on behalf of all of them. This provision ensures that, so long as there is at least one person still in existence that is liable for the termination premium, there will be at least one identifiable entity with responsibility to file. This provision is similar to § 4010.3 of PBGC's regulation on Annual Financial and Actuarial Information Reporting (Part 4010 of PBGC's regulations) and § 4043.3(a) of PBGC's regulation on Reportable Events and Certain Other Notification Requirements (Part 4043 of PBGC's regulations). Thus, only a single filing of the premium and required premium information is required, but if it is not timely made, PBGC could seek enforcement against any or all contributing sponsors and controlled group members.

Section 4007.13(c) provides for a discretionary ''facts-and-circumstances'' penalty for failure to pay the termination premium timely, instead of the automatic 1 percent or 5 percent penalty that applies to late payment of flat- and variable-rate premiums under § 4007.8(a). PBGC wants to preserve flexibility in penalizing failures to pay the new premium in full and on time while it gains experience with the new premium. The penalty is limited to 100 percent of the amount of termination premium not timely filed.

In addition, this rule would amend several sections in the existing premium payment regulation to eliminate inconsistencies or potential inconsistencies between existing language in those sections and the termination premium provisions.

Technical Changes

PBGC is taking this opportunity to make some technical changes (unrelated to DRA 2005 or PPA 2006) to its regulations on Premium Rates and Payment of Premiums.

Section 4006.3 of the premium rates regulation refers to basic benefits guaranteed under section 4022(a) of ERISA (which relates only to single-employer plans) and omits mention of section 4022A(a) of ERISA (which relates to multi-employer plans). This rule would add a reference to section 4022A(a).

Section 4007.11(d) of the premium payment regulation states that where proration of the flat- and variable-rate premiums is available under § 4006.5(f) of the premium rates regulation, the un-prorated premium must be paid in full (even if the plan would be entitled to a refund). This provision is anachronistic: PBGC now permits payment of the prorated amount under § 4006.5(f), rather than requiring that a filer pay the un-prorated amount and request a refund. This rule would remove the outdated provision.

Section 4007.11(e) of the premium payment regulation permits PBGC to return improper filings and consider them not made. PBGC is not exercising this authority, and the provision is unnecessary; PBGC has authority to assess penalties under ERISA section 4071 for failure to submit material information under the premium payment regulation. This rule would remove § 4007.11(e).

Applicability

The regulatory changes made by this rule to implement the provisions of section 8101 of DRA 2005 would apply (as section 8101 of DRA 2005 does) to plan years beginning after 2005 and to terminations with termination dates after 2005 (subject to the special rule for bankruptcies filed before October 18, 2005). The regulatory changes made by this rule to implement the provisions of section 405 of PPA 2006 would apply (as section 405 of PPA 2006 does) to plan years beginning after 2006.

Compliance With Rulemaking Guidelines

The PBGC has determined, in consultation with the Office of Management and Budget, that this proposed rule is a ''significant regulatory action'' under Executive Order 12866. The Office of Management and Budget, therefore, has reviewed the rule under Executive Order 12866.

PBGC certifies under section 605(b) of the Regulatory Flexibility Act that the amendments in this rule will not have a significant economic impact on a substantial number of small entities. This rule implements statutory changes made by Congress. It provides guidance on how to calculate, pay, and substantiate the premiums prescribed by statute and imposes no significant burden beyond the burden imposed by statute. Furthermore:

- The statutorily imposed increase in the flat-rate premium is at most $11 per participant per year, which does not constitute a significant economic impact where a plan has a small number of participants. Although the flat-rate premium will increase as the number of participants increases, the economic impact of the flat-rate premium relative to the size of the entity will remain fairly constant and will not be significant for a substantial number of entities of any size.
- The statutorily imposed cap on the variable-rate premium will save qualifying plans money. The rule simply interprets the statutory provisions.
- The statutorily imposed termination premium will not affect a substantial number of entities of any size.

Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), sections 603 and 604 do not apply.

The information requirements relating to the flat-rate and variable-rate premiums have been approved by the Office of Management and Budget under the Paperwork Reduction Act (OMB control number 1212–0009, expires April 30, 2008).

PBGC is submitting the information requirements relating to the termination premium to the Office of Management and Budget for review and approval under the Paperwork Reduction Act. Copies of PBGC's request may be obtained free of charge by contacting the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street, NW., Washington, DC 20005, 202–326–4040.

PBGC needs this information to identify the plan for which a termination premium is paid to PBGC,

to verify the determination of the premium, and to identify the persons liable for the premium.

PBGC expects that it will receive termination premium filings from about 30 contributing sponsors or controlled group members annually and that the total annual burden of the collection of information will be about 40 hours and $264,000.

Comments on the paperwork provisions under this proposed rule should be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. Although comments may be submitted through April 23, 2007, the Office of Management and Budget requests that comments be received on or before March 22, 2007 to ensure their consideration. Comments may address (among other things)—

- Whether the proposed collection of information is needed for the proper performance of PBGC's functions and will have practical utility;
- The accuracy of PBGC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancement of the quality, utility, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

List of Subjects

29 CFR Part 4006

Pension insurance, Pensions.

29 CFR Part 4007

Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons given above, PBGC is amending 29 CFR parts 4006 and 4007 as follows.

PART 4006—PREMIUM RATES

1. The authority citation for part 4006 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

2. In § 4006.3:

a. The introductory text is amended by removing the words ''§ 4006.5 (dealing with exemptions and special rules)'' and adding in their place the words ''§ 4006.5 (dealing with exemptions and special rules) and § 4006.7 (dealing with premiums for certain terminated single-employer plans)''; and by removing the words ''section 4022(a)'' and adding in their place the words ''section 4022(a) or section 4022A(a)''.

b. Paragraph (a) introductory text is amended by removing the words ''multiplied by—'' and adding in their place the words ''multiplied by the applicable flat premium rate determined under paragraph (c) of this section.''.

c. Paragraphs (a)(1) and (a)(2) are removed.

d. Paragraph (b) is revised, and new paragraphs (c) and (d) are added, to read as follows:

§ 4006.3 Premium rate.

* * * * *

(b) *Variable-rate premium.*

(1) *In general.* Subject to the limitation in paragraph (b)(2) of this section, the variable-rate premium is $9 for each $1,000 of a single-employer plan's unfunded vested benefits, as determined under § 4006.4.

(2) *Cap on variable-rate premium.* If a plan is described in paragraph (b)(3) of this section for the premium payment year, the variable-rate premium does not exceed $5 multiplied by the square of the number of participants in the plan on the last day of the plan year preceding the premium payment year. For example, if the number of participants in the plan on the last day of the plan year preceding the premium payment year is 20, the variable-rate premium does not exceed $2,000 ($\$5 \times 20^2 = \$5 \times 400 = \$2,000$).

(3) *Plans eligible for cap.* A plan is described in this paragraph (b)(3) for the premium payment year if the aggregate number of employees of all employers in the plan's controlled group on the first day of the premium payment year is 25 or fewer.

(4) *Meaning of ''employee.''* For purposes of paragraph (b)(3) of this section, the aggregate number of employees is determined in the same manner as under section 410(b)(1) of the Code, taking into account the provisions of section 414(m) and (n) of the Code, but without regard to section 410(b)(3), (4), and (5) of the Code.

(c) *Applicable flat premium rate.* The applicable flat premium rate is:

(1) For a premium payment year beginning before 2006—

(i) For a single-employer plan, $19, and

(ii) For a multiemployer plan, $2.60.

(2) For a premium payment year beginning in 2006—

(i) For a single-employer plan, $30, and

(ii) For a multiemployer plan, $8.

(3) For a premium payment year beginning after 2006, the greater of—

(i) The applicable flat premium rate for plan years beginning in the calendar year preceding the calendar year in which the premium payment year begins, or

(ii) The adjusted flat rate determined under paragraph (d) of this section for the premium payment year.

(d) *Adjusted flat rate.* The adjusted flat rate for a premium payment year beginning after 2006 is determined by—

(1) Multiplying the applicable flat premium rate for 2006 by the ratio of—

(i) The national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the two calendar years preceding the calendar year in which the premium payment year begins, to

(ii) The national average wage index (as so defined) for 2004; and

(2) Rounding the result to the nearest multiple of $1 (rounding up any unrounded result that equals some whole number of dollars plus 50 cents).

3. New § 4006.7 is added to read as follows:

§ 4006.7 Premium rate for certain terminated single-employer plans.

(a) The premium under this section (''termination premium'') applies to a DRA 2005 termination described in § 4007.13 of this chapter.

(b) The amount of the premium under this section that is payable with respect to each applicable 12-month period (as described in § 4007.13 of this chapter) is the number of participants in the plan, determined as of the day before the termination date under section 4048 of ERISA, multiplied by the termination premium rate. In general, the termination premium rate is $1,250. However, the termination premium rate is $2,500 for an ''eligible plan'' under section 402(c)(1) of the Pension Protection Act of 2006 (dealing with certain plans of commercial passenger airlines and airline catering services) while an election under section 402(a)(1) of the Pension Protection Act of 2006 (dealing with alternative funding schedules) is in effect for the plan if the plan terminates during the five-year period beginning on the first day of the first applicable plan year (as defined in section 402(c)(2) of that Act) with respect to the plan, unless the Secretary of Labor determines that the plan terminated as a result of extraordinary circumstances such as a terrorist attack or other similar event.

(c) The premium under this section is in addition to any other premium under this part.

(d) See § 4007.13 of this chapter for further rules about termination premiums.

PART 4007—PAYMENT OF PREMIUMS

4. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(a), 1306, 1307.

5. Section 4007.3 is amended by removing the words ''The plan administrator'' and adding in their place the words ''Subject to the provisions of § 4007.13, the plan administrator''; and by removing ''§ 4007.11'' and adding in its place the words ''this part''.

6. In § 4007.7, paragraph (a) is amended by removing ''§ 4007.11'' and adding in its place the words ''this part''.

7. In § 4007.8:

a. Paragraph (a) introductory text is amended by removing the words ''If any premium payment due'' and adding in their place the words ''Subject to the provisions of § 4007.13, if any premium payment due''; and by removing ''§ 4007.11'' and adding in its place the words ''this part''.

b. Paragraph (a)(1)(i) is amended by removing the word ''plan's''.

c. Paragraph (a)(1) introductory text is revised to read as follows:

§ 4007.8 Late payment penalty charges.

(a) *Penalty charge.* * * *

(1) *Penalty rate; in general.* Except as provided in paragraph (a)(2) of this section, the penalty rate is—

* * * * *

8. In § 4007.9, paragraph (a) is amended by removing the words ''by a plan administrator''; and by removing the words ''that plan's'' and adding in their place the words ''a plan's''.

9. In § 4007.10:

a. Paragraph (a)(1) is amended by removing the words ''plan administrator'' and adding in their place the words ''designated recordkeeper under paragraph (a)(3) of this section''.

b. Paragraph (a)(2) is amended by removing the words ''The plan administrator'' and adding in their place the words ''A designated recordkeeper''.

c. Paragraph (b) is amended by removing the words ''for any premium payment year''.

d. Paragraph (c)(1) is amended by removing the words ''The plan administrator'' and adding in their place the words ''A designated recordkeeper''.

e. Paragraph (c)(2) is amended by removing the words ''the plan administrator'' and adding in their place the words ''a designated recordkeeper''.

f. Paragraph (c)(2)(ii) is amended by removing the words ''plan administrator'' and adding in their place the words ''designated recordkeeper''.

g. New paragraph (a)(3) is added to read as follows:

§ 4007.10 Recordkeeping; audits; disclosure of information.

(a) *Retention of records to support premium payments.*

* * * * *

(3) *Designated recordkeepers.*

(i) With respect to the flat-rate and variable-rate premiums described in § 4006.3 of this chapter, the plan administrator is the designated recordkeeper.

(ii) With respect to the premium for certain terminated single-employer plans described in § 4006.7 of this chapter, each person who was a contributing sponsor of such a plan, or was a member of a contributing sponsor's controlled group, as of the day before the plan's termination date is a designated recordkeeper.

* * * * *

10. In § 4007.11:

a. Paragraph (a) introductory text is amended by removing the words ''The premium filing due date for small plans'' and adding in their place the words ''For flat-rate and variable-rate premiums, the premium filing due date for small plans''.

b. Paragraph (a)(3) introductory text is amended by removing the words ''the premium form or forms and payment or payments for the short plan year shall be filed by'' and adding in their place the words ''the due date or dates for the flat-rate premium and any variable-rate premium for the short plan year are''; and by removing the words ''for the premium forms and payments''.

c. Paragraph (c) introductory text is amended by removing the words ''the premium form and all premium payments due for the first plan year of coverage of any new plan or newly covered plan shall be filed on or before'' and adding in their place the words ''the due date for the flat-rate premium and any variable-rate premium for the first plan year of coverage of any new plan or newly covered plan shall be''.

d. Paragraph (d) is amended by removing the words ''to file the forms or forms prescribed by this part and to pay any premiums due'' and adding in their place the words ''to make flat-rate and (as applicable) variable-rate premium filings and payments under this part''; and by removing the last sentence of the paragraph (beginning ''The entire * * *'' and ending ''* * * § 4006.5(f).'').

e. Paragraph (e) is removed.

11. In § 4007.12, paragraph (a) is amended by removing the words ''to file the applicable forms and to submit the premium payment'' and adding in their place the words ''to make flat-rate and variable-rate premium filings and payments under this part''; and by removing the words ''liable for premium payments'' and adding in their place ''liable for flat-rate and variable-rate premium payments''.

12. New § 4007.13 is added to read as follows:

§ 4007.13 Premiums for certain terminated single-employer plans.

(a) *Applicability.*

(1) *In general.* This section applies where there is a ''DRA 2005 termination'' of a plan. Subject to paragraph (a)(2) of this section, there is a DRA 2005 termination where a single-employer plan's termination date under section 4048 of ERISA is after 2005 and either—

(i) The plan terminates under section 4042 of ERISA, or

(ii) The plan terminates under section 4041(c) of ERISA and at least one contributing sponsor or member of a contributing sponsor's controlled group meets the requirements of section 4041(c)(2)(B)(ii) or (iii) of ERISA.

(2) *Plans terminated during reorganization proceedings.* Except as provided in paragraph (a)(3) of this section, a DRA 2005 termination of a plan does not occur where as of the plan's termination date under section 4048 of ERISA—

(i) A bankruptcy proceeding has been filed by or against any person that was a contributing sponsor of the plan on the day before the plan's termination date or that was on that day a member of any controlled group of which any such contributing sponsor was a member,

(ii) The proceeding is pending as a reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State),

(iii) The person has not been discharged from the proceeding, and

(iv) The proceeding was filed before October 18, 2005.

(3) *Special rule for certain airline-related plans.* Paragraph (a)(2) of this section does not apply to an ''eligible plan'' under section 402(c)(1) of the Pension Protection Act of 2006 (dealing with certain plans of commercial passenger airlines and airline catering services) while an election under section 402(a)(1) of the Pension Protection Act of 2006 (dealing with alternative funding schedules) is in effect for the plan.

(4) *Termination premium.* A premium as described in § 4006.7 of this chapter is payable to PBGC with respect to a DRA 2005 termination each year for three years after the termination (the ''termination premium'').

(b) *Filing requirements; method of filing.* Notwithstanding § 4007.3, in the case of a DRA 2005 termination of a plan, each person that was a contributing sponsor of the plan on the day before the plan's termination date or that was on that day a member of any controlled group of which any such contributing sponsor was a member is responsible for filing prescribed termination premium information and payments. Any such person may file on behalf of all such persons.

(c) *Late payment penalty charges.* Notwithstanding § 4007.8(a), if any required termination premium payment is not filed by the due date under paragraph (d) of this section, PBGC may assess a late payment penalty charge based on the facts and circumstances, subject to waiver under § 4007.8(b), (c), (d), or (e). The charge will not exceed the amount of termination premium not timely filed.

(d) *Due dates.* Notwithstanding § 4007.11, the due date for the termination premium is the 30th day of each of three applicable 12-month periods. The three applicable 12-month periods with respect to a DRA 2005 termination of a plan are—

(1) *First applicable 12-month period.* Except as provided in paragraph (e) or (f) of this section, the period of 12 calendar months beginning with the first calendar month following the calendar month in which occurs the plan's termination date under section 4048 of ERISA, and

(2) *Subsequent applicable 12-month periods.* Each of the first two periods of 12 calendar months that immediately follow the first applicable 12-month period.

(e) *Certain reorganization cases.*

(1) This paragraph (e) applies with respect to a DRA 2005 termination of a plan if the conditions in both paragraph (e)(2) and paragraph (e)(3) of this section are satisfied.

(2) The condition of this paragraph (e)(2) is that either—

(i) The plan terminates under section 4042 of ERISA, or

(ii) The plan terminates under section 4041(c) of ERISA and at least one contributing sponsor or member of a contributing sponsor's controlled group meets the requirements of section 4041(c)(2)(B)(ii) of ERISA.

(3) The condition of this paragraph (e)(3) is that as of the plan's termination date under section 4048 of ERISA—

(i) A bankruptcy proceeding has been filed by or against any person that was a contributing sponsor of the plan on the day before the plan's termination date or that was on that day a member of any controlled group of which any such contributing sponsor was a member,

(ii) The proceeding is pending as a reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State), and

(iii) The person has not been discharged from the proceeding.

(4) If this paragraph (e) applies with respect to a DRA 2005 termination of a plan, then except as provided in paragraph (f) of this section, the first applicable 12-month period with respect to the plan is the period of 12 calendar months beginning with the first calendar month following the calendar month in which occurs the earliest date when, for every person that was a contributing sponsor of the plan on the day before the plan's termination date under section 4048 of ERISA, or that was on that day a member of any controlled group of which any such contributing sponsor was a member, either—

(i) There is not pending any bankruptcy proceeding that was filed by or against such person and that was, as of the plan's termination date under section 4048 of ERISA, a reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State), or

(ii) The person has been discharged from any such proceeding, or

(iii) The person no longer exists.

(f) *Retroactive plan termination date.* If a plan's termination date under section 4048 of ERISA is in the past when it is established by agreement or court action as described in section 4048 of ERISA, then the first applicable 12-month period for determining the due dates of the termination premium begins with the later of—

(1) The first calendar month following the calendar month in which the termination date is established by agreement or court action as described in section 4048 of ERISA, or

(2) The first calendar month specified in paragraph (d)(1) of this section or (if paragraph (e) of this section applies) paragraph (e)(4) of this section.

(g) *Liability for termination premiums.* In the case of a DRA 2005 termination of a plan, each person that was a contributing sponsor of the plan on the day before the plan's termination date, or that was on that day a member of any controlled group of which any such contributing sponsor was a member, is jointly and severally liable for termination premiums with respect to the plan.

Issued in Washington, DC, this 13th day of February, 2007.

Vincent K. Snowbarger,

Interim Director, Pension Benefit Guaranty Corporation.

[FR Doc. E7–2812 Filed 2–16–07; 8:45 am]

BILLING CODE 7709–01–P

Proposed Rules

Federal Register
Vol. 72, No. 33
Tuesday, February 20, 2007

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

[Docket No. AO–14–A77, et al.; DA–07–02]

Milk in the Northeast and Other Marketing Areas; Supplemental Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Supplemental notice of public hearing on proposed rulemaking.

SUMMARY: This document contains an additional proposal to be considered at a previously scheduled hearing to consider proposals that would amend the Class III and Class IV product price formulas applicable to all Federal milk marketing orders.

DATES: The hearing will convene at 9 a.m., Monday, February 26, 2007.

ADDRESSES: The hearing will be held at the Holiday Inn Select—Strongsville, 15471 Royalton Road, Strongsville, Ohio 44136, phone (440) 238–8800.

FOR FURTHER INFORMATION CONTACT: Jack Rower, Marketing Specialist, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Stop 0231–Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–2357, e-mail address: *jack.rower@usda.gov*.

Persons requiring a sign language interpreter or other special accommodations should contact Paul Huber, Assistant Market Administrator, at (330) 225–4758; e-mail: *phuber@fmmaclev.com* before the hearing begins.

SUPPLEMENTARY INFORMATION: This additional proposal, which supplements a proposal published on February 7, 2007 (72 FR 6179), seeks to establish cost-of-production surcharges that manufacturers could include in the selling price of their products but would not be included in the determination of National Agricultural Statistics Service (NASS) survey prices for cheese, butter, nonfat dry milk and dry whey.

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Holiday Inn Select, Strongsville, Ohio, beginning at 9 a.m. on Monday, February 26, 2007, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Initial Regulatory Flexibility Analysis

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information collection requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees (13 CFR 121.201). Most parties subject to a milk order are considered as a small business.

For the purposes of determining which dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

USDA has identified that during 2005 approximately 51,060 of the 54,652 dairy producers whose milk is pooled on Federal orders are small businesses. Small businesses represent about 93 percent of the dairy farmers who participate in the Federal milk order program.

On the processing side, during June 2005 there were approximately 350 fully regulated plants (of which 149 or 43 percent were small businesses) and 110 partially regulated plants (of which 50 or 45 percent were small businesses.) In addition, there were 48 producer-handlers, of which 29 were considered small businesses for the purposes of this initial regulatory flexibility analysis, who submitted reports under the Federal milk order program during this period.

The fluid use of milk represented about 37.6 percent of total Federal milk marketing order producer deliveries during calendar year 2006. Almost 237 million Americans, approximately 80 percent of the total U.S. population reside within the geographical boundaries of the 10 Federal milk marketing areas.

In order to accomplish the goal of imposing no additional regulatory burdens on the industry, a review of the current reporting requirements was completed pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) In light of that review, it was determined that these proposed amendments would have little or no impact on reporting, record keeping, or other compliance requirements because these requirements would remain identical to those currently in effect under the Federal order program. No new or additional reporting would be necessary.

This notice does not require additional information collection that requires clearance by the OMB beyond the currently approved information collection. Information currently collected through the use of OMB-approved forms and the primary sources of data used to complete the forms are

routinely used in business transactions. The forms require only a minimal amount of information that can be provided without data processing equipment or trained statistical staff. Thus, the information collection burden is relatively small. Requiring the same reports from all handlers does not disadvantage any handler that is smaller than the industry average.

No other burdens are expected to fall upon the dairy industry as a result of overlapping Federal rules. This proposed rulemaking does not duplicate, overlap, or conflict with any existing Federal rules.

To ensure that small businesses are not unduly or disproportionately burdened based on these proposed amendments consideration was given to mitigating any negative impacts. It is expected that small producers would not experience any particular disadvantage compared to larger producers as a result of the proposed amendments. Similarly, it is expected that small handlers would not experience any particular disadvantage compared to larger handlers as a result of the proposed amendments. Possible changes to the Class III and Class IV price formulas should not have any special impacts on small handler entities. All handlers manufacturing dairy products from milk classified as Class III or Class IV would remain subject to the same minimum prices regardless of the size of their operations. Minimum prices should not raise barriers regarding the ability of small handlers to compete in the marketplace.

Interested parties are invited to present evidence on the probable regulatory and information collection impact of the hearing proposals on small businesses. Also, such parties may suggest modifications of the proposal for tailoring its applicability to small businesses.

Executive Order 12988, Civil Justice Reform

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 8c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with (6) copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131.

Milk marketing orders.

The authority citation for 7 CFR parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131 read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

The proposed amendment, as set forth below, has not received the approval of the Department.

Proposed by Dairylea Cooperative, Inc.

Proposal No. 20

The additional proposal seeks to establish cost-of-production surcharges that manufacturers could include in the selling price of their products but would not be included in the determination of the NASS survey prices for cheese, butter, nonfat dry milk and dry whey.

1. Amend § 1000.50 by:

(a) Adding new paragraph (r);

(b) Adding new paragraph (r)(1); and

(c) Adding new paragraph (r)(2).

The additions read as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(r) *Manufacturing surcharges.* For the purposes of determining the NASS survey prices for this section, as reported by the Department, cost of production add-on surcharges, up to a maximum value as contained in part (1) of this section, shall not be included in the NASS survey prices.

(1) The maximum cost of production add-on surcharges shall be as follows:

(i) Cheese: $0.0xxx per pound;

(ii) Butter: $0.0xxx per pound;

(iii) Whey powder: $0.0xxx per pound; and

(iv) Nonfat dry milk: $0.0xxx per pound.

(2) To be excluded from the NASS survey price, cost of production factors must be shown on the appropriate invoice as a separately negotiated surcharge to the normal price charged on the invoice, up to the maximum amount shown for such product pursuant to part (1), above. Failure to show the add-on as such will result in any such values being included in the NASS survey price.

2. Amend § 1000.53 by adding new paragraph (a)(12), to read as follows:

§ 1000.53 Announcement of class prices, component prices, and advanced pricing factors.

(a) * * *

(12) The rates as determined in 1000.50(r)(1).

* * * * *

Copies of this supplemental notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, United States Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue, SW., Washington, DC 20250–9200, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture.

Office of the Administrator, Agricultural Marketing Service.

Office of the General Counsel.

Dairy Programs, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: February 14, 2007.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 07–746 Filed 2–14–07; 4:01 pm]

BILLING CODE 3410–02–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4006 and 4007

RIN 1212–AB10

Premium Rates; Payment of Premiums; Flat Premium Rates, Variable-Rate Premium Cap, and Termination Premium; Deficit Reduction Act of 2005; Pension Protection Act of 2006

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: This is a proposed rule to amend PBGC's regulations on Premium Rates and Payment of Premiums to implement certain provisions of the Deficit Reduction Act of 2005 (Pub. L. 109–171) and the Pension Protection Act of 2006 (Pub. L. 109–280) that are effective beginning in 2006 or 2007. The provisions that would be implemented by this rule change the flat premium rate, cap the variable-rate premium in some cases, and create a new ''termination premium'' that is payable in connection with certain distress and involuntary plan terminations. This rule does not address other provisions of the Pension Protection Act of 2006 that deal with PBGC premiums.

DATES: Comments must be submitted on or before April 23, 2007.

ADDRESSES: Comments, identified by RIN number 1212–AB10, may be submitted by any of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the Web site instructions for submitting comments.
- *E-mail*: *reg.comments@pbgc.gov*.
- *Fax*: 202–326–4224.
- *Mail or Hand Delivery*: Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

All submissions must include the Regulatory Information Number for this rulemaking (RIN 1212-AB10). Comments received, including personal information provided, will be posted to *www.pbgc.gov*. Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington DC 20005–4026, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: John H. Hanley, Director, Legislative and Regulatory Department; or Catherine B. Klion, Manager, or Deborah C. Murphy, Attorney, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Background

Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Pension plans covered by Title IV must pay premiums to PBGC. Section 4006 of ERISA deals with premium rates, and section 4007 of ERISA deals with the payment of premiums, including premium due dates, interest and penalties on premiums not timely paid, and persons liable for premiums.

On February 8, 2006, the President signed into law the Deficit Reduction Act of 2005, Pub. L. 109–171 (DRA 2005). Section 8101 of DRA 2005 amends section 4006 of ERISA. Section 8101(a) changes the per-participant flat premium rate for plan years beginning in 2006 from $19 to $30 for single-employer plans and from $2.60 to $8 for multiemployer plans and provides for inflation adjustments to the flat rates for future years. Section 8101(b) creates a new ''termination premium'' (in addition to the flat-rate and variable-rate premiums under section 4006(a)(3)(A) and (E) of ERISA) that is payable for three years following certain distress and involuntary plan terminations that occur after 2005.

On August 17, 2006, the President signed into law the Pension Protection Act of 2006, Pub. L. 109–280 (PPA 2006). Sections 401(b) and 402(g)(2)(B) of PPA 2006 make changes to the termination premium rules of DRA 2005. Section 405 of PPA 2006 amends section 4006 of ERISA to cap the variable-rate premium for plans of certain small employers beginning in 2007. (PPA 2006 also makes other changes affecting PBGC premiums that are not addressed in this rule.)

This rule would amend PBGC's regulations on Premium Rates (29 CFR Part 4006) and Payment of Premiums (29 CFR Part 4007) to conform to these requirements of DRA 2005 and PPA 2006 and to clarify how the requirements apply.

Flat-Rate Premium

Until the enactment of DRA 2005, the flat-rate premium had remained unchanged for single-employer plans since 1991 and for multiemployer plans since 1989. Section 8101(a) of DRA 2005 amends section 4006(a)(3)(A) of ERISA and adds new subparagraphs (F) and (G) to the end of section 4006(a)(3) of ERISA to raise the flat premium rates for 2006 for both single- and multiemployer plans and to provide for inflation indexing for future years.

Applicability

Before amendment by DRA 2005, section 4006(a)(3)(A) of ERISA provided (in part) that ''* * * the annual premium rate * * * is * * * in the case of a single-employer plan, for plan years beginning after December 31, 1990, an amount equal to the sum of $19 plus the [per-participant variable-rate premium] under subparagraph (E) for each * * * participant * * *'' Section 8101(a)(1)(A) of DRA 2005 changes ''$19'' to read ''$30.'' Thus, the amended text of ERISA, read literally, makes it appear that the $30 single-employer flat-rate premium applies to plan years beginning after 1990. However, section 8101(d)(1) of DRA 2005 (which does not amend ERISA) says that this change applies to plan years beginning after December 31, 2005. Accordingly, PBGC considers single-employer flat premium rates for plan years beginning before 2006 to be unaffected by DRA 2005.

Participant Count

Section 8101(a)(2)(A)(ii) of DRA 2005 adds a new clause (iv) to section 4006(a)(3)(A) of ERISA providing that the flat premium rate for a multiemployer plan for a post-2005 plan year is ''$8.00 for each individual who is a participant in such plan during the applicable plan year.'' PBGC interprets this to mean that the participant count is to be taken as of the premium snapshot date described in the premium rates regulation and PBGC's premium instructions (generally the last day of the plan year preceding the premium payment year). This is consistent with PBGC's interpretation of the nearly identical language in existing section 4006(a)(3)(A)(i) of ERISA.

Inflation Adjustments

Section 8101(a)(1)(B) and (2)(B) of DRA 2005 add to section 4006(a)(3) of ERISA substantially identical new subparagraphs (F) and (G) providing for inflation adjustments to the $30 and $8 flat rates for plan years beginning after 2006. The adjustments are based on changes in the national average wage index as defined in section 209(k)(1) of the Social Security Act, with a two-year lag—for example, for 2007, it will be the 2005 index that will be compared to the baseline (the 2004 index). However, new subparagraphs (F) and (G) are written in such a way that the premium rate can never go down; if the change in the national average wage index is negative, the premium rate remains the same as in the preceding year. Also, under new subparagraphs (F) and (G), premium rates are rounded to the nearest whole dollar. PBGC interprets this to mean that if the adjustment formula would produce an unrounded premium rate of some number of dollars plus 50 cents, the premium rate will be rounded up.

Regulatory Provisions

This rule would amend § 4006.3 of the premium rates regulation to reflect the changes to the flat-rate premium made by section 8101(a) of DRA 2005. Existing paragraphs (a)(1) and (a)(2) of § 4006.3 (setting forth the $19 and $2.60 flat rates) would be removed, and a cross-reference to new § 4006.3(c) would be provided instead. Paragraph (1) of new § 4006.3(c) provides pre-2006 rates ($19 and $2.60); paragraph (2) provides 2006 rates ($30 and $8); and paragraph (3) provides post-2006 rates (the greater of the preceding year's rate or the inflation-adjusted rate). The inflation adjustment is described in new § 4006.3(d).

Variable-Rate Premium

Section 405 of PPA 2006 amends section 4006(a)(3)(E)(i) of ERISA and adds new subparagraph (H) to the end of section 4006(a)(3) to cap the variable-rate premium for certain plans, effective for plan years beginning after 2006.

Plans Covered

Clause (i) of new section 4006(a)(3)(H) of ERISA says that the new variable-rate premium cap applies ''[i]n the case of an employer who has 25 or fewer employees on the first day of the plan year.'' But clause (ii) of new section 4006(a)(3)(H) of ERISA makes clear that the applicability of the new cap does not necessarily depend on the size of a single employer, but rather depends on the size of a plan's controlled group, that is, the aggregate size of ''all contributing sponsors and their controlled groups.'' (See the definition of ''controlled group'' in § 4001.2 of PBGC's regulation on Terminology (29 CFR Part 4001), which provides that ''[a]ny reference to a plan's controlled group means all contributing sponsors of the plan and all members of each contributing sponsor's controlled group''). Since a plan maintained by one contributing sponsor may or may not also be maintained by one or more other contributing sponsors that are not in the first sponsor's controlled group, the applicability of the cap must be determined plan by plan, not employer by employer.

Meaning of ''employee''

New section 4006(a)(3)(H) of ERISA does not give guidance as to the meaning of the term ''employee.'' PBGC proposes to define ''employee'' for this purpose by reference to section 410(b)(1) of the Internal Revenue Code, which deals with minimum coverage requirements for qualified plans and requires that employees be counted to evaluate the breadth of coverage of a plan. For this purpose, certain individuals may be counted as ''employees'' although they might not be considered common law employees of the employer—for example, affiliated service group employees (under Code section 414(m)) and leased employees (under Code section 414(n)). PBGC considers this approach appropriate to prevent an employer from qualifying for the cap by artificially lowering its employee count through the use of sophisticated business structuring devices. In addition, in order to ensure that all employees are counted, PBGC proposes that the employee count be determined without regard to Code section 410(b)(3), (4), and (5), which might be considered to exclude from the count collective bargaining employees, employees not meeting a plan's age and service requirements, and employees in separate lines of business.

Cap Amount

Under new section 4006(a)(3)(H)(i) of ERISA, the per-participant variable-rate premium is capped at ''$5 multiplied by the number of participants in the plan as of the close of the preceding plan year.'' PBGC interprets this to mean that the participant count is to be taken as of the premium snapshot date described in the premium rates regulation and PBGC's premium instructions (generally the last day of the plan year preceding the premium payment year). This is consistent with PBGC's interpretation of the nearly identical language in existing section 4006(a)(3)(E)(i) of ERISA. This participant count is the same as the count used as a multiplier under section 4006(a)(3)(A)(i) of ERISA for purposes of both the flat- and variable-rate premiums. Thus, an eligible plan's total variable-rate premium is capped at an amount equal to $5 multiplied by the square of the participant count.

Regulatory Provisions

This rule would revise § 4006.3(b) of the premium rates regulation to reflect the new cap on the variable-rate premium added by section 405 of PPA 2006. The existing variable-rate premium is described in new paragraph (b)(1) of § 4006.3. The cap is described in new paragraph (b)(2); plans eligible for the cap in new paragraph (b)(3); and the meaning of the term ''employee'' in new paragraph (b)(4). Paragraph (b)(2) includes an example of the computation of the cap taken from page 95 of the Technical Explanation of H.R. 4, the ''Pension Protection Act of 2006,'' as Passed by the House on July 28, 2006, and as Considered by the Senate on August 3, 2006, Prepared by the Staff of the Joint Committee on Taxation (August 3, 2006) (*http://www.house.gov/jct/x-38-06.pdf*).

Termination Premium

Section 8101(b) of DRA 2005 adds a new paragraph (7) to the end of section 4006(a) of ERISA, creating a new ''termination premium'' that applies only where certain distress and involuntary terminations occur and then only for three years. However, although only section 4006 of ERISA is amended, subparagraph (D) of new paragraph (7) in effect modifies section 4007 of ERISA as well. Sections 401(b) and 402(g)(2)(B) of PPA 2006 make changes to the termination premium rules of DRA 2005.

Termination Dates Covered

Section 8101(d)(2)(A) of DRA 2005 (which does not amend ERISA) restricts the new termination premium to ''plans terminated after December 31, 2005.'' (Section 401(b)(1) of PPA 2006 repeals new section 4006(a)(7)(E) of ERISA, added by DRA 2005, which provided that the termination premium would not apply ''with respect to any plan terminated after December 31, 2010.'')

Section 8101(d)(2)(B) of DRA 2005 further restricts the application of the new termination premium in certain bankruptcy situations. If a plan ''is terminated during the pendency of any bankruptcy reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State),'' the new premium does not

apply ''if the proceeding is pursuant to a bankruptcy filing occurring before October 18, 2005.'' Under section 402(g)(2)(B)(ii) of PPA 2006, this limitation does not apply to an ''eligible plan'' under section 402(c)(1) of PPA 2006 (generally a plan of a commercial passenger airline or airline catering service) while a funding election under section 402(a)(1) of PPA 2006 is in effect for the plan.

These time restrictions on the applicability of the new premium turn on when a plan is ''terminated.'' PBGC believes that the most natural reading of these provisions is that the date to look to is the termination date under section 4048 of ERISA. Focusing on the section 4048 termination date is also consistent with other provisions of DRA 2005 and implementing regulations discussed below.

Types of Terminations Covered

Under new section 4006(a)(7)(A) of ERISA, the termination premium applies where ''there is a termination of a single-employer plan under clause (ii) or (iii) of section 4041(c)(2)(B) [of ERISA] or section 4042 [of ERISA].'' Section 4041(c) of ERISA provides for distress terminations; ERISA section 4042 provides for involuntary terminations.

Under ERISA section 4041(c)(1), a distress termination of a plan may occur only if each contributing sponsor and each member of any contributing sponsor's controlled group meets one of the ''distress tests'' in clauses (i), (ii), and (iii) of section 4041(c)(2)(B). The tests are that the person is the subject of a bankruptcy liquidation proceeding (clause (i)), that the person is the subject of a bankruptcy reorganization proceeding (clause (ii)), or that the person is suffering business hardship (clause (iii)).

Although typically all contributing sponsors and controlled group members meet the same distress test, that is not required for a distress termination under section 4041(c). Thus, while terminations where all contributing sponsors and controlled group members meet the test in clause (i) seem to be excluded from applicability of the termination premium, it is not clear from the statutory language whether the termination premium is to apply to terminations where one or more contributing sponsors and/or controlled group members meet the clause (i) test but others meet the tests in clauses (ii) and/or (iii). Examples of such situations would be where there are two contributing sponsors, one liquidating and one reorganizing; where the sole contributing sponsor is liquidating but there are controlled group members that are reorganizing; and where the sole contributing sponsor is reorganizing but the controlled group members are liquidating.

The statutory language provides no basis for distinguishing among these examples or others that might be cited. All contributing sponsors and controlled group members are liable for plan underfunding under ERISA section 4062 and (as discussed below) for the termination premium (if it applies), and they must all satisfy one or another distress test under ERISA section 4041(c)(2)(B) for a distress termination to take place. This suggests that all these entities should be considered responsible as a group for the consequences of plan termination and that the fact that one entity among several is liquidating should not shield the others from liability. PBGC thus interprets new section 4006(a)(7)(A) of ERISA as applying the termination premium in any distress termination case where at least one contributing sponsor or controlled group member meets the distress test in either clause (ii) or (iii) of section 4041(c)(2)(B) (i.e., is not liquidating).

Payers

Section 4007(a) of ERISA places responsibility for paying PBGC premiums on the ''designated payor'' of a plan, and section 4007(e)(1)(A) of ERISA identifies the designated payor of a single-employer plan as the contributing sponsor or plan administrator. However, new section 4006(a)(7)(D)(i)(II) of ERISA, as added by section 8101(b) of DRA 2005, provides that notwithstanding section 4007, the designated payor of the new termination premium is ''the person who is the contributing sponsor as of immediately before the termination date.'' It thus appears that the designated payor is to be identified as of the day before the termination date under section 4048 of ERISA. Similarly, this rule provides for identification of members of the contributing sponsor's controlled group (which are jointly and severally liable for premiums under section 4007(e)(2) of ERISA) as of the same day.

Participants

Under new section 4006(a)(7)(A) of ERISA, the termination premium is based on the number of ''participants in the plan immediately before the termination date.'' It thus appears that participants are to be counted—for purposes of computing the termination premium—as of the day before the termination date under section 4048 of ERISA (the same day on which the contributing sponsor and controlled group members are determined). Section 4006.6 of the premium rates regulation already includes a definition of ''participant'' (which is used in computing the flat-rate premium), and DRA 2005 suggests no reason to depart from that definition for purposes of the termination premium.

Due Dates

The termination premium is payable each year for three years. Under new section 4006(a)(7)(D)(i)(I) of ERISA, as added by section 8101(b) of DRA 2005, the new premium is due within 30 days after the beginning of each of three ''applicable 12-month periods,'' which are in turn described in new section 4006(a)(7)(C). New section 4006(a)(7)(C)(i)(I) provides that in general, the first applicable 12-month period starts with ''the first month following the month in which the termination date occurs.'' (From this it is evident that calendar months are meant.) Under new section 4006(a)(7)(C)(i)(II), the second and third applicable 12-month periods are simply the two 12-month periods that follow the first applicable 12-month period.

But new section 4006(a)(7)(C)(ii) of ERISA defers the beginning of the first applicable 12-month period (and thus the due dates) in certain bankruptcy reorganization cases. This deferral rule comes into play where ''the requirements of subparagraph (B) [of new section 4006(a)(7) of ERISA] are met in connection with the termination of the plan * * *.'' (Section 401(b)(2) of PPA 2006 corrected an erroneous reference to ''subparagraph (B)(i)(I)'' in new section 4006(a)(7)(C)(ii) of ERISA.) Subparagraph (B) of new section 4006(a)(7)(B) of ERISA defers the applicability of the termination premium for distress or involuntary plan terminations that occur when bankruptcy reorganization proceedings are pending for terminations ''under section 4041(c)(2)(B)(ii) [of ERISA] or under section 4042 [of ERISA].'' Following the same reasoning discussed above regarding new section 4006(a)(7)(A) of ERISA (the general termination premium applicability provision), PBGC concludes that the bankruptcy reorganization deferral provision in new section 4006(a)(7)(B) of ERISA is meant to apply to a distress termination only when at least one contributing sponsor or controlled group member satisfies the bankruptcy reorganization test in section 4041(c)(2)(B)(ii).

In order for the due date deferral rule in new section 4006(a)(7)(C)(ii) of

ERISA to apply, the requirements of subparagraph (B) of section 4006(a)(7) of ERISA must be met ''with respect to 1 or more persons described in such subparagraph'' (that is, one or more persons must be reorganizing in bankruptcy as described in subparagraph (B)). If so, then the first applicable 12-month period begins with ''the first month following the month which includes the earliest date as of which each such person is discharged or dismissed in the case described in such clause [sic] in connection with such person.'' (The only clause mentioned in section 4006(a)(7)(C)(ii) of ERISA is clause (i)(I) of section 4006(a)(7)(C), which describes the first applicable 12-month period that applies if the special bankruptcy rule does not. Thus the reference to ''such clause'' appears to be intended to refer to ''such subparagraph''—that is, subparagraph (B)—and PBGC so interprets the reference.)

However, although subparagraph (B) of new section 4006(a)(7) of ERISA describes a case—a bankruptcy case—it does not describe a person. The only person mentioned in subparagraph (B) is ''such person,'' with no cross-reference to another place where the person is described. Nonetheless, it seems clear that the person referred to must be a person that has a relationship to both the plan and the bankruptcy proceeding mentioned in subparagraph (B). Subparagraph (B) contains parenthetical language that is essentially identical to parenthetical language that appears in section 4041(c)(2)(B)(ii) of ERISA (which describes the bankruptcy reorganization test for distress terminations). In section 4041(c)(2)(B)(ii), the words ''such person'' in the parenthetical language refer to a contributing sponsor or member of a contributing sponsor's controlled group. PBGC infers that ''such person'' in new section 4006(a)(7)(B) of ERISA is meant to refer likewise to a contributing sponsor of the terminated plan or member of a contributing sponsor's controlled group—determined (consistent with the designated payor provision in new section 4007(a)(7)(D)(i)(II)) as of the day before the termination date under section 4048 of ERISA.

This inference is supported by the observation that these same persons—contributing sponsors and controlled group members—are the persons liable for the termination premium. It appears that Congress' intent was to defer the due date for the termination premium until the persons liable to pay it were not in bankruptcy proceedings. Accordingly, where the special bankruptcy rule for due dates applies, it is necessary to identify every contributing sponsor and controlled group member that was involved in bankruptcy reorganization proceedings on the termination date and determine the date when each one left bankruptcy—through dismissal of or discharge from the proceeding—or ceased to exist. (If an entity ceases to exist, its failure to emerge from bankruptcy should not postpone the termination premium due date.) Under new section 4006(a)(7)(C)(ii), the first applicable 12-month period for the termination will then begin with the calendar month that next begins following the last such date.

One due date issue not addressed by the statute is that the agreement or court action establishing a plan's termination date under ERISA section 4048 may occur well after the termination date so established. Where a termination date is thus ''retroactively'' set, one or more statutory due dates for the termination premium may already have passed when the termination date becomes known. Thus, termination premium payments could be overdue before it was determined that they were owed.

In cases of that kind, PBGC considers it appropriate to provide that where the termination date is set retroactively, the first applicable 12-month period does not begin immediately after the month in which the termination date falls, but rather begins immediately after the month in which the termination date is established. Where the special bankruptcy rule for due dates applies, this rule would come into play if the termination date was established after all contributing sponsors and controlled group members were out of bankruptcy reorganization proceedings, and would defer the beginning of the first applicable 12-month period until immediately after the month in which the termination date was established.

Other Bankruptcy Issues

The parenthetical language in new section 4006(a)(7)(B) of ERISA—''(or a case described in section 4041(c)(2)(B)(i) filed by or against such person has been converted, as of such date, to such a case in which reorganization is sought)''—shows that Congress focused on the fact that bankruptcy proceedings can be converted back and forth between liquidation and reorganization proceedings. But neither section 4006(a)(7)(B) nor section 4006(a)(7)(C)(ii) (which describes the special first applicable 12-month period) mentions conversion of a reorganization case to a liquidation case as being sufficient to trigger the beginning of the first applicable 12-month period. It thus appears that even after such a conversion, the first applicable 12-month period would be postponed until the (liquidation) bankruptcy proceeding were dismissed or the contributing sponsor or controlled group member discharged. This could be of significance where there were other persons liable for the termination premium that were not (or were no longer) in bankruptcy.

Section 8101(d)(2)(B) of DRA 2005 (which, as discussed above, excludes from the termination premium terminations that occur during the pendency of bankruptcy reorganization proceedings pursuant to a filing before October 18, 2005) says nothing about the persons involved in such proceedings. Following the reasoning above, PBGC concludes that section 8101(d)(2)(B) is intended to apply only where the subject of a pending bankruptcy proceeding is a contributing sponsor of the terminated plan or a member of a contributing sponsor's controlled group (and that these persons are to be identified as of the day before the termination date under section 4048 of ERISA). Section 8101(d)(2)(B) also does not mention conversion of a bankruptcy case from a liquidation proceeding to a reorganization, as new section 4006(a)(7)(B) of ERISA does. But the language of section 8101(d)(2)(B) is consistent with the interpretation that—like section 4006(a)(7)(B)—it covers bankruptcy proceedings begun as liquidation proceedings and converted to reorganization proceedings before the termination date under section 4048 of ERISA.

Termination Premium Rate

Under new section 4006(a)(7) of ERISA as added by section 8101(b) of DRA 2005, the termination premium is $1,250 per participant per year for three years. But under section 402(g)(2)(B) of PPA 2006 (which does not amend ERISA), the rate is increased from $1,250 to $2,500 where a commercial passenger airline or airline catering service elects funding relief (an extended underfunding amortization period and lenient assumptions for valuing liabilities) for a frozen plan under section 402(a)(1) of PPA 2006, if the plan terminates during the first five years of the funding relief period, unless the Secretary of Labor determines that the termination resulted from extraordinary circumstances such as a terrorist attack or other similar event.

Regulatory Provisions

This rule would add a new § 4006.7 to the premium rates regulation

providing that the amount of the termination premium with respect to each applicable 12-month period is the premium rate (generally $1,250) times the number of participants, determined as of the day before the termination date, with a cross-reference from § 4006.3 (where the flat and variable premium rates are set forth). New § 4006.7(b) also explains the circumstances in which the termination premium rate is $2,500 rather than $1,250. In addition, the rule would add a new § 4007.13 to the premium payment regulation (with a cross-reference from § 4006.7), where the rest of the provisions about the termination premium are found.

New § 4007.13 contains provisions specific to the termination premium, and it supplements provisions in existing sections of Part 4007 that also apply to the termination premium. Section 4007.13(a) describes when the termination premium applies; § 4007.13 (d), (e), and (f) deal with due dates; § 4007.13(g) deals with what persons are liable for the termination premium. The provisions on these three topics reflect the discussions above.

Section 4007.13(b) makes each contributing sponsor and controlled group member (determined as of the day before the termination date under section 4048 of ERISA) responsible for filing required termination premium information and payments, and (where there is more than one such person) provides that any one can file on behalf of all of them. This provision ensures that, so long as there is at least one person still in existence that is liable for the termination premium, there will be at least one identifiable entity with responsibility to file. This provision is similar to § 4010.3 of PBGC's regulation on Annual Financial and Actuarial Information Reporting (Part 4010 of PBGC's regulations) and § 4043.3(a) of PBGC's regulation on Reportable Events and Certain Other Notification Requirements (Part 4043 of PBGC's regulations). Thus, only a single filing of the premium and required premium information is required, but if it is not timely made, PBGC could seek enforcement against any or all contributing sponsors and controlled group members.

Section 4007.13(c) provides for a discretionary ''facts-and-circumstances'' penalty for failure to pay the termination premium timely, instead of the automatic 1 percent or 5 percent penalty that applies to late payment of flat- and variable-rate premiums under § 4007.8(a). PBGC wants to preserve flexibility in penalizing failures to pay the new premium in full and on time while it gains experience with the new premium. The penalty is limited to 100 percent of the amount of termination premium not timely filed.

In addition, this rule would amend several sections in the existing premium payment regulation to eliminate inconsistencies or potential inconsistencies between existing language in those sections and the termination premium provisions.

Technical Changes

PBGC is taking this opportunity to make some technical changes (unrelated to DRA 2005 or PPA 2006) to its regulations on Premium Rates and Payment of Premiums.

Section 4006.3 of the premium rates regulation refers to basic benefits guaranteed under section 4022(a) of ERISA (which relates only to single-employer plans) and omits mention of section 4022A(a) of ERISA (which relates to multi-employer plans). This rule would add a reference to section 4022A(a).

Section 4007.11(d) of the premium payment regulation states that where proration of the flat- and variable-rate premiums is available under § 4006.5(f) of the premium rates regulation, the un-prorated premium must be paid in full (even if the plan would be entitled to a refund). This provision is anachronistic: PBGC now permits payment of the prorated amount under § 4006.5(f), rather than requiring that a filer pay the un-prorated amount and request a refund. This rule would remove the outdated provision.

Section 4007.11(e) of the premium payment regulation permits PBGC to return improper filings and consider them not made. PBGC is not exercising this authority, and the provision is unnecessary; PBGC has authority to assess penalties under ERISA section 4071 for failure to submit material information under the premium payment regulation. This rule would remove § 4007.11(e).

Applicability

The regulatory changes made by this rule to implement the provisions of section 8101 of DRA 2005 would apply (as section 8101 of DRA 2005 does) to plan years beginning after 2005 and to terminations with termination dates after 2005 (subject to the special rule for bankruptcies filed before October 18, 2005). The regulatory changes made by this rule to implement the provisions of section 405 of PPA 2006 would apply (as section 405 of PPA 2006 does) to plan years beginning after 2006.

Compliance With Rulemaking Guidelines

The PBGC has determined, in consultation with the Office of Management and Budget, that this proposed rule is a ''significant regulatory action'' under Executive Order 12866. The Office of Management and Budget, therefore, has reviewed the rule under Executive Order 12866.

PBGC certifies under section 605(b) of the Regulatory Flexibility Act that the amendments in this rule will not have a significant economic impact on a substantial number of small entities. This rule implements statutory changes made by Congress. It provides guidance on how to calculate, pay, and substantiate the premiums prescribed by statute and imposes no significant burden beyond the burden imposed by statute. Furthermore:

- The statutorily imposed increase in the flat-rate premium is at most $11 per participant per year, which does not constitute a significant economic impact where a plan has a small number of participants. Although the flat-rate premium will increase as the number of participants increases, the economic impact of the flat-rate premium relative to the size of the entity will remain fairly constant and will not be significant for a substantial number of entities of any size.
- The statutorily imposed cap on the variable-rate premium will save qualifying plans money. The rule simply interprets the statutory provisions.
- The statutorily imposed termination premium will not affect a substantial number of entities of any size.

Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), sections 603 and 604 do not apply.

The information requirements relating to the flat-rate and variable-rate premiums have been approved by the Office of Management and Budget under the Paperwork Reduction Act (OMB control number 1212–0009, expires April 30, 2008).

PBGC is submitting the information requirements relating to the termination premium to the Office of Management and Budget for review and approval under the Paperwork Reduction Act. Copies of PBGC's request may be obtained free of charge by contacting the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street, NW., Washington, DC 20005, 202–326–4040.

PBGC needs this information to identify the plan for which a termination premium is paid to PBGC,

to verify the determination of the premium, and to identify the persons liable for the premium.

PBGC expects that it will receive termination premium filings from about 30 contributing sponsors or controlled group members annually and that the total annual burden of the collection of information will be about 40 hours and $264,000.

Comments on the paperwork provisions under this proposed rule should be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. Although comments may be submitted through April 23, 2007, the Office of Management and Budget requests that comments be received on or before March 22, 2007 to ensure their consideration. Comments may address (among other things)—

- Whether the proposed collection of information is needed for the proper performance of PBGC's functions and will have practical utility;
- The accuracy of PBGC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancement of the quality, utility, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

List of Subjects

29 CFR Part 4006

Pension insurance, Pensions.

29 CFR Part 4007

Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons given above, PBGC is amending 29 CFR parts 4006 and 4007 as follows.

PART 4006—PREMIUM RATES

1. The authority citation for part 4006 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

2. In § 4006.3:

a. The introductory text is amended by removing the words ''§ 4006.5 (dealing with exemptions and special rules)'' and adding in their place the words ''§ 4006.5 (dealing with exemptions and special rules) and § 4006.7 (dealing with premiums for certain terminated single-employer plans)''; and by removing the words ''section 4022(a)'' and adding in their place the words ''section 4022(a) or section 4022A(a)''.

b. Paragraph (a) introductory text is amended by removing the words ''multiplied by—'' and adding in their place the words ''multiplied by the applicable flat premium rate determined under paragraph (c) of this section.''.

c. Paragraphs (a)(1) and (a)(2) are removed.

d. Paragraph (b) is revised, and new paragraphs (c) and (d) are added, to read as follows:

§ 4006.3 Premium rate.

* * * * *

(b) *Variable-rate premium.*

(1) *In general.* Subject to the limitation in paragraph (b)(2) of this section, the variable-rate premium is $9 for each $1,000 of a single-employer plan's unfunded vested benefits, as determined under § 4006.4.

(2) *Cap on variable-rate premium.* If a plan is described in paragraph (b)(3) of this section for the premium payment year, the variable-rate premium does not exceed $5 multiplied by the square of the number of participants in the plan on the last day of the plan year preceding the premium payment year. For example, if the number of participants in the plan on the last day of the plan year preceding the premium payment year is 20, the variable-rate premium does not exceed $2,000 ($\$5 \times 20^2 = \$5 \times 400 = \$2,000$).

(3) *Plans eligible for cap.* A plan is described in this paragraph (b)(3) for the premium payment year if the aggregate number of employees of all employers in the plan's controlled group on the first day of the premium payment year is 25 or fewer.

(4) *Meaning of ''employee.''* For purposes of paragraph (b)(3) of this section, the aggregate number of employees is determined in the same manner as under section 410(b)(1) of the Code, taking into account the provisions of section 414(m) and (n) of the Code, but without regard to section 410(b)(3), (4), and (5) of the Code.

(c) *Applicable flat premium rate.* The applicable flat premium rate is:

(1) For a premium payment year beginning before 2006—

(i) For a single-employer plan, $19, and

(ii) For a multiemployer plan, $2.60.

(2) For a premium payment year beginning in 2006—

(i) For a single-employer plan, $30, and

(ii) For a multiemployer plan, $8.

(3) For a premium payment year beginning after 2006, the greater of—

(i) The applicable flat premium rate for plan years beginning in the calendar year preceding the calendar year in which the premium payment year begins, or

(ii) The adjusted flat rate determined under paragraph (d) of this section for the premium payment year.

(d) *Adjusted flat rate.* The adjusted flat rate for a premium payment year beginning after 2006 is determined by—

(1) Multiplying the applicable flat premium rate for 2006 by the ratio of—

(i) The national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the two calendar years preceding the calendar year in which the premium payment year begins, to

(ii) The national average wage index (as so defined) for 2004; and

(2) Rounding the result to the nearest multiple of $1 (rounding up any unrounded result that equals some whole number of dollars plus 50 cents).

3. New § 4006.7 is added to read as follows:

§ 4006.7 Premium rate for certain terminated single-employer plans.

(a) The premium under this section (''termination premium'') applies to a DRA 2005 termination described in § 4007.13 of this chapter.

(b) The amount of the premium under this section that is payable with respect to each applicable 12-month period (as described in § 4007.13 of this chapter) is the number of participants in the plan, determined as of the day before the termination date under section 4048 of ERISA, multiplied by the termination premium rate. In general, the termination premium rate is $1,250. However, the termination premium rate is $2,500 for an ''eligible plan'' under section 402(c)(1) of the Pension Protection Act of 2006 (dealing with certain plans of commercial passenger airlines and airline catering services) while an election under section 402(a)(1) of the Pension Protection Act of 2006 (dealing with alternative funding schedules) is in effect for the plan if the plan terminates during the five-year period beginning on the first day of the first applicable plan year (as defined in section 402(c)(2) of that Act) with respect to the plan, unless the Secretary of Labor determines that the plan terminated as a result of extraordinary circumstances such as a terrorist attack or other similar event.

(c) The premium under this section is in addition to any other premium under this part.

(d) See § 4007.13 of this chapter for further rules about termination premiums.

PART 4007—PAYMENT OF PREMIUMS

4. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(a), 1306, 1307.

5. Section 4007.3 is amended by removing the words ''The plan administrator'' and adding in their place the words ''Subject to the provisions of § 4007.13, the plan administrator''; and by removing ''§ 4007.11'' and adding in its place the words ''this part''.

6. In § 4007.7, paragraph (a) is amended by removing ''§ 4007.11'' and adding in its place the words ''this part''.

7. In § 4007.8:

a. Paragraph (a) introductory text is amended by removing the words ''If any premium payment due'' and adding in their place the words ''Subject to the provisions of § 4007.13, if any premium payment due''; and by removing ''§ 4007.11'' and adding in its place the words ''this part''.

b. Paragraph (a)(1)(i) is amended by removing the word ''plan's''.

c. Paragraph (a)(1) introductory text is revised to read as follows:

§ 4007.8 Late payment penalty charges.

(a) *Penalty charge.* * * *

(1) *Penalty rate; in general.* Except as provided in paragraph (a)(2) of this section, the penalty rate is—

* * * * *

8. In § 4007.9, paragraph (a) is amended by removing the words ''by a plan administrator''; and by removing the words ''that plan's'' and adding in their place the words ''a plan's''.

9. In § 4007.10:

a. Paragraph (a)(1) is amended by removing the words ''plan administrator'' and adding in their place the words ''designated recordkeeper under paragraph (a)(3) of this section''.

b. Paragraph (a)(2) is amended by removing the words ''The plan administrator'' and adding in their place the words ''A designated recordkeeper''.

c. Paragraph (b) is amended by removing the words ''for any premium payment year''.

d. Paragraph (c)(1) is amended by removing the words ''The plan administrator'' and adding in their place the words ''A designated recordkeeper''.

e. Paragraph (c)(2) is amended by removing the words ''the plan administrator'' and adding in their place the words ''a designated recordkeeper''.

f. Paragraph (c)(2)(ii) is amended by removing the words ''plan administrator'' and adding in their place the words ''designated recordkeeper''.

g. New paragraph (a)(3) is added to read as follows:

§ 4007.10 Recordkeeping; audits; disclosure of information.

(a) *Retention of records to support premium payments.*

* * * * *

(3) *Designated recordkeepers.*

(i) With respect to the flat-rate and variable-rate premiums described in § 4006.3 of this chapter, the plan administrator is the designated recordkeeper.

(ii) With respect to the premium for certain terminated single-employer plans described in § 4006.7 of this chapter, each person who was a contributing sponsor of such a plan, or was a member of a contributing sponsor's controlled group, as of the day before the plan's termination date is a designated recordkeeper.

* * * * *

10. In § 4007.11:

a. Paragraph (a) introductory text is amended by removing the words ''The premium filing due date for small plans'' and adding in their place the words ''For flat-rate and variable-rate premiums, the premium filing due date for small plans''.

b. Paragraph (a)(3) introductory text is amended by removing the words ''the premium form or forms and payment or payments for the short plan year shall be filed by'' and adding in their place the words ''the due date or dates for the flat-rate premium and any variable-rate premium for the short plan year are''; and by removing the words ''for the premium forms and payments''.

c. Paragraph (c) introductory text is amended by removing the words ''the premium form and all premium payments due for the first plan year of coverage of any new plan or newly covered plan shall be filed on or before'' and adding in their place the words ''the due date for the flat-rate premium and any variable-rate premium for the first plan year of coverage of any new plan or newly covered plan shall be''.

d. Paragraph (d) is amended by removing the words ''to file the forms or forms prescribed by this part and to pay any premiums due'' and adding in their place the words ''to make flat-rate and (as applicable) variable-rate premium filings and payments under this part''; and by removing the last sentence of the paragraph (beginning ''The entire * * *'' and ending ''* * * § 4006.5(f).'').

e. Paragraph (e) is removed.

11. In § 4007.12, paragraph (a) is amended by removing the words ''to file the applicable forms and to submit the premium payment'' and adding in their place the words ''to make flat-rate and variable-rate premium filings and payments under this part''; and by removing the words ''liable for premium payments'' and adding in their place ''liable for flat-rate and variable-rate premium payments''.

12. New § 4007.13 is added to read as follows:

§ 4007.13 Premiums for certain terminated single-employer plans.

(a) *Applicability.*

(1) *In general.* This section applies where there is a ''DRA 2005 termination'' of a plan. Subject to paragraph (a)(2) of this section, there is a DRA 2005 termination where a single-employer plan's termination date under section 4048 of ERISA is after 2005 and either—

(i) The plan terminates under section 4042 of ERISA, or

(ii) The plan terminates under section 4041(c) of ERISA and at least one contributing sponsor or member of a contributing sponsor's controlled group meets the requirements of section 4041(c)(2)(B)(ii) or (iii) of ERISA.

(2) *Plans terminated during reorganization proceedings.* Except as provided in paragraph (a)(3) of this section, a DRA 2005 termination of a plan does not occur where as of the plan's termination date under section 4048 of ERISA—

(i) A bankruptcy proceeding has been filed by or against any person that was a contributing sponsor of the plan on the day before the plan's termination date or that was on that day a member of any controlled group of which any such contributing sponsor was a member,

(ii) The proceeding is pending as a reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State),

(iii) The person has not been discharged from the proceeding, and

(iv) The proceeding was filed before October 18, 2005.

(3) *Special rule for certain airline-related plans.* Paragraph (a)(2) of this section does not apply to an ''eligible plan'' under section 402(c)(1) of the Pension Protection Act of 2006 (dealing with certain plans of commercial passenger airlines and airline catering services) while an election under section 402(a)(1) of the Pension Protection Act of 2006 (dealing with alternative funding schedules) is in effect for the plan.

(4) *Termination premium.* A premium as described in § 4006.7 of this chapter is payable to PBGC with respect to a DRA 2005 termination each year for three years after the termination (the ''termination premium'').

(b) *Filing requirements; method of filing.* Notwithstanding § 4007.3, in the case of a DRA 2005 termination of a plan, each person that was a contributing sponsor of the plan on the day before the plan's termination date or that was on that day a member of any controlled group of which any such contributing sponsor was a member is responsible for filing prescribed termination premium information and payments. Any such person may file on behalf of all such persons.

(c) *Late payment penalty charges.* Notwithstanding § 4007.8(a), if any required termination premium payment is not filed by the due date under paragraph (d) of this section, PBGC may assess a late payment penalty charge based on the facts and circumstances, subject to waiver under § 4007.8(b), (c), (d), or (e). The charge will not exceed the amount of termination premium not timely filed.

(d) *Due dates.* Notwithstanding § 4007.11, the due date for the termination premium is the 30th day of each of three applicable 12-month periods. The three applicable 12-month periods with respect to a DRA 2005 termination of a plan are—

(1) *First applicable 12-month period.* Except as provided in paragraph (e) or (f) of this section, the period of 12 calendar months beginning with the first calendar month following the calendar month in which occurs the plan's termination date under section 4048 of ERISA, and

(2) *Subsequent applicable 12-month periods.* Each of the first two periods of 12 calendar months that immediately follow the first applicable 12-month period.

(e) *Certain reorganization cases.*

(1) This paragraph (e) applies with respect to a DRA 2005 termination of a plan if the conditions in both paragraph (e)(2) and paragraph (e)(3) of this section are satisfied.

(2) The condition of this paragraph (e)(2) is that either—

(i) The plan terminates under section 4042 of ERISA, or

(ii) The plan terminates under section 4041(c) of ERISA and at least one contributing sponsor or member of a contributing sponsor's controlled group meets the requirements of section 4041(c)(2)(B)(ii) of ERISA.

(3) The condition of this paragraph (e)(3) is that as of the plan's termination date under section 4048 of ERISA—

(i) A bankruptcy proceeding has been filed by or against any person that was a contributing sponsor of the plan on the day before the plan's termination date or that was on that day a member of any controlled group of which any such contributing sponsor was a member,

(ii) The proceeding is pending as a reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State), and

(iii) The person has not been discharged from the proceeding.

(4) If this paragraph (e) applies with respect to a DRA 2005 termination of a plan, then except as provided in paragraph (f) of this section, the first applicable 12-month period with respect to the plan is the period of 12 calendar months beginning with the first calendar month following the calendar month in which occurs the earliest date when, for every person that was a contributing sponsor of the plan on the day before the plan's termination date under section 4048 of ERISA, or that was on that day a member of any controlled group of which any such contributing sponsor was a member, either—

(i) There is not pending any bankruptcy proceeding that was filed by or against such person and that was, as of the plan's termination date under section 4048 of ERISA, a reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State), or

(ii) The person has been discharged from any such proceeding, or

(iii) The person no longer exists.

(f) *Retroactive plan termination date.* If a plan's termination date under section 4048 of ERISA is in the past when it is established by agreement or court action as described in section 4048 of ERISA, then the first applicable 12-month period for determining the due dates of the termination premium begins with the later of—

(1) The first calendar month following the calendar month in which the termination date is established by agreement or court action as described in section 4048 of ERISA, or

(2) The first calendar month specified in paragraph (d)(1) of this section or (if paragraph (e) of this section applies) paragraph (e)(4) of this section.

(g) *Liability for termination premiums.* In the case of a DRA 2005 termination of a plan, each person that was a contributing sponsor of the plan on the day before the plan's termination date, or that was on that day a member of any controlled group of which any such contributing sponsor was a member, is jointly and severally liable for termination premiums with respect to the plan.

Issued in Washington, DC, this 13th day of February, 2007.

Vincent K. Snowbarger,

Interim Director, Pension Benefit Guaranty Corporation.

[FR Doc. E7–2812 Filed 2–16–07; 8:45 am]

BILLING CODE 7709–01–P

Notices

Federal Register

Vol. 72, No. 33

Tuesday, February 20, 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.

AMERICAN BATTLE MONUMENTS COMMISSION

SES Performance Review Board

AGENCY: American Battle Monuments Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the ABMC Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Theodore Gloukhoff, Director of Personnel and Administration, American Battle Monuments Commission, Courthouse Plaza II, Suite 500, 2300 Clarendon Boulevard, Arlington, Virginia, 22201–3367, *Telephone Number:* (703) 696–6908.

American Battle Monuments Commission SES Performance Review Board

Dr. Susan L. Duncan, Director, Human Resources, US Army Corps of Engineers;

Mr. Joseph Tyler, Chief, Program Management Division, US Army Corps of Engineers;

Mr. Wesley C. Miller, Director, Resource Management, US Army Corps of Engineers.

Theodore Gloukhoff,

Director, Personnel and Administration.

[FR Doc. E7–2853 Filed 2–16–07; 8:45 am]

BILLING CODE 6120–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–803)

Heavy Forged Hand Tools from the People's Republic of China: Notice of Court Decision Not In Harmony With Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 9, 2007, the United States Court of International Trade (''CIT'') sustained the final remand redetermination made by the Department of Commerce (''the Department'') pursuant to the CIT's remand of the final results of the eleventh administrative review of the antidumping duty orders on heavy forged hand tools from the People's Republic of China. *See Shandong Huarong Machinery Co. v. United States and Ames True Temper*, Slip Op. 2007–3 (CIT, 2007) (''*Shandong Huarong II*''). This case arises out of the Department's final results in the administrative review covering the period February 1, 2001, through January 31, 2002. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges*, 68 FR 53347 (September 10, 2003) (''*Final Results*''). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''Federal Circuit'') in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (''Timken''), the Department is notifying the public that *Shandong Huarong II* is not in harmony with the Department's *Final Results*.

EFFECTIVE DATE: February 20, 2007

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Mark Manning; AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, DC 20230; telephone: (202) 482–3936 or (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION: In *Shandong Huarong Machinery Co. v. United States*, No. 03–00676 (CIT, 2005) (''*Shandong Huarong I*''), the CIT remanded the underlying final results to the Department to: (1) reopen the record in order to afford Shandong Huarong Machinery Co. (''Huarong'') a second opportunity to provide a scrap offset in which its scrap sales are allocated to the production of bars/wedges; (2) explain why its methodology of including distances greater than the distance from the nearest port to the factory, when calculating the weighted–average freight distance for multiple suppliers of one particular factor of production (''FOP''), satisfies the reasoning in *Sigma Corp. v. United States*, 117 F.3d 1401 (Fed. Cir. 1997) (''*Sigma*'') and *Lasko Metal Products Inc. v. United States*, 43 F.3d 1442, 1446 (Fed. Cir. 1994) (''*Lasko*''), or adjust its methodology; (3) explain its decision to disregard the effect of subsidies from the United States and other countries, in light of *Fuyao Glass Indus. Group Co. v. United States*, Slip Op. 2003–169 (CIT, 2003) (''*Fuyao I*'') and *Fuyao Glass Indus. Group Co. v. United States*, Slip Op. 2005–06 (CIT, 2005) (''*Fuyao II*''); (4) supply a more complete explanation to support its determination that labor costs and other factor inputs for making steel pallets are included in the cost of brokerage and handling; and (5) provide a more complete explanation to support its decision that the cost of movement from the truck to the container yard, demurrage and storage charges, and other port charges are included in the brokerage and handling cost.

The Department released the Draft Results of Redetermination Pursuant to Court Remand (''Draft Redetermination'') to Huarong and Ames True Temper[1] (''Ames'') for comment on October 7, 2005. The Department received timely filed comments from both Huarong and Ames on October 14, 2005, and rebuttal comments from Huarong on October 19, 2005. On October 16, 2006, the Department issued to the CIT its final results of redetermination pursuant to remand on November 30, 2005. In the remand redetermination the Department did the following: (1) reopened the record, and applied a steel scrap offset in its calculation of normal value to adjust for sales of steel scrap that was generated from the production of the subject bars and wedges; (2) applied the *Sigma* cap in its analysis and capped the distance for each supplier before calculating the weighted–average inland freight distance; (3) explained its decision in the *Final Results* to not exclude U.S. export data from the Indian import statistics used as the surrogate value because it would have resulted in an insignificant adjustment to normal value; (4) revised its FOP methodology to include labor costs and other factor inputs for making steel pallets in normal value; and (5) explained its reasoning for finding that movement expenses incurred at the port

[1] Ames True Temper is a domestic interested party to the proceeding, and was the petitioner in the underlying review.

of export were included in the calculation of brokerage and handing expenses. The Department recalculated the antidumping duty rate applicable to Huarong, and included the changes noted above. On January 9, 2007, the CIT sustained all aspects of the remand redetermination made by the Department pursuant to the CIT's remand of the *Final Results*.

In its decision in *Timken*, 893 F.2d at 341, the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (''the Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's decision in this case on January 9, 2007, constitutes a final decision of the court that is not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the CIT's ruling is not appealed or, if appealed, upheld by the Federal Circuit, the Department will instruct U.S. Customs and Border Protection to revise the cash deposit rates covering the subject merchandise.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: February 13, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–2836 Filed 2–19–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–201–822)

Stainless Steel Sheet and Strip in Coils from Mexico; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 20, 2007

FOR FURTHER INFORMATION CONTACT: Maryanne Burke, Deborah Scott or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5604, (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2006, the Department of Commerce (the Department) published a notice of opportunity to request administrative review of the antidumping duty order on, *inter alia*, stainless steel sheet and strip in coils from Mexico. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 37890 (July 3, 2006). On July 31, 2006, the Department received a timely request from Allegheny Ludlum Corporation, United Auto Workers Local 3303, Zanesville Armco Independent Organization, Inc. and the United Steelworkers (collectively, petitioners) to conduct an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico. Also on July 31, 2006, the Department received a timely request from the respondent in this review, ThyssenKrupp Mexinox S.A. de C.V. (Mexinox S.A.) and Mexinox USA, Inc. (Mexinox USA) (collectively, Mexinox) for revocation of the antidumping order on stainless steel sheet and strip in coils from Mexico. On August 30, 2006, the Department published a notice of initiation of this administrative review, covering the period July 1, 2005, to June 30, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (August 30, 2006). The preliminary results are currently due no later than April 2, 2007.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order for which a review is requested.

The Department has determined it is not practicable to complete this review within the statutory time limit because further analysis is needed with respect to Mexinox's affiliated party transactions and its cost of production data used in the margin calculation programs. We require additional information from Mexinox in order to complete our analysis and will not have time to analyze this information prior to the current deadline for the preliminary results. Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review until no later than July 31, 2007, which is 365 days from the last day of the anniversary month. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: February 13, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–2835 Filed 2–19–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 070207025–7025–01; I.D. 051906D]

RIN 0648–ZB55

FY 2007 Broad Agency Announcement Request for Extramural Research, Innovative Projects, and Sponsorships

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of the availability of Federal assistance.

SUMMARY: NOAA announces the availability of Federal assistance under the Broad Agency Announcement (BAA) for fiscal year 2007. The purpose of this notice is to request proposals for special projects and programs associated with the Agency's strategic plan and mission goals, as described in the **SUPPLEMENTARY INFORMATION** section, and to provide the general public with information and guidelines on how NOAA will select proposals and administer discretionary Federal assistance under this BAA. NOAA issued approximately $1 billion in Federal assistance funds in fiscal year 2006. Approximately 81 percent was for discretionary funding and 19 percent non-discretionary. This BAA is a mechanism to encourage research, technical projects, or sponsorships (e.g., conferences, newsletters, etc.) that are

not normally funded through our competitive discretionary programs.

DATES: Proposals will be accepted on a rolling basis up to 5 p.m. ET September 28, 2007. Applications shall be evaluated for funding generally within 3 to 6 months of receipt.

ADDRESSES: All proposals should be submitted through Grants.Gov. For those applicants without internet access, hard copy applications may be submitted to the individuals listed below under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: This announcement, the Federal Funding Opportunity (FFO) announcement, and application forms will be available through Grants.Gov: *http://www.grants.gov*. For those applicants without internet access, the above information can be acquired by contacting the following individuals:

National Marine Fisheries Service (NMFS), Joanna Grable, Route: F/MB2, Bldg: SSMC3 Rm: 14359, 1315 East-West Hwy, Silver Spring, MD 20910–3282, Phone: 301–713–1364.

National Ocean Service (NOS), Jane Piercy, Route: N/MB3, Bldg: SSMC4 Rm: 13250, 1305 East-West Hwy, Silver Spring MD 20910–3281, Phone: 301–713–3050.

Office of Atmospheric Research (OAR), Sharon Schroeder, Route: R/OM61, Bldg: SSMC3 Rm: 11464, 1315 East-West Hwy, Silver Spring, MD 20910–3282, Phone: 301–713–2474.

National Weather Service (NWS), Youngnan Cohan, Route: W/CFO2, Bldg: SSMC2 Rm: 18394, 1325 East-West Hwy, Silver Spring MD 20910–3283, Phone: 301–713–0420.

National Environmental Satellite Data Information Service (NESDIS), Ingrid Guch, Route: E/RA1, Bldg: WWBG RM: 701, 5200 Auth RD, Camp Springs, MD 20746–4304, Phone: 301–763–8282.

NOAA, Office of Education, Carrie McDougall, Bldg: HCHB Suite: M6863, 1401 Constitution Ave., NW, Washington, DC 20230–0001, Phone: 202–482–0875.

SUPPLEMENTARY INFORMATION: As an agency with responsibilities for maintaining and improving the viability of marine and coastal ecosystems, for delivering valuable weather, climate, and water information and services, for understanding the science and consequences of climate change, and for supporting the global commerce and transportation upon which we all depend, NOAA must remain current and responsive in an ever-changing world. We do this in concert with our partners and stakeholders in federal, state, and local governments and private organizations, applying a systematic approach that links our strategic goals through multi-year plans to the daily activities of our employees. Every year we are committed to re-evaluate our progress and priorities, look for efficiencies, and take advantage of new opportunities to improve our information, products, and services. In furtherance of this objective, NOAA issues this BAA for extramural research, innovative projects, and sponsorships that address one or more of the following five mission goal descriptions contained in the NOAA Strategic Plan:

1. Protect, Restore, and Manage the Use of Coastal and Ocean Resources through an Ecosystem Approach to Management;

2. Understand Climate Variability and Change to Enhance Society's Ability to Plan and Respond;

3. Serve Society's Needs for Weather and Water Information;

4. Support the Nation's Commerce with Information for Safe, Efficient, and Environmentally Sound Transportation; and

5. Provide Critical Support for NOAA's Mission.

A detailed description for each mission goal can be found in the FFO that can be accessed via the Grants.gov Web site, by contacting the program official identified in the **FOR FURTHER INFORMATION CONTACT** section, or by accessing the following: *http://www.spo.noaa.gov/pdfs/STRATEGIC%20PLANS/Strategic_Plan_2006_FINAL_04282005.pdf*.

Proposals that fall within the scope of a separate competitive program initiative or are duplicative of a nondiscretionary project/program will not be accepted under this BAA and will be rejected by the Line/Program Office. In addition, non-responsive applications, i.e., those not meeting the mission goals of NOAA or the intent of this notice, will not be considered. It should be noted that specific competitive program initiatives may have already been announced and those unanticipated at the time of the publication of this notice may be announced through future **Federal Register** notices.

This announcement also provides guidelines and details for the application process, eligibility, evaluation criteria, and selection procedures. Selected applicants will either enter into a grant or receive a cooperative agreement depending upon the amount of NOAA's involvement in the project - substantial involvement means a cooperative agreement.

Electronic Access

The full text of the full funding opportunity announcement for this BAA can be accessed via the Grants.gov Web site: *http://www.grants.gov*. The announcement will also be available by contacting the program officials identified under **FOR FURTHER INFORMATION CONTACT**. Applicants must comply with all requirements contained in the FFO. This **Federal Register** notice is available through the NOAA home page at: *http://www.noaa.gov*.

You will be able to access, download and submit electronic grant applications for this announcement at *http://www.grants.gov*. The closing dates will be the same as for the paper submissions noted in this announcement. NOAA strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov. Getting started with Grants.gov is easy! Go to *http://www.grants.gov*. There are two key features on the site: Find Grant Opportunities and Apply for Grants. Everything else on the site is designed to support these two features and your use of them. While you can begin searching for grant opportunities for which you would like to apply immediately, it is recommended that you complete the remaining Get Started steps sooner rather than later, so that when you find an opportunity for which you would like to apply, you are ready to go. Individuals do not need a DUNS number to register to submit applications. The system will generate a default value in that field. Individuals who plan to submit a grant application using Grants.gov are required to register with the Credential Provider (Step 3 B) and register with Grants.gov (Step 4 B).

Get Started, Step 1 B: Find Grant Opportunity for Which You Would Like To Apply

Start your search for Federal government-wide grant opportunities and register to receive automatic e-mail notifications of new grant opportunities or any modifications to grant opportunities as they are posted to the site by clicking the Find Grant Opportunities tab at the top of the page.

Get Started, Step 2 B: Organizations Must Register With Central Contractor Registry (CCR)

Your organization will also need to be registered with Central Contractor Registry. You can register with them online. This will take about 30 minutes. You should receive your CCR registration within 3 business days.

Important: You must have a DUNS number from Dun & Bradstreet before you register with CCR. Many organizations already have a DUNS number. To determine if your organization already has a DUNS number or to obtain a DUNS number, contact Dun & Bradstreet at 1–866–705–5711. This will take about 10 minutes and is free of charge. Be sure to complete the Marketing Partner ID (MPIN) and Electronic Business Primary Point of Contact fields during the CCR registration process. These are mandatory fields that are required when submitting grant applications through Grants.gov.

Get Started, Step 3 B: Register With the Credential Provider

You must register with a Credential Provider to receive a username and password. This will be required to securely submit your grant application.

Get Started, Step 4 B: Register With Grants.gov

The final step in the Get Started process is to register with Grants.gov. This will be required to submit grant applications on behalf of your organization. After you have completed the registration process, you will receive e-mail notification confirming that you are able to submit applications through Grants.gov.

Get Started, Step 5: B Log on to Grants.gov

After you have registered with Grants.gov, you can log on to Grants.gov to verify if you have registered successfully, to check application status, and to update information in your applicant profile, such as your name, telephone number, e-mail address, and title. In the future, you will have the ability to determine if you are authorized to submit applications through Grants.gov on behalf of your organization. In the interim, only the authorized representative can submit an application to Grants.gov. Please ensure your organization makes an authorized representative designation.

Electronic Application File Format and Naming Conventions

After the initial grant application package has been submitted to NOAA (e.g., via Grants.gov), requests for additional or modified forms may be requested by NOAA. Applicants should resubmit forms in Portable Document File (PDF) format and follow the following file naming convention to name resubmitted forms. For example: 98042—SF–424–mm–dd–yy—v2.pdf.

(1) 98042 = Proposal (provided to applicant by Grants.gov & NOAA)
(2) SF–424 = Form Number
(3) mm-dd-yy = Date
(4) v2 = Version Number

To learn how to convert documents to PDF go to: *http://www.grants.gov/assets/PDFConversion.pdf*.

The above is suggested in order to obtain consistency and have the documents readily identifiable to the appropriate program and/or grants office staff personnel responsible for the application. The Grants.gov website provides specific instructions regarding conversion. However, in FY2007 applicants can still submit the requested additional documents through the mail or facsimile as a last resort if needed.

Eligibility Criteria and Prescreening Process

Eligible Applicants

Eligible applicants may be institutions of higher education, non-profits, commercial organizations, international or foreign organizations, governments, individuals, state, local and Indian tribal governments. Eligibility also depends on the statutory authority that permits NOAA to fund the proposed activity. Eligible applicants should go to the Catalog of Federal Domestic Assistance (CFDA) to see if they are eligible. A current listing of the CFDA programs that may be eligible for funding can be found in the FFO posted at Grants.gov that accompanies this BAA.

Prescreening Process/Minimum Requirements Review

Upon receipt of a full application by NOAA, an initial administrative review will be conducted to determine eligibility for award, compliance with requirements and completeness of the application. This review includes determining whether or not:

1. Statutory authority exists to provide financial assistance for the project or organization;
2. A complete application package has been submitted;
3. The Project Description/Narrative is consistent with one or more of NOAA's mission goals;
4. The proposal falls within the scope of an existing NOAA competitive announcement or duplicates an existing nondiscretionary project (if it does, it cannot be funded under this announcement); and
5. The work in the proposal will directly benefit NOAA (if it will, it should be supported by a procurement contract, not a financial assistance award which cannot be funded under this announcement, as provided in 31 U.S.C. 6303).

Applications not passing this initial review will be returned to the applicant.

Evaluation Criteria and Selection Procedures

All proposals submitted in response to this BAA shall be evaluated and selected in accordance with the following procedures.

Proposal Review and Selection Process

NOAA will evaluate proposal(s) determined to be eligible under this BAA individually (i.e., proposals will be not compared to each other). Proposals are judged and awarded based on the evaluation factors described below so long as funds, if any, are available. The merit review is conducted by mail reviewers and/or peer panel reviewers. Each reviewer will individually evaluate the proposal(s) using the evaluation criteria provided below. A minimum of three merit reviewers per proposal is required. The reviewers may be any combination of Federal and/or non-federal personnel. The proposal(s) will be individually scored (i.e., a consensus is not reached) unless all reviewers are Federal employees. Only then can a consensus be reached by the Federal reviewers, at the discretion of the selection official. NOAA selects evaluators on the basis of their professional qualifications and expertise as related to the unique characteristics of the proposal. The NOAA Program Officer will assess the evaluations and make a fund or do not fund recommendation to the Selecting Official based on the evaluations of the reviewers. The Selecting Official selects proposal(s) after considering the reviews and recommendations of the Program Officer. Any application considered for funding may be required to address the issues raised in the evaluation of the proposal by the reviewers, Program Officer, Selecting Official, and/or Grants Officer before an award is issued.

Applications not selected for funding under this announcement in FY2007 may be considered for funding from FY2008 funds but, in response to NOAA's request, may be required to revalidate the terms of the original application or resubmit in the next BAA cycle if one is published for the next fiscal year.

Proposals not selected for funding will be destroyed.

The Program Officer, Selecting Official and/or Grants Officer may negotiate the final funding level of the proposal with the intended applicant. The Selecting Official makes the final recommendation for award to the

NOAA Grants Officer who is authorized to commit the Federal Government and obligate the funds.

Evaluation Criteria for BAA Projects

NOAA has standardized evaluation criteria for all competitive assistance announcements. The criteria as applied to this BAA are listed below. Since proposals responding to this BAA may vary significantly in their activities/objectives, assigning a set weight for each evaluation criterion is not feasible but is based on a total possible score of 100. The Program Office and/or Selection Official will determine which of the following criteria and weights will be applied. Some proposals, for example sponsorships, may not be able to be evaluated against all the criteria like technical/scientific merit. However, it is in your best interest to prepare a proposal that can be easily evaluated against these five criteria.

1. Importance and/or Relevance and Applicability of Proposed Project to the Mission Goals

This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, federal, regional, state, or local activities: i.e., How does the proposed activity enhance NOAA's strategic plan and mission goals? Proposals should also address significance/possibilities of securing productive results: i.e., Does this study address an important problem?; If the aims of the application are achieved, how will scientific knowledge be advanced?; What will be the effect of these studies on the concepts or methods that drive this field?; What effect will the project have on improving public understanding of the role the ocean, coasts, and atmosphere in the global ecosystem? Proposals will also be scored for innovation: i.e., Does the project employ novel concepts, approaches or methods?: Are the aims original and innovative?: Does the project challenge existing paradigms or develop new methodologies or technologies?

2. Technical/Scientific Merit

This assesses whether the approach is technically sound and if the methods are appropriate, and whether there are clear project goals and objectives. Proposals should address the approach/soundness of design: i.e., Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project?; Does the applicant acknowledge potential problem areas and consider alternative tactics? This criterion should also address the applicant's proposed methods for monitoring, measuring, and evaluating the success or failure of the project: i.e., What are they? Are they appropriate?

3. Overall Qualifications of Applicants

This ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project. If appropriate, proposals should also address the physical environment and collaboration, if any: i.e., Does the environment in which the work will be done contribute to the probability of success? Do the proposed experiments or activities take advantage of unique features of the intended environment or employ useful collaborative arrangements?

4. Project Costs

The Budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame.

5. Outreach and Education

NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's environmental resources. For example, how will the outcomes of the project be communicated to NOAA and the interested public to ensure it has met the project objectives over the short, medium or long term? Does the project address any of the goals or employ any of the strategies of the NOAA Education Plan (*http://www.oesd.noaa.gov/NOAA_Ed_Plan.pdf*)?

STATUTORY AUTHORITY: The specific program authority will vary depending on the nature of the proposed project. A list of the most prevalent assistance authorities are 15 U.S.C. 1540; 15 U.S.C. 2901 *et seq.*; 16 U.S.C. 661; 16 U.S.C. 1456c; 33 U.S.C. 883a-d; 33 U.S.C. 1442; 49 U.S.C. 44720(b).

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER: The CFDA number will vary depending on the nature of the proposed project. The applicant should consult the Catalog of Federal Domestic Assistance series 11.400 - 11.481 and review the subset of CFDA's applicable to this BAA to select the most accurate program for the proposed project. The link to the catalog for NOAA programs is as follows: *http://12.46.245.173/pls/portal30/CATALOG.BROWSE_SUBAGENCY_PROGRAM_RPT.SHOW?p_arg_names=agency_id&p_arg_values=206*.

FUNDING AVAILABILITY: There is no direct level of Congressional funding available for this BAA. Funding of a project is completely at the discretion of the program office willing to support the proposed activities. Appropriations from FY2007 or FY2008 (if and when available) may be used to fund applications in response to this BAA.

APPLICATION DEADLINE: Full applications can be submitted on a rolling basis up to 5 p.m. Eastern Time September 28, 2007. Applications received after this time will be returned without review. Applications shall be evaluated for funding generally within 3 to 6 months of receipt. An applicant can expect to receive either a rejection notice, request for additional information, and/or award within that timeframe.

COST SHARING REQUIREMENTS: Cost sharing is not required unless it is determined that a project can only be funded under an authority that requires matching funds.

APPLICATION REQUIREMENTS: Full applications will be required to submit the standard forms as posted in the FFO, in addition to a project narrative (which must include a synopsis which is not to exceed one page), budget narrative, and project timeline.

INTERGOVERNMENTAL REVIEW: Applications under this program may be subject to Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs.'' Refer to the appropriate CFDA number listed on your application for the applicability of this E.O. to your proposal.

Limitation of Liability

Funding for potential projects in this notice is contingent upon the availability of fiscal year 2007 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for any proposed activities in this notice. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Universal Identifier

Applicants should be aware that, for programs which have deadline dates on or after October 1, 2003, they may be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 **Federal Register** (67 FR 66177) for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the internet (*http://www.dunandbradstreet.com*).

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216--6--TOC.pdf*, NEPA Questionnaire, *http://www.nepa.noaa.gov/questionnaire.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc--ceq.htm*. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations

a. This section applies to the extent that this BAA results in financial assistance awards involving access to export-controlled information or technology.

b. In performing a financial assistance award, the recipient may gain access to export-controlled information or technology. The recipient will then be responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including deemed exports. The recipient shall establish and maintain throughout performance of the financial assistance award effective export compliance procedures at non-NOAA facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled information and technology.

c. Definitions

1. *Deemed export.* The Export Administration Regulations (EAR) define a deemed export as any release of technology or source code subject to the EAR to a foreign national, both in the United States and abroad. Such release is ''deemed'' to be an export to the home country of the foreign national. 15 CFR 734.2(b)(2)(ii).

2. *Export-controlled information and technology.* Export-controlled information and technology is information and technology subject to the EAR (15 CFR parts 730 *et seq.*), implemented by the DOC Bureau of Industry and Security, or the International Traffic I Arms Regulations (ITAR) (22 CFR parts 120–130), implemented by the Department of State, respectively. This includes, but is not limited to, dual-us items, defense articles and any related assistance, services, software or technical data as defined in the EAR and ITAR.

d. The recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of a financial assistance award, to ensure that access is restricted, or licensed, as required by applicable Federal laws, Executive Orders, and/or regulations.

e. Nothing in the terms of this section is intended to change, supersede, or waive any of the requirements of applicable Federal laws, Executive Orders or regulations.

f. The recipient shall include this clause, including this paragraph (f), in all lower tier transactions (subawards, contracts, and subcontracts) under the financial assistance award that may involve access to export-controlled information technology.

NOAA implementation of Homeland Security Presidential Directive - 12

If the performance of a financial assistance award, if approved by NOAA, requires recipients to have physical access to Federal premises for more than 180 days or access to a Federal information system, any items or services delivered under a financial assistance award shall comply with the Department of Commerce personal identity verification procedures that implement Homeland Security Presidential Directive - 12, FIPS PUB 201, and the Office of Management and Budget Memorandum M–05–24. The recipient shall insert this clause in all subawards or contracts when the subaward recipient or contractor is required to have physical access to a Federally controlled facility or access to a Federal information system.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424 and 424A, 424B, 424C, 424D, SF-LLL, and CD–346 has been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical

requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: February 12, 2007.

Daniel L. Clever,

Deputy Director, Acquisition and Grants Office, National Oceanic and Atmospheric Administration.

[FR Doc. E7–2833 Filed 2–19–07; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021207B]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Applications for three scientific research permits and one modification.

SUMMARY: Notice is hereby given that NMFS has received four scientific research permit application requests relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts.

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on March 22, 2007.

ADDRESSES: Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to 503–230–5441 or by e-mail to *resapps.nwr@NOAA.gov.*

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (ph.: 503–231–2005, Fax: 503–230–5441, e-mail: *Garth.Griffin@noaa.gov*). Permit application instructions are available from the address above.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened lower Columbia River (LCR), endangered upper Columbia River (UCR), threatened Snake River (SR) spring/summer-run (spr/sum), threatened SR fall-run, threatened Puget Sound (PS).

Chum salmon (*O. keta*): threatened Columbia River (CR), threatened Hood Canal (HC).

Steelhead (*O. mykiss*): threatened LCR, threatened middle Columbia River (MCR), threatened Snake River (SR), threatened UCR, proposed threatened PS.

Coho salmon (*O. kisutch*): threatened LCR.

Sockeye salmon (*O. nerka*): threatened Ozette Lake (OL), endangered SR.

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et. seq*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1339

The Columbia River Inter-tribal Fish Commission (CRITFC) is currently authorized to annually take adult, threatened, SR spr/sum Chinook salmon and adult, threatened, SR steelhead while conducting research in a number of the tributaries to the Imnaha River in Oregon. Their permit to do so is expiring this year and they desire to renew it for another five years. The purpose of the research is to acquire information on the status (escapement abundance, genetic structure, life history traits) of steelhead in the Imnaha River Basin. The research will continue to benefit the listed species by providing information that fisheries managers can use to determine if recovery actions are helping increase wild Snake River salmonid populations. Baseline information on steelhead populations in the Imnaha River Basin would also be used to help guide future management actions. Adult salmon and steelhead would be observed/harassed during spawning ground surveys and snorkeling activities. They would also be collected using temporary/portable picket weirs, sampled for biological information, sampled for fin tissues and scales, marked with opercule punches, tagged with Tyvek disc tags, and released. Adult steelhead carcasses would also be collected and sampled for tissues and/or scales and biological information. The CRITFC does not intend to kill any of the fish being captured but a small number may die as an unintended result of the activities.

Permit 1379 — Modification 2

For a number of years, CRITFC has been permitted to annually take UCR Chinook salmon, UCR steelhead, SR spr/sum Chinook salmon, SR fall Chinook salmon, SR sockeye salmon, LCR Chinook salmon, and LCR coho salmon while conducting three studies designed to increase what we know about the status and productivity of various fish populations, collect data on migratory and exploitation (harvest) patterns, and develop baseline information on various population and habitat parameters in order to guide salmonid restoration strategies. The studies are: Project 1 Juvenile Upriver Bright Fall Chinook Sampling at the Hanford Reach; Project 2 Adult Chinook, Sockeye, and Coho Sampling at Bonneville Dam; and Project 3 Adult Sockeye Sampling at Tumwater Dam, Wenatchee River.

This year, CRITFC is seeking to add three new aspects to their currently allowed research: (1) They wish add adult tagging as a permitted activity for all species sampled at Bonneville Dam; (2) they are seeking to add adult steelhead sampling at Bonneville Dam to their permit rather than having it covered by a separate permit (this action would necessitate adding MCR steelhead to the permit); and (3) they seek to increase their allowable take for the Hanford project as it appears likely they will receive funding for a new project which would increase the number of UCR and SR spring-run Chinook salmon they catch.

The research would benefit listed fish by helping managers set in-river and ocean harvest regimes so that they have minimal impacts on listed populations. It would also help managers prioritize projects in a way that gives maximum benefit to listed species including projects designed to help the listed fish recover. The CRITFC does not intend to kill any of the fish being captured but a small number may die as an unintended result of the activities.

Permit 1590

The U.S. Army Corps of Engineers (USACE) is requesting a permit to annually take juvenile PS Chinook salmon and HC chum salmon over the next five years. The research would also affect the PS steelhead (currently proposed for listing as ''threatened''). The purpose of the research is to study the marine phase of ''resident'' Chinook salmon, a life-history type that rears to adulthood in the Puget Sound marine zone foregoing the typical ocean migration of the species. The goals are to describe the behavior and life history of resident Chinook salmon, and determine whether the proportion of PS Chinook salmon adopting this resident pattern varies among populations and hatchery stocks. Research activities would be conducted throughout the marine zone of Puget Sound and Hood Canal, Washington. The information gathered by this research would be used to develop a conceptual model of the life history of resident PS Chinook. The research would benefit PS Chinook by helping managers develop a better understanding of the abundance, distribution, and habitat requirements of this life history strategy. The USACE proposes to capture fish using shoreline and boat angling, beach seining, and purse-seining. Captured fish would be anesthetized, measured, checked for fin clip or CWT, tagged with acoustic or archival loggers, and fin clipped for tissue samples. Additionally, stomach content samples would be collected from a portion of the captured fish. The USACE does not intend to kill any of the fish being captured but a small number may die as an unintended result of the activities.

Permit 1598

The Washington Department of Transportation (WSDOT) is requesting a 5-year research permit to annually take all fish species identified in this notice while conducting research throughout the State of Washington. The purpose of the research is determine the distribution and diversity of anadromous fish species in waterbodies crossed by or adjacent to the state transportation systems (highways, railroads, and/or airports). The surveys would help establish presence of listed salmon and steelhead in waterbodies about which we currently have little data. That information would be used to assess the impacts proposed projects may have on listed species. The research would benefit the listed species by helping WSDOT develop best management practices and in-water work window timing so they can minimize the harm their projects may do to listed fish. Survey methods would depend on the size of the stream system and may include snorkel surveys, dip nets, stick seines, baited gee minnow traps and electrofishing. Fish would be captured, identified, and released in the same location. The WSDOT does not intend to kill any of the fish being captured but a small number may die as an unintended result of the activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: February 14, 2007.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–2847 Filed 2–19–07; 8:45 am]

BILLING CODE 3510–22–S

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Wednesday, February 21, 2007 at 10 a.m.

PLACE: 999 E. Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 07–781 Filed 2–15–07; 3:42 pm]

BILLING CODE 6715–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Thursday, February 22, 2007, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Regulations Priority.

Future Meeting Dates.

Management and Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 07–782 Filed 2–15–07; 3:42 pm]

BILLING CODE 6715–01–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; United States-Caribbean Basin Trade Partnership Act

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the United States-Caribbean Basin Trade Partnership Act. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 23, 2007, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C., 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments

should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: United States-Caribbean Basin Trade Partnership Act.

OMB Number: 1651–0083.

Form Number: CBP–450.

Abstract: The collection of information is required to implement the duty preference provisions of the United States-Caribbean Basin Trade Partnership Act.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 440.

Estimated Time Per Respondent: 42.5 hours.

Estimated Total Annual Burden Hours: 18,720.

Estimated Total Annualized Cost on the Public: N/A.

Dated: February 12, 2007.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. E7–2827 Filed 2–16–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; African Growth and Opportunity Act Certificate of Origin

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the African Growth and Opportunity Act Certificate of Origin. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 23, 2007, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C., 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: African Growth and Opportunity Act Certificate of Origin.

OMB Number: 1651–0082.

Form Number: None.

Abstract: The collection of information is required to implement the duty preference provisions of the African Growth and Opportunity Act (AGOA) to provide extension of duty-free treatment under the Generalized System of Preferences (GSP) to sensitive articles normally excluded from GSP duty treatment. It also provides for the entry of specific textile and apparel articles free of duty and free of any quantitative limits to the countries of sub-Saharan Africa.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 440.

Estimated Time Per Respondent: 23 hours.

Estimated Total Annual Burden Hours: 10,400.

Estimated Total Annualized Cost on the Public: N/A.

Dated: February 12, 2007.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. E7–2829 Filed 2–16–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Issuance of Final Determination Concerning Bolt Container Seals and Cable Seals

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that the Bureau of Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of certain bolt container seals and cable seals to be offered to the United States Government under an undesignated government procurement contract. For each of the

two products, two different manufacturing scenarios were presented. Based upon the facts presented, the final determination found that China is the country of origin of the bolt container seal for purposes of U.S. Government procurement where the product is assembled in the United States from components of Chinese and Malaysian origin. Where a U.S.-origin lock body is used in the assembly of the bolt container seal in the United States, the final determination found that the country of origin of the lock body assembly is the United States and the country of origin of the imported bolt shank is China. With regard to the cable seal, the final determination found that the country of origin of the cable seal assembled in the United States from components of Chinese and Malaysian origin is China for purposes of U.S. Government procurement. The final determination also found that where a U.S.-origin lock body is used in the assembly of the cable seal in the United States, the country of origin of the cable seal is the United States for purposes of U.S. Government procurement.

DATES: The final determination was issued on February 8, 2007. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of February 20, 2007.

FOR FURTHER INFORMATION CONTACT: Holly Files, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202–572–8817).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on February 8, 2007, pursuant to Subpart B of Part 177, Customs Regulations (19 CFR Part 177, subpart B), CBP issued a final determination concerning the country of origin of certain bolt container seals and cable seals to be offered to the United States Government under an undesignated government procurement contract. The CBP ruling number is HQ W563587. This final determination was issued at the request of TydenBrammall under procedures set forth at 19 CFR Part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18).

The final determination examined four different manufacturing scenarios. The first two scenarios involve the manufacture of the bolt container seal. The third and fourth scenarios involve the manufacture of the cable seal. The first scenario proposed the assembly of the bolt container seal in the United States solely from parts of foreign origin. In the second scenario, the bolt container seal was assembled in the United States from parts of U.S. and foreign origin. The final determination concluded that, based upon the facts presented in the first scenario, the assembly and packaging in the United States of five foreign-origin components to create the bolt container seal did not substantially transform the foreign components into a product of the United States. In the second scenario, the final determination found that the assembly of a U.S.-origin lock body with other foreign-origin components in the United States to form a lock body assembly substantially transformed the foreign components of the lock body assembly into a product of the United States. However, as one foreign-origin component, the bolt shank, was merely packaged with the lock body assembly, the final determination found that the bolt shank was not substantially transformed into a product of the United States. In the third scenario, the cable seal was assembled in the United States solely from parts of foreign origin. The fourth scenario involved the assembly of the cable seal in the United States from parts of U.S. and foreign origin. Based upon the facts presented in the third scenario, the final determination concluded that the assembly in the United States of four components of foreign origin to create the container seal did not substantially transform the foreign-origin components into a product of the United States. With regard to the facts presented in the fourth scenario, the final determination concluded that the assembly in the United States of a U.S.-origin lock body with foreign-origin components to create the container seal substantially transformed the foreign components into a product of the United States.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, Customs Regulations (19 CFR 177.30), states that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: February 13, 2007.

Sandra L. Bell,

Executive Director, Office of Regulations and Rulings, Office of International Trade.

HQ W563587

February 8, 2007.

MAR–2–05 RR:CTF:VS W563587 HEF

Category: Marking

Mr. William L. Matthews
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037–1122

RE: U.S. Government Procurement; Final Determination; country of origin of bolt container seals and cable seals; substantial transformation; 19 CFR Part 177

Dear Mr. Matthews:

This is in response to your letter dated September 5, 2006, requesting a final determination on behalf of TydenBrammall, pursuant to subpart B of Part 177, Customs Regulations (19 CFR 177.21 *et seq.*). Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 USC 2511 *et seq.*), U.S. Customs and Border Protection (''CBP'') issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated foreign country or instrumentality for the purpose of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of certain bolt container seals and cable seals. We note that TydenBrammall is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination. Confidential treatment for certain business information identified in your request for a final determination will be extended in accordance with your request. Photographs of the bolt container seals and cable seals were submitted with your request. In preparing this final determination, consideration was given to your supplemental submission dated December 12, 2006.

Facts:

I. Vu Bolt Container Seal

You advise us that TydenBrammall will manufacture Vu Bolt Container Seals at its production facility in Angola, Indiana. The container seals are used to secure rail, container, and truck cargo shipments. The container seal is composed of the following five components: bolt shank, lock body, locking ring, inner cover, and clear cover. The bolt shank, lock body, and locking ring are manufactured in China. The inner cover and clear cover are manufactured in Malaysia.

At the Indiana facility, a machine operator uses a press to seat the locking ring within the grooves of the lock body, and the operator gauges the locking ring to ensure proper placement within the lock body. Next, the lock body is inserted into the inner cover to form the lock body subassembly. The lock body subassembly is placed into a linear inkjet marking machine where a custom serialization number is applied to the subassembly. Then, the serialized subassemblies are inspected to ensure the correct serialization and quality. The serialized subassemblies are moved to an ultrasonic welding station where they are aligned in rows of five by ten and covered by the clear cover. There, the subassembly

and clear cover are ultrasonically welded together and then inspected for quality. Finally, the completed subassemblies are packaged together with the bolt shanks in packages of 200 Vu Bolt Container Seals per box.

You also request that CBP issue a final determination for an identical assembly process except that the lock body is of U.S. origin.

II. XBorder Cable Seal

You advise us that TydenBrammall will manufacture the XBorder Cable Seal at its production facility in Angola, Indiana. The XBorder Cable Seal is intended for one-time use on trucks, shipping containers, and freight rail cars. A TydenBrammall press release emphasizes that the seal has a secure and permanent locking mechanism that makes cargo tampering virtually impossible without detection. Press Release, TydenBrammall, Xborder™ Seal Secures High Risk Cargo, *http://www.tydenbrammall.com/cargoguy/pressreleases/xborder.pdf* (last visited November 15, 2006). The XBorder Cable Seal is composed of the following four components: bolt shank, lock body, non-preformed cable, and locking ring. The bolt shank, lock body, and locking ring are manufactured in China, and the non-preformed cable is manufactured in Malaysia.

To begin the U.S. assembly operation, a machine operator uses a press to seat the locking ring within the grooves of the lock body and gauges the locking ring to ensure its proper placement. Then, the operator uses a multi-headed electrical resistance cutting machine to cut the non-preformed cable to a specified length. Next, both ends of the cable are ground using an abrasive belt to taper the welded tips of the cable. Then, one end of the cable is positioned at the bolt shank to form the bolt shank subassembly. The bolt shank subassembly is inserted into a swaging press that applies an eight-axis crimp to the subassembly. The other end of the cable is positioned at the lock body to form the lock body subassembly. The lock body subassembly is inserted into a swaging press that applies an eight-axis crimp to the subassembly. Then, both crimps of the cable seal are inspected for quality by examining the depth and position of the crimps. Next, a custom serial number is applied to the cable seal using a laser. The finished XBorder Cable Seals are inspected for quality, bundled into groups of 10 and packaged 100 per box.

You also request that CBP issue a final determination for an identical assembly process except that the lock body is of U.S. origin.

Issue:

What are the countries of origin of the bolt container seal and the cable seal for purposes of U.S. Government procurement?

Law and Analysis:

Pursuant to Subpart B of Part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 CFR 177.22(a).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens* v. *United States*, 6 Ct. Int'l Trade 204, 573 F. Supp. 1149 (1983), aff'd, 741 F.2d 1368 (Fed. Cir. 1984). If the manufacturing or combining process is a minor one which leaves the identity of the imported article intact, a substantial transformation has not occurred. *Uniroyal Inc.* v. *United States*, 3 Ct. Int'l Trade 220, 542 F. Supp. 1026 (1982). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See C.S.D. 80–111, C.S.D. 85–25, and C.S.D. 90–97.

In order to determine whether a substantial transformation occurs when components of various origins are assembled to form completed articles, CBP considers the totality of the circumstances and makes such decisions on a case-by-case basis. The country of origin of the article's components, the extent of the processing that occurs within a given country, and whether such processing renders a product with a new name, character, or use are primary considerations in such cases. Additionally, facts such as resources expended on product design and development, extent and nature of post-assembly inspection procedures, and worker skill required during the actual manufacturing process will be considered when analyzing whether a substantial transformation has occurred; however, no one such factor is determinative.

I. Vu Bolt Container Seal

CBP has considered a number of different scenarios involving the assembly of locking apparatus. Each case presents a slightly different set of facts. In Headquarters Ruling Letter (''HRL'') 734440, dated March 30, 1992, CBP found that a lock apparatus was substantially transformed in the United States as a result of combining it with pieces manufactured in the United States. CBP noted that the predominant expense of the assembled lock was in the parts produced in the United States, which required extensive manufacturing and development. By contrast, the imported piece was a generic mechanism that was inserted into the U.S. pieces.

In HRL 734923, dated May 14, 1993, CBP determined that imported components of a door lockset, the rosettes and parts of the latch, were substantially transformed when they were assembled together with significant U.S. components in the United States to make the finished door lockset. CBP noted that the manufacture of the rosettes in China was relatively simple and did not require a great deal of precision as compared to the manufacture of the other components in the United States, which required significant precision and substantial machinery and tooling.

Similarly, in HRL 735198, dated March 1, 1995, CBP held that imported lock cases and cylinder retainer blocks were substantially transformed into industrial padlocks in the United States as a result of their assembly with a substantial number of U.S.-origin components. CBP found that the character of the lock case and cylinder retainer block was changed as a result of their incorporation into the finished padlock.

By contrast, in HRL 734227, dated June 26, 1992, CBP found that chrome plated levers did not lose their separate identity when they were combined with domestic locksets to form completed lever locksets. CBP reasoned that the levers were a significant component of the completed article, and their assembly in no way changed the character of the levers. The levers were clearly recognizable both before and after the assembly. Moreover, the lever was a separate component, which had to be disassembled from the rest of the lockset prior to its installation.

In HRL 734629, dated October 1, 1992, CBP found that a lock cylinder was not substantially transformed where it was not attached to the remaining pieces of the lock until after it was received by the installer. Furthermore, CBP noted that the lock cylinder did not lose its separate identity when combined with the remaining pieces. The cylinder remained visible even after assembly by the installer and the attachment process was a simple screw mount, which meant that the cylinder easily could be replaced.

In HRL 735133, dated May 5, 1994, CBP held that imported lock parts and assemblies were not substantially transformed when assembled in the United States with a U.S.-origin coverplate screw. CBP noted that most of the cost in making the finished lock was attributable to operations performed in Taiwan and that the production in the United States was a simple manual assembly operation of basically finished parts.

In the first scenario, TydenBrammall proposes to assemble the Vu Bolt Container Seal entirely from imported parts. You contend that the various components are substantially transformed based on their assembly in the U.S. alone. The U.S. assembly operation that you describe consists of the assembly of a small number of parts, the addition of a serial number, the ultrasonic welding of a clear cover to the lock body assembly, and the packaging of the finished lock body assembly with the imported bolt shank. Similar to the situation described in HRL 735133, *supra,* we find that the described manufacturing process is a simple assembly operation of imported

components that is not complex and meaningful enough to result in a substantial transformation. In considering the last country in which the container seal underwent a substantial transformation, we believe that the lock body primarily imparts the essential character of the container seal. While the seal numbers are a unique feature to the container seal, the lock body is the component that imparts the ability of the container seal to actually lock and secure the cargo. The lock body is also the most valuable component of the container seal. Therefore, based on the facts presented in the first scenario, we find that China is the country of origin of the Vu Bolt Container Seal.

In the second scenario, TydenBrammall proposes to assemble the Vu Bolt Container Seal in the same manner except that the lock body is of U.S. origin. According to the confidential figures you have provided, the cost of the lock body represents a significant percentage of the total cost of the components used in the Vu Bolt Container Seal. In fact, under this scenario, most of the cost in making the container seal is attributable to the U.S. part and the labor performed in the United States. Furthermore, as noted above, we find that the lock body imparts the essential character of the container seal. Thus, we find that the imported locking ring, inner cover, and clear cover are substantially transformed when assembled in the United States with the U.S.-origin lock body to form the lock body assembly.

However, we also find that the Chinese-origin bolt shank is not substantially transformed when packaged with the lock body assembly in the United States. In HRL 734219, dated September 3, 1991, CBP ruled that water pans and charcoal pans were not substantially transformed when combined in the United States with other domestic and foreign components of smoker/grill units. CBP reasoned that the water pans and charcoal pans were completely finished articles when imported, there was no extensive manufacturing process involved, and that placing the pans into a container with other domestic and foreign articles was a minor operation, required no skill, and was not time-consuming. CBP noted that the pans were not permanently attached either before sale or once assembly of the unit was completed by the consumer. Moreover, Customs observed that the pans were functionally necessary to the use of the smoker/grill units, in that the units could not perform the essential operations of barbecuing, smoking, roasting or steaming without the pans.

In the instant case, the bolt shank is a finished article when it is imported into the United States. In the United States, it is merely packaged with the lock body assembly. This act is not an extensive manufacturing process. The bolt shank is not attached to the lock body assembly prior to the sale of the container seal. When the U.S. customer attaches the bolt shank, it remains clearly visible. Furthermore, the bolt shank is functionally necessary to the essential operation of the container seal. As such, the bolt shank is not substantially transformed as a result of packaging it with the lock body assembly. Therefore, the country of origin of the bolt shank is China. We note that the distinction between the origins of the bolt shank and the lock body assembly is not necessary in the first assembly scenario, as the country of origin for both the bolt shank and the lock body assembly is China.

Based upon the information provided, we find that China is the country of origin of the Vu Bolt Container Seal that is produced entirely from Chinese and Malaysian parts. Where TydenBrammall uses a U.S. lock body in the assembly of the product in the United States, the country of origin of the lock body assembly is the United States and the country of origin of the bolt shank is China.

II. XBorder Cable Seal

In the first scenario, you propose to manufacture the XBorder Cable Seal using imported components only. On numerous occasions, CBP has considered various manufacturing processes performed on wire and cable and whether such processes result in substantial transformations. In HRL 561392, dated June 21, 1999, CBP held that the cutting of a cable to length and the assembly of the cable to connectors did not result in a substantial transformation. In HRL 561392, all of the components were from Taiwan and the operations were performed in China.

In HRL 560214, dated September 3, 1997, CBP found that where imported wire rope cable was cut to length, U.S.-origin sliding hooks were put on the rope, and U.S.-origin end ferrules were swaged on in the United States, the wire rope cable was not substantially transformed.

In HRL 555774, dated December 10, 1990, CBP held that no substantial transformation occurred where Japanese wire was cut to length and U.S.-origin electrical connectors were crimped onto the ends of the wire in the United States.

Consistent with these decisions, we find that a substantial transformation does not occur as a result of operations described in the first scenario, which include cutting an imported cable to a specified length, grounding its ends, crimping an imported bolt shank and imported lock body onto the ends, and serializing the product with a laser. In considering the last country in which the cable seal underwent a substantial transformation, we believe that the essential character of the cable seal is derived from the lock body, which enables the cable ends to be sealed permanently to secure the cargo and prevent tampering without detection. Therefore, the country of origin of the XBorder Cable Seal is China.

In the second scenario, TydenBrammall proposes to assemble the XBorder Cable Seal in the same manner except that the lock body is of U.S. origin. According to the confidential figures you have provided, the lock body is by far the most valuable component of the cable seal. In fact, most of the cost in making the finished cable seal is attributable to the U.S. part and labor performed in the United States. As we stated above, we also believe that the lock body imparts the essential character of the cable seal. Therefore, we find that the components of foreign origin are substantially transformed when they are assembled with the U.S. lock body in the United States to form the cable seal. Based on these specific facts, the country of origin of the XBorder Cable Seal is the United States.

Holding:

Based upon the facts provided, we find that where the Vu Bolt Container Seal is assembled from Chinese and Malaysian components in the United States, the components are not substantially transformed. The country of origin for the Vu Bolt Container Seal for purposes of U.S. Government procurement is China.

Where the lock body assembly of the Vu Bolt Container Seal is assembled in the United States using a U.S.-origin lock body, we find that the imported locking ring, inner cover and clear cover are substantially transformed. Thus, the country of origin of the lock body assembly for purposes of U.S. Government procurement is the United States. In addition, we hold that the Chinese-origin bolt shank does not undergo a substantial transformation. Therefore, the country of origin of the bolt shank for purposes of U.S. Government procurement is China.

Where the XBorder Cable Seal is assembled from imported components in the United States, the imported components do not undergo a substantial transformation. Based on these facts, the country of origin of the XBorder Cable Seal for purposes of U.S. Government Procurement is China.

Where the XBorder Cable Seal is assembled in the United States from imported components and a U.S.-origin lock body, we find that the imported components undergo a substantial transformation. Therefore, the country of origin of this XBorder Cable Seal for purposes of U.S. Government procurement is the United States.

Notice of this final determination will be given in the **Federal Register** as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Any party-at-interest may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell,

Executive Director, Office of Regulations and Rulings, Office of International Trade.

[FR Doc. 07–740 Filed 2–16–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5055–N–02]

Use of Census Data in the Indian Housing Block Grant Program (IHBG); Notice of Reopening of Public Comment Period

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of reopening of public comment period.

SUMMARY: On December 12, 2006, HUD published a notice in the **Federal Register** seeking public comment on HUD's use of multi-race data in the computation of the Indian Housing Block Grant (IHBG) program formula. This notice reopens the public comment period.

DATES: *Comment Due Date:* April 23, 2007

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Interested persons may also submit comments electronically through the federal electronic rulemaking portal at: *www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically in order to make them immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically. Facsimile (FAX) comments are not acceptable. All communications must refer to the docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Divisions at (202) 708–3055 (this is not a toll-free number). Copies of the public comments submitted are also available for inspection and downloading at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW., Room 4126, Washington, DC 20410–5000; telephone 202–401–7914 (this telephone number is not toll-free). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On December 12, 2006 (71 FR 74748), HUD published a notice in the **Federal Register** that invited public comment on HUD's use of multi-race data in the computation of the IHBG program allocation formula. Specifically, HUD invited public comments on the feasibility of using either single race or multi-race data to determine funding for the Need component of the IHBG formula. See the December 12, 2006, notice for further information.

Since publication, HUD has learned that several commenters are unable to submit their comments by the original, February 12, 2006, deadline. Therefore, the deadline for public comments is being reopened for an additional 60 days to allow additional time for public input. Following HUD's review and consideration of the comments received on this notice, HUD may proceed with rulemaking as necessary.

Dated: February 12, 2007.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

[FR Doc. E7–2832 Filed 2–16–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5076–D–17]

Delegation and Redelegation of Authority for the Office of the Inspector General

AGENCY: Office of the Inspector General, HUD.

ACTION: Notice of delegation and redelegation of authority.

SUMMARY: This notice updates the delegation of authority of the Office of the Inspector General to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by the Inspector General Act to the Deputy Inspector General, the Assistant Inspectors General, the Deputy Assistant Inspectors General, the Special Agents in Charge, the Regional Inspectors General for Audit, and the Directors within the Office of Audit. This notice also redelegates to the above-mentioned officials the authority of the Inspector General to cause the seal of the Department to be affixed to certain documents and to certify that a copy of any book, record, paper, microfilm or other document is a true copy of that in the files of the Department. This notice also delegates the authority to the Deputy Inspector General, the Assistant Inspector General for Investigation, the Deputy Assistant Inspectors General for Investigation, and the Special Agents in Charge, to request information under 5 U.S.C. section 552a(b)(7).

EFFECTIVE DATE: February 12, 2007.

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Counsel to the Inspector General, Office of the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8260, Washington, DC 20410–4500, telephone (202) 708–1613. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 6(a)(4) of the Inspector General Act of 1978 (5 U.S.C. app.) authorizes the Inspector General to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by the Inspector General Act. This notice delegates this authority to issue subpoenas from the Inspector General to the Deputy Inspector General, the Assistant Inspectors General, the Deputy Assistant Inspectors General, the Special Agents in Charge, the Regional Inspectors General for Audit, and the Directors within the Office of Audit.

This notice also redelegates to the above-mentioned officials the authority delegated to the Inspector General by the Secretary of HUD in the Delegation of Authority published on July 15, 2003, at 68 FR 41840, which delegated to various officials, including the Inspector General, the authority to cause the seal of the Department to be affixed to certain documents and to certify that a copy of any book, record, paper, microfilm or other document is a true copy of that in the files of the Department.

Section 552a(b)(7) authorizes the Inspector General to request information protected by the Privacy Act for a civil or criminal law enforcement activity. This notice delegates to the Deputy Inspector General, the Assistant Inspector General for Investigations, the Deputy Assistant Inspectors General for Investigations, and the Special Agents in Charge, the authority to request information under 5 U.S.C. section 552a(b)(7).

The Inspector General has not limited his authority to issue subpoenas or to affix the Departmental seal and certify copies of records, or to request information under 5 U.S.C. § 552a by this delegation or redelegation. Also, this delegation and redelegation of authority prohibits further delegation or redelegation.

Accordingly, the Inspector General delegates and redelegates as follows:

Section A. Authority Delegated and Redelegated

The HUD Inspector General delegates to the Deputy Inspector General, the Assistant Inspectors General, the Deputy Assistant Inspectors General, the Special Agents in Charge, the Regional Inspectors General for Audit and the Directors within the Office of Audit, the authority to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by the Inspector General Act pursuant to Section 6(a)(4) of the Inspector General Act of 1978.

Additionally, the Inspector General redelegates to the Deputy Inspector General, the Assistant Inspectors General, the Deputy Assistant Inspectors General, the Special Agents in Charge, the Regional Inspectors General for Audit and the Directors within the Office of Audit, the authority under the delegation of authority published at 68 FR 41840 (July 15, 2003) to cause the seal of the Department of Housing and Urban Development to be affixed to such documents as may require its application and to certify that a copy of any book, record, paper, microfilm or other document is a true copy of that in the files of the Department.

Additionally, the Inspector General delegates to the Deputy Inspector General, the Assistant Inspector General for Investigations, the Deputy Assistant Inspectors General for Investigations, and the Special Agents in Charge, the authority to request information under 5 U.S.C. section 552a(b)(7).

Section B. No Further Delegation or Redelegation

The authority delegated and redelegated in Section A above may not be further delegated or redelegated.

Authority: Section 6(a)(4), Inspector General Act of 1978 (5 U.S.C. App.); Section 7(d), Department of HUD Act (42 U.S.C. 3535(d)); Delegation of Authority, April 15, 1987, at 52 FR 12259; 5 U.S.C. section 552a.

Dated: February 12, 2007.

Kenneth M. Donohue,

Inspector General.

[FR Doc. E7–2826 Filed 2–16–07; 8:45 am]

BILLING CODE 4210–67–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, December 15, 2006.

Time of Meeting: 9 a.m. to 12:30 p.m.

Place of Meeting: National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Rooms 500/501, 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, December 11, 2006. 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: February 12, 2007.

J. William Leonard,

Director, Information Security Oversight Office.

[FR Doc. E7–2866 Filed 2–16–07; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Pilgrim Nuclear Power Station, Entergy Nuclear Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards; Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–35 issued to Entergy Nuclear Operations, Inc. (the licensee) for operation of the Pilgrim Nuclear Power Station (Pilgrim), located in Plymouth County, Massachusetts.

The proposed amendment would revise Limiting Condition for Operation (LCO) 3.14.A to adopt the Technical Specification Task Force-484, Revision 0, ''Use of Technical Specification 3.10.1 for Scram Time Testing Activities.''

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Technical Specifications currently allow for operation at greater than [200]°F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

Technical Specifications currently allow for operation at greater than [200]°F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. No new operational conditions beyond those currently allowed by LCO 3.10.1 are introduced. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

Technical Specifications currently allow for operation at greater than [200]°F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact any margin of safety. Allowing completion of inspections and testing and supporting completion of scram time testing initiated in conjunction with an inservice leak or hydrostatic test prior to power operation results in enhanced safe operations by eliminating unnecessary maneuvers to control reactor temperature and pressure.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly-available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requester/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to

participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, *Attention:* Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Travis C. McCullough, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated December 27, 2006, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly-available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

For The Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 8th day of February 2007.

James Kim,

Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–2804 Filed 2–16–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Draft Interim Staff Guidance Document Hlwrs–Isg–03, ''Preclosure Safety Analysis—Dose Performance Objectives and Radiation Protection Program''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION, CONTACT: Jon Chen, Project Manager, Project Management Branch B, Division of High-Level Waste Repository Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Telephone:* (301) 415–5526; *fax number:* (301) 415–5399; *e-mail: jcc2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Yucca Mountain Review Plan (YMRP) (July 2003, NUREG–1804, Revision 2) provides guidance for U.S. Nuclear Regulatory Commission (NRC) Division of High-Level Waste Repository Safety (HLWRS) staff to evaluate a U.S. Department of Energy (DOE) license application for a geologic repository. NRC has prepared Interim Staff Guidance (ISG) to provide clarifications or refinements to the guidance provided in the YMRP. NRC is soliciting public comments on Draft HLWRS–ISG–03, which will be considered in the final version, or subsequent revisions, to HLWRS–ISG–03.

II. Summary

The purpose of this notice is to provide the public with an opportunity to review and comment on draft HLWRS–ISG–03, which is to supplement the YMRP, for the NRC staff review of consequence estimates for the preclosure safety analysis, and the associated radiation protection program that will be implemented by DOE during geologic repository operations area operations.

This ISG revises Sections 2.1.1.5 and 2.1.1.8 of the YMRP. A sufficient description of the radiation protection program and adequate technical bases for consequence estimates are needed to demonstrate compliance with the performance objectives in *Code of Federal Regulations* (CFR), Title 10, Part 63 (10 CFR Part 63), and radiation protection requirements of 10 CFR Part 20.

III. Further Information

The documents related to this action are available electronically at NRC's Electronic Reading Room, at *http://www.nrc.gov/reading-rm/adams.html.* From this site, a member of the public can access NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the document related to this notice is provided in the following table. If an individual does not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference (PDR) staff, at 1–800–397–4209, or (301) 415–4737, or by e-mail, at *pdr@nrc.gov.*

ISG	ADAMS accession number
Draft HLWRS–ISG–03, ''Preclosure Safety Analysis—Dose Performance Objectives and Radiation Protection Program''.	ML070230090.

These documents may also be viewed electronically, on the public computers located at NRC's PDR, O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents, for a fee. Comments and questions on draft HLWRS–ISG–03 should be directed to the NRC contact listed below by April 6, 2007. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Contact: Sheena Whaley, Nuclear Engineer, Technical Review Directorate, High-Level Waste Repository Safety Division of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments can also be submitted by telephone, fax, or e-mail, which are as follows: *telephone:* (301) 415–7965; *fax number:* (301) 415–5399; or *e-mail: saw2@nrc.gov.*

Dated at Rockville, Maryland this 9th day of February 2007.

For the Nuclear Regulatory Commission.

N. King Stablein,

Chief, Project Management Branch B, Division of High-Level Waste Repository Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E7–2803 Filed 2–16–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55272; File No. SR–Amex–2006–77]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto To Amend Rules 918 and 918–Ante Regarding Trading Rotations, Halts and Suspensions

February 12, 2007.

I. Introduction

On August 16, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change to amend Amex Rules 918 and 918–ANTE relating to trading rotations and trading halts. On December 5, 2006, Amex filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 29, 2006.[1] The Commission received no comments regarding the proposal. This order approves the proposed rule change as modified by Amendment No. 1.

II. Discussion and Commission Findings

The Exchange proposes to amend Amex Rules 918 and 918–ANTE relating to trading rotations and trading halts. Specifically, Amex Rules 918(a) and 918–ANTE(a) currently provide that a trading rotation shall be employed at the opening of each business day following the opening of the underlying security in the primary market. Amex Rules 918(b) and 918–ANTE(b) provide that trading on any Exchange option contract may be halted or suspended whenever the Exchange deems such action appropriate. Included in these rules is a list of factors that the Exchange may use to determine if a trading halt or suspension is warranted. Pursuant to Amex Rules 918(b)(1) and 918–ANTE(b)(1), the Exchange may halt or suspend trading in an option contract if the underlying security has been halted or suspended in the primary market. Similarly, the Exchange may also consider, pursuant to Amex Rules 918(b)(2) and 918–ANTE(b)(2), halting or suspending trading in an option contract if the opening of such underlying stock in the primary market has been delayed due to unusual circumstances.

''Primary market'' is defined in Amex Rules 900(b)(26) and 900–ANTE(b)(26) as (i) With respect to an underlying equity security which is principally traded on a national securities exchange, the principal exchange market in which the underlying security is traded, (ii) with respect to an underlying equity security which is principally traded in the over-the-counter market, the market reflected by Nasdaq,[2] and (iii) with respect to any other type of security, the market reflected by any widely recognized quotation dissemination system.

The Exchange proposes to amend Amex Rules 918(a)(1) and Amex Rule 918–Ante(a)(1) to permit the opening rotation to begin once the underlying security has opened for trading in any market. In addition, Amex proposes to amend Amex Rule 918–Ante Commentary .01(d) to provide that the automated opening rotation shall begin once the opening trade or quote is disseminated by any market. Amex proposes to amend Amex Rules 918(b)(1) and 918–ANTE(b)(1) to implement trading halts and suspensions in any options contract if the underlying security is subject to a trading halt or suspension across several markets or in the primary listed market. Amex also proposes to amend Amex Rules 918(b)(2) and 918–ANTE(b)(2) to institute trading halts and suspensions in any options contract if there is a delay in the opening of the underlying security across several markets or in the primary listed market because of unusual circumstances. Additionally, the Exchange proposes to amend Amex Rules 918 Commentary .01(c) and 918–ANTE Commentary .01(g) to permit the closing rotation to begin once the final price for the underlying security is established in the trading markets and/or the primary listed market. Finally, the Exchange proposes to make clarifying changes to Amex Rules 918 and 918–ANTE to clarify that trading rotations, halts and suspensions apply to any options on a stock, exchange traded fund and trust issued receipt.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act,[3] which requires, among other things, Amex's rules be 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.[4]

Amex represented that the analysis of which market is the ''primary market'' for purposes of trading rotations and halts has become burdensome and uncertain due to trading of underlying securities in multiple markets. The Commission believes that the proposed rule change will provide Amex with flexibility to determine when to permit opening and closing rotations to begin by removing the requirement that it analyze which market is the primary market. As proposed, Amex may

[1] *See* Securities Exchange Act Release No. 54995 (December 21, 2006), 71 FR 78474.

[2] The Commission notes that Nasdaq currently operates as a national securities exchange with respect to Nasdaq-listed securities and as a facility of the NASD with respect to non-Nasdaq exchange listed securities.

[3] 15 U.S.C. 78f(b)(5).

[4] 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).

institute opening and closing rotations based on any market trading the underlying security. With regard to trading halts, however, Amex proposes to halt trading if multiple underlying markets have halted trading or if the primary listed market halted trading. The Commission believes that this standard is sufficient to establish when Amex should halt trading in its option contracts.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (SR–Amex–2006–77), as modified by Amendment No. 1, be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2837 Filed 2–16–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55277; File No. SR–Amex–2007–19]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise the AEMI Rules to Conform to Changes Previously Made to the AEMI-One Rules for the Pilot

February 12, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 9, 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, II, and III below, which Items have been substantially prepared by the Exchange. Amex has filed this proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(5) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[5] 15 U.S.C. 78s(b)(2).

[6] 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)(5).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt changes to its AEMI rules to match several changes that have already been approved and implemented as part of the Exchange's AEMI-One rules. The proposed changes would: (i) Eliminate the order types ''buy minus'' and ''sell plus''; (ii) revise the descriptions of ''stop order'' and ''stop limit order'' to provide that ''too marketable'' stop and stop limit orders for exchange-traded funds (''ETFs'') will be executed, not rejected; (iii) codify the Exchange's interpretation that a Specialist will not be deemed to be ''trading ahead'' of a percentage order if an aggressing order that executes against the Specialist's quote automatically elects the percentage order but the percentage order is not executed by that aggressing order due to insufficient remaining interest; (iv) revise the definition of ''specialist emergency quote'' to provide for an Exchange-wide upper limit on the number of such quotes that can be sequentially generated; (v) revise the definition of ''stabilizing quote'' to provide that such a quote may be issued when orders or quotes on the AEMI Book are exhausted and that auto-ex would be disabled after such a quote is generated so that the Specialist may step in to re-quote the market; (vi) revise two rules (including the definition of ''intermarket sweep order'') to provide, as required by Regulation NMS, that members who choose to send intermarket sweep orders to the Exchange will be obligated to protect the same quotations of other market centers that the Exchange is obligated to protect; and (vii) correct two internal references in Rule 205–AEMI and add a new subparagraph to provide for the execution of an unexecuted odd-lot balance on an aggressing order that is the result of an unexecuted odd-lot balance on an intermarket sweep order that was routed to another market by the AEMI platform to access a better-priced protected quotation.

The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com*, at the Exchange's principal office, 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 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. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has recently adopted two sets of rules in connection with the operation of its new hybrid market trading platform for equity products and ETFs, designated as AEMI℠ (the ''Auction and Electronic Market Integration'' platform). The initial version of AEMI is referred to as ''AEMI-One'' and is currently operational on a pilot basis[5] through the day prior to the final date set by the Commission for full operation of all automated trading centers that intend to qualify their quotations for trade-through protection under Rule 611[6] of Regulation NMS (the latter date being referred to as the ''Trading Phase Date'').[7] On the Trading Phase Date, the regular AEMI rules will become effective[8] and the AEMI-One rules will cease to be operative. In the final amendment to the AEMI-One rules just prior to their approval by the Commission, the Exchange made several changes that are now reflected in those AEMI-One rules. In addition, the Exchange subsequently filed with the Commission a proposed change to the AEMI-One rule on odd-lot order execution that was immediately effective on filing and that provides for the execution of an unexecuted odd-lot balance on an aggressing order that is the result of an unexecuted odd-lot

[5] *See* Securities Exchange Act Release No. 54709 (November 3, 2006), 71 FR 65847 (November 9, 2006) (SR–Amex–2006–72) (Order Approving a Proposed Rule Change and Amendment No 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3, to Adopt New Rules to Implement on a Pilot Basis an Initial Version of AEMI, Its Proposed New Hybrid Market Trading Platform for Equity Products and Exchange Traded Funds).

[6] 17 CFR 242.611. The Order Protection Rule requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution of trades at prices inferior to protected quotations displayed by other trading centers, subject to certain exceptions.

[7] The Trading Phase Date is currently established as March 5, 2007.

[8] *See* Securities Exchange Act Release No. 54552 (September 29, 2006), 71 FR 59546 (October 10, 2006) (SR–Amex–2005–104) (Order Approving a Proposed Rule Change and Amendments No. 1, 2, 3, 4, and 5 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 6, to Establish a New Hybrid Trading System Known as AEMI).

balance on an order that was routed to another market by the AEMI platform to access a better-priced protected quotation.[9] The purpose of this filing is simply to make conforming changes to the regular AEMI rules so that they match the corresponding AEMI-One rules that have been approved by the Commission and that are currently effective.

Elimination of ''Buy Minus'' and ''Sell Plus'' Order Types

The Exchange proposes to remove the order types ''buy minus'' and ''sell plus'' from Rule 131–AEMI(n) (and all references thereto in the AEMI rules) due to lack of demand for these order types and the complexity of the coding that would be involved to incorporate them into the AEMI platform.

Execution of ''Too Marketable'' Stop and Stop Limit Orders for ETFs

The Exchange proposes to revise the descriptions of ''stop order'' in Rule 131–AEMI(o) and ''stop limit order'' in Rule 131–AEMI(p) to provide that ''too marketable'' stop and stop limit orders for ETFs will be executed, not rejected.

Codification of Exchange Interpretation Regarding ''Trading Ahead'' of a Percentage Order

The Exchange proposes to codify as Commentary .01 to Rule 154–AEMI its interpretation, based on several of the AEMI rules, that a Specialist will not be deemed to be ''trading ahead'' of a percentage order (of which he is the agent) if (i) An aggressing order that executes against the Specialist's quote automatically ''elects'' the percentage order (making it eligible for immediate execution) and (ii) the percentage order is not executed by that aggressing order due to insufficient remaining interest and therefore reverts back to unelected status. Additionally, the proposed Commentary will provide that any subsequent trade by the Specialist for his own account at the limit price of the percentage order will not constitute ''trading ahead'' if the percentage order has not been otherwise re-elected at that time.

Revised Definitions of ''Specialist Emergency Quote'' and ''Stabilizing Quote''

The Exchange proposes to revise the definition of ''specialist emergency quote'' in Rule 1A–AEMI to provide for an exchange-wide upper limit (not to exceed ten) on the number of specialist emergency quotes that may be sequentially generated. A change in the definition of ''stabilizing quote'' is also proposed to provide that a stabilizing quote may be issued when orders or quotes on the AEMI Book are exhausted, and that auto-ex would be disabled after the stabilizing quote is generated so that the Specialist may step in to re-quote the market.

Obligation of Members to Protected Quotations at Other Market Centers

The Exchange proposes to add language to the definition of an ''intermarket sweep order'' in Rule 131–AEMI(k) to provide, as required by Regulation NMS, that members who choose to send such orders to the Exchange will be obligated to protect the same quotations of other market centers that the Exchange is obligated to protect. Specifically, a member may submit an intermarket sweep order to the Exchange only if the member simultaneously sends an intermarket sweep order for the full displayed size of every other better-priced protected quotation displayed by other trading centers. The same requirement is being added to Rule 126A–AEMI (Protected Bids and Offers of Away Markets).

Revisions to Odd-Lot Order Execution Rule

The Exchange proposes to correct two internal rule references in Rule 205–AEMI so that they refer to the appropriate AEMI rules. In addition, the Exchange proposes to add a new subparagraph (b)(viii) to provide for the execution of an unexecuted odd-lot balance on an aggressing order that is the result of an unexecuted odd-lot balance on an intermarket sweep order that was routed to another market by the AEMI platform to access a better-priced protected quotation. Specifically, if a partial-lot trade is received from an away market in response to an intermarket sweep order sent by AEMI, resulting in an unexecuted balance which comprises an odd lot, then any unexecuted odd-lot balance on the aggressing order (including the unexecuted odd-lot balance from the intermarket sweep order) shall be traded immediately against the Specialist at the last trade price of the intermarket sweep order, and any remaining unexecuted round-lot balance shall reaggress the AEMI Book in accordance with Rule 126A–AEMI. Illustrative examples of the proposed rule provision were included in the related AEMI–One filing referenced above.[10]

The Exchange asserts that the proposal to effect the foregoing changes to the AEMI trading system does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and does not have the effect of limiting the access to or availability of the system.

2. Statutory Basis

The proposed rule change is designed to be consistent with Regulation NMS, as well as consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5),[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 remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no 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

Because the proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) have the effect of limiting the access to or availability of an existing order entry or trading system of the Exchange, the foregoing rule change has become effective immediately pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b–4(f)(5)[13] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission

[9] *See* Securities Exchange Act Release No. 54866 (December 4, 2006), 71 FR 71598 (December 11, 2006) (SR–Amex–2006–111) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Odd-Lot Rejections by Away Markets in the AEMI-One Pilot).

[10] The corresponding AEMI–One rule refers to an ''away market obligation'' (which is an immediate-or-cancel limit order) rather than an ''intermarket sweep order'' based on the expectation that not all markets would be able to receive and execute intermarket sweep orders during the period of the AEMI–One pilot.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(5).

may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

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 at *http://www.sec.gov/rules/sro.shtml;* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Amex–2007–19 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 No. SR–Amex–2007–19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Amex–2007–19 and should be submitted on or before March 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2840 Filed 2–16–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55275; File No. SR–CBOE–2006–94]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Off-Floor DPMs

February 12, 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 November 13, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''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 Exchange filed Amendment No. 1 to the proposed rule change on January 18, 2007. 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

CBOE proposes to amend CBOE rules to allow a Designated Primary Marker-Maker (''DPM'') to operate remotely away from CBOE's trading floor. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to amend its rules to allow a DPM to operate remotely away from CBOE's trading floor. DPMs are member organizations that function in option classes allocated to them as a Market-Maker, and also are subject to the obligations under Rule 8.85 or as otherwise provided in CBOE's Rules. Currently, all DPMs operate on CBOE's trading floor. However, some member organizations have expressed an interest in acting as a DPM remotely away from CBOE's trading floor. As discussed below, the proposed rule change is intended to provide DPMs with the flexibility to operate on CBOE's trading floor (''On-Floor DPM'') or remotely away from CBOE's trading floor (''Off-Floor DPM''). A DPM would only be permitted to operate as an Off-Floor DPM in equity option classes traded on the Hybrid Trading System.

CBOE proposes to amend Rule 8.83 to provide that in selecting an applicant for approval as a DPM, the appropriate exchange committee may place one or more conditions on the approval, including, but not limited to, whether the DPM will operate on-floor or off-floor. Additionally, CBOE proposes to amend Rule 8.83 to provide that an On-Floor DPM can request that the appropriate Exchange committee authorize it to operate as an Off-Floor DPM in one or more equity option classes traded on the Hybrid Trading System. The appropriate Exchange committee will consider the factors specified in Rule 8.83(b) in determining whether to permit an On-Floor DPM to operate as an Off-Floor DPM. In the event a DPM is approved to operate as an Off-Floor DPM, Rule 8.83 provides that the Off-Floor DPM can have a DPM Designee trade in open outcry in the option classes allocated to the Off-Floor DPM, but the Off-Floor DPM shall not receive a participation entitlement under Rule 8.87 with respect to orders represented in open outcry. CBOE also proposes to amend Rule 6.45A(a)(C) and Rule 6.74 to make clear that the DPM participation entitlement is only applicable to an On-Floor DPM.

As provided in new Interpretation .01 to Rule 8.83, if an Off-Floor DPM wishes to operate as an On-Floor DPM, the Off-

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Floor DPM can request that the appropriate Exchange Committee authorize it to do so. In making a determination pursuant to this Interpretation, the appropriate Exchange committee would evaluate whether the change is in the best interests of the Exchange, and the committee may consider any information that it believes will be of assistance to it. Factors to be considered may include, but are not limited to, any one or more of the following: performance, operational capacity of the Exchange or the DPM, efficiency, number and experience of personnel of the DPM who will be performing functions related to the trading of the applicable securities, number of securities involved, number of Market-Makers affected, and trading volume of the securities.

In connection with this rule change, CBOE proposes to amend certain DPM obligations contained in Rule 8.85. In particular, CBOE proposes to amend the obligation contained in subparagraph (a)(iv) which currently provides that the DPM must assure that the number of DPM Designees and support personnel continuously present at the trading station throughout every business day is not less than the minimum required by the appropriate Exchange committee. CBOE proposes to amend subparagraph (a)(iv) to state that an Off-Floor DPM similarly shall assure that the number of DPM Designees and support personnel continuously overseeing the DPM's activities is not less than the minimum required by the appropriate Exchange committee. Additionally, an Off-Floor DPM shall provide members with telephone access to a DPM Designee at all times during market hours for purposes of resolving problems involving trading on the Exchange.

CBOE also proposes to amend the provision in subparagraph (a)(v) of Rule 8.85 that states a DPM shall trade in all securities allocated to the DPM only in the capacity of a DPM and not in any other capacity. CBOE proposes to allow, as part of an existing pilot program applicable to e-DPMs,[3] an Off-Floor DPM to have not more than one Market-Maker affiliated with the Off-Floor DPM trade on CBOE's trading floor in any specific option class allocated to the Off-Floor DPM, provided such Market-Maker is trading on a separate membership.[4] The affiliated Market-Maker would also have to comply with the ''Guidelines for Exemptive Relief Under Rule 8.91(e) for Members Affiliated with DPMs'', set forth in Rule 8.91. (Absent the pilot program, an Off-Floor DPM may not allow any Market-Makers affiliated with the Off-Floor DPM to trade on CBOE's trading floor in any class allocated to the Off-Floor DPM.) If the Off-Floor DPM has an affiliated Marker-Maker trade on CBOE's trading floor in any specific option class allocated to the Off-Floor DPM pursuant to the pilot program, Rule 8.85(a)(v) provides that the Off-Floor DPM cannot also have a DPM Designee trading in open outcry in the option classes allocated to the Off-Floor DPM.

Finally, CBOE proposes to amend Interpretation .02 of Rule 3.8 to allow an Off-Floor DPM to appoint one individual to be the nominee for all memberships utilized by the organization in an Off-Floor DPM capacity. Interpretation .02 of Rule 3.8 currently provides that a member organization can appoint one individual to be the nominee for all memberships utilized by the organization in an RMM capacity or an e-DPM capacity. This is an exception to the general requirement of Rule 3.8(a)(ii) which provides that ''if a member organization is the owner or lessee of more than one membership, the organization must designate a different individual to be the nominee for each of the memberships.''

2. Statutory Basis

CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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 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) 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 such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2006–94 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–2006–94. 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

[3] *See* CBOE Rule 8.93(vii). The Pilot Program is scheduled to expire on March 14, 2007.

[4] CBOE proposes to make a corresponding change to the ''Guidelines for Exemptive Relief Under Rule 8.91(e) for Members Affiliated with DPMs.'' *See* Guidelines, Paragraph (b)(viii).

[5] 15 U.S.C. 78(f)(b).

[6] 15 U.S.C. 78(f)(b)(5).

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 CBOE. 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–2006–94 and should be submitted on or before March 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

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[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55279; File No. SR–ISE–2007–02]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Position and Exercise Limits on the KBW Bank Index

February 12, 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 8, 2007, the International Securities Exchange, LLC (''ISE'' 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 ISE. On February 5, 2007, the ISE filed Amendment No. 1 to the proposed rule change. The ISE filed the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[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).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to increase the position and exercise limits for options on the KBW Bank Index. The text of the proposed rule change is available at the ISE, the Commission's Public Reference Room, and *http://www.iseoptions.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 ISE 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 ISE 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 recently listed for trading options on the KBW Bank Index (''BKX'') pursuant to the Exchange's generic listing standards found in its Rule 2002(b). Under ISE Rule 2005, a narrow-based index option cannot have position and exercise limits that exceed 31,500 contracts.[5] The Exchange notes that the Philadelphia Stock Exchange (''Phlx'') also currently lists options on BKX. However, pursuant to a Rule 19b–4 filing, the position and exercise limit for options on BKX traded by Phlx is currently 44,000 contracts.[6] Accordingly, the Exchange proposes to increase the position and exercise limit for options on BKX traded at ISE to 44,000 contracts also. The Exchange believes it is important for a product traded at multiple exchanges to have a uniform position and exercise limit in order to eliminate any confusion among investors and other market participants.

2. Statutory Basis

The basis under the Act for this proposed rule change is found in Section 6(b)(5),[7] in that the adoption of uniform position and exercise limits for BKX will serve 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.

[5] ISE Rule 2007 generally states that exercise limits for an index option shall be equivalent to the position limit prescribed to that index option.

[6] *See* Securities Exchange Act Release No. 49312 (February 24, 2004), 69 FR 9672 (March 1, 2004) (SR–Phlx–2004–13).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

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.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement. The Commission has determined to waive this requirement.

[10] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on February 5, 2007, the date on which the ISE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

the date of filing.[11] However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The ISE has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change will make the ISE's position and exercise limits for options on BKX consistent with the Phlx's position and exercise limits for such options.[13] Further, the Commission notes that the increased position and exercise limits for Phlx were previously noticed for comment and no comments were received. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

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–ISE–2007–02 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–ISE–2007–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2007–02 and should be submitted on or before March 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

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BILLING CODE 8010–01–P

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *Id.*

[13] *See supra* note 6.

[14] 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. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55274; File No. SR–NASD–2007–012]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Implement Certain Approved NASD Rule Changes Upon the Operation of the Nasdaq Stock Market LLC for Non-Nasdaq Exchange-Listed Securities

February 12, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 9, 2007, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. The NASD filed the proposed rules change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD has filed a proposed rule change to (1) Provide notice that the amendments to the NASD Rule 4700 Series that were approved pursuant to SR–NASD–2006–104[5] will not be implemented; (2) implement certain amendments that were approved pursuant to SR–NASD–2006–104 upon the operation of the Nasdaq Stock Market LLC (the ''Nasdaq Exchange'') as a national securities exchange for non-Nasdaq exchange-listed securities; and (3) propose additional changes that were not approved pursuant to SR–NASD–2006–104, specifically the deletion of the Rule 4700 Series and Rule 5150. All other rule changes that were approved pursuant to SR–NASD–2006–104, and were not implemented pursuant to SR–NASD–2006–135,[6] will be implemented upon the operation of NASD's Alternative Display Facility (''ADF'') for non-Nasdaq exchange-listed securities, as approved by the Commission on September 28, 2006.[7] The text of the proposed amendments is available at the NASD, from the Commission's Public Reference Room, and on the NASD's Web site (*http://www.nasd.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 NASD 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. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving SR–NASD–2006–104).

[6] *See* Securities Exchange Act Release No. 54984 (December 20, 2006), 71 FR 78245 (December 28, 2006) (notice of filing and immediate effectiveness of SR–NASD–2006–135).

[7] *See* Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (order approving SR–NASD–2006–091).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 30, 2006, the Commission approved SR–NASD–2005–087, which, among other things, proposed an implementation strategy for the operation of the Nasdaq Exchange as a national securities exchange for Nasdaq-listed securities during a transitional period and also proposed rules for reporting trades in Nasdaq-listed securities effected otherwise than on an exchange to the NASD/Nasdaq Trade Reporting Facility (the ''NASD/Nasdaq TRF'').[8] On November 21, 2006, the Commission approved SR–NASD–2006–104, which, among other things, proposed amendments necessary to reflect the complete separation of The Nasdaq Stock Market Inc. (''Nasdaq'') from the NASD upon the operation of the Nasdaq Exchange as a national securities exchange for non-Nasdaq exchange-listed securities and also proposed to expand the scope of the NASD/Nasdaq TRF rules to include reporting of over-the-counter trades in non-Nasdaq exchange-listed securities.[9]

As originally approved, the rule changes in SR–NASD–2006–104 were to become effective on the date that the Nasdaq Exchange commences operation as a national securities exchange for non-Nasdaq exchange-listed securities. However, as described in SR–NASD–2006–135, for a transitional period, Nasdaq has continued to operate the SuperIntermarket (SiM) trading platform on NASD's behalf via the Transitional System and Regulatory Services Agreement.[10] As contemplated in SR–NASD–2006–135, the NASD has determined to continue to use Nasdaq as a vendor to operate SiM, even upon the Nasdaq Exchange's operation as an exchange for non-Nasdaq exchange-listed securities, which is currently scheduled for February 12, 2007.[11] As such, the current rules relating to SiM will remain in place and the approved rule changes to the Rule 4700 Series in SR–NASD–2006–104 will not be implemented.

In addition, the following rule changes that were approved pursuant to SR–NASD–2006–104 will be implemented on the date upon which the Nasdaq Exchange operates as a national securities exchange for non-Nasdaq exchange-listed securities: (1) Deletion of the Rule 4900 Series and the 4950 Series; and (2) adoption of new Rules 5120 (Other Trading Practices) and 5130 (Obligation to Provide Information) relating to trading otherwise than on an exchange. All other rule changes that are part of SR–NASD–2006–104, and were not implemented pursuant to SR–NASD–2006–135 (*i.e.*, amendments to the Rule 0100 Series; amendments to the Rule 4000 Series and Rule 6100 Series relating to the NASD/Nasdaq TRF; deletion of Rule 4400; amendments to Rule 11890, Interpretive Material (IM) 11890–1 and IM–11890–2; and the deletion of IM–11890–3), will be implemented upon the operation of the ADF for non-Nasdaq exchange-listed securities, which will be the Regulation NMS Trading Phase Date (currently anticipated to be March 5, 2007).[12]

In this proposed rule change, NASD is proposing two additional rule changes that were not approved as part of SR–NASD–2006–104. First, NASD is proposing to delete the Rule 4700 Series in its entirety upon the operation of the ADF for non-Nasdaq exchange-listed securities.[13] Second, NASD is proposing to delete Rule 5150 upon the operation of the ADF for non-Nasdaq exchange-listed securities. Rule 5150 requires an NASD member that is registered as a market maker with the Nasdaq Exchange in a non-Nasdaq exchange-listed security to comply with the provisions of NASD Rule 5262 relating to trade-throughs with respect to that security for trades reported to NASD. Rule 5150 was approved by the Commission on September 19, 2006 and will become effective on the date that the Nasdaq Exchange operates as a national securities exchange for non-Nasdaq exchange-listed securities.[14] Upon the operation of the ADF for non-Nasdaq exchange-listed securities, the Rule 5200 Series, including Rule 5262, will be deleted pursuant to NASD–2006–091. Thus, NASD is proposing to delete Rule 5150 on that same date.

NASD has filed the proposed rule change for immediate effectiveness. NASD proposes to implement the proposed rule change as described herein.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[15] which requires, among other things, that NASD 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. NASD believes that the proposed rule change will provide an effective mechanism and regulatory framework for quoting and trading activities otherwise than on an exchange in non-Nasdaq exchange-listed securities upon the operation of the Nasdaq Exchange as a national securities exchange for non-Nasdaq exchange-listed securities and the operation of the ADF for non-Nasdaq exchange-listed securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or

[8] *See* Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving SR–NASD–2005–087).

[9] *See* Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving SR–NASD–2006–104).

[10] *See* Securities Exchange Act Release No. 54984 (December 20, 2006), 71 FR 78245 (December 28, 2006) (notice of filing and immediate effectiveness of SR–NASD–2006–135). In that filing, amendments to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries and the By-Laws of NASD, NASD Regulation and NASD Dispute Resolution, and the deletion of the Nasdaq By-Laws, which were previously approved in SR–NASD–2006–104, were implemented on December 20, 2006 to reflect Nasdaq's complete separation from NASD, and, on that same date, dissolution of NASD's controlling share in Nasdaq.

[11] *See* Securities Exchange Act Release No. 54984 (December 20, 2006), 71 FR 78245 (December 28, 2006) (notice of filing and immediate effectiveness of SR–NASD–2006–135), *infra* note 13.

[12] Pursuant to SR–NASD–2006–091, among other changes, the following will be deleted from the NASD Manual on the Trading Phase Date: the Rule 5200 Series, the Rule 6300 Series and the Rule 6400 Series.

[13] Thus, in the period between commencement of operation of the Nasdaq Exchange for non-Nasdaq exchange-listed securities and the operation of the ADF for non-Nasdaq exchange-listed securities, the Rule 4700 Series will remain in the NASD Manual as it exists today. Upon the operation of the ADF for non-Nasdaq exchange-listed securities, the Rule 4700 Series will be deleted in its entirety.

[14] *See* Securities Exchange Act Release No. 54471 (September 19, 2006), 71 FR 56202 (September 26, 2006) (order approving SR–NASD–2006–081).

[15] 15 U.S.C. 78o–3(b)(6).

such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act,[16] and Rule 19b–4(f)(6) thereunder.[17] 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.

A proposed rule change filed under Rule 19b–4(f)(6)[18] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The NASD has asked the Commission to waive the 30-day pre-operative delay. The Commission believes that such waiver is consistent with the protection of investors and the public interest because it would allow the NASD to update and clarify its rules.[20] The Commission notes that the proposed rule change will facilitate the implementation of NASD rules that were subject to notice and comment and approved by the Commission on November 21, 2006. For this reason, the Commission designates the proposed rule change to be operative on the date that the Nasdaq Exchange begins operations as a national securities exchange for non-Nasdaq exchange-listed securities.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2007–012 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–2007–012. 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–2007–012 and should be submitted on or before March 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2839 Filed 2–16–07; 8:45 am]

BILLING CODE 8010–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] *Id.*

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55283; File No. SR–NASD–2007–010]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASD Rule 7010 To Modify Pricing for NASD Members Using ITS/CAES System and Inet Facility

February 12, 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 29, 2007, the National Association of Securities Dealers, Inc. (''NASD'') 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 substantially by NASD. NASD submitted the proposed rule change under 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.[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

NASD proposes to amend NASD Rule 7010 to modify the pricing for its members using the ITS/CAES System and the Inet facility (the ''Nasdaq Facilities''), which are currently operated by The Nasdaq Stock Market, Inc. and its subsidiaries (''Nasdaq'') as facilities of NASD. The text of the proposed rule change is available on the NASD's Web site at *http://www.nasd.com*, at NASD 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, NASD 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

[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] NASD stipulated the implementation date to be February 1, 2007.

may be examined at the places specified in Item IV below. NASD 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

This proposed rule change modifies the pricing schedule for the systems for trading non-Nasdaq exchange-listed securities that are currently operated as NASD facilities by Nasdaq. The fees apply to the Nasdaq Facilities, but as is currently the case with respect to fees for these systems, the fee schedule reflects the volume of a member's use of ITS/CAES, Inet, and the Nasdaq Market Center (a facility of The NASDAQ Stock Market LLC (the ''Nasdaq Exchange'')) in determining applicable fees.[6] The changes made by this proposed rule change relate to order execution fees for ITS/CAES and Inet, fees for routing to venues other than the New York Stock Exchange (the ''NYSE''), and fees for routing orders in exchange-traded funds to the NYSE; fees to route other orders to the NYSE are unchanged.

Currently, members with an average daily volume in all securities during the month of (i) More than 30 million shares of liquidity provided, and (ii) more than 50 million shares of liquidity accessed and/or routed; or members with an average daily volume through the Nasdaq Facilities in all securities during the month of (i) More than 20 million shares of liquidity provided, and (ii) more than 60 million shares of liquidity accessed and/or routed, pay a fee of $0.0027 per share executed when their orders access liquidity on ITS/CAES or Inet or are routed. Members with lower volumes pay a fee of $0.0028 or $0.003, depending on their volumes. The proposed rule change raises the volume thresholds needed to qualify for the $0.0027 fee, such that it will be available to market participants that (i) Add more than 35 million shares of liquidity per day during the month and route or remove more than 55 million shares of liquidity per day during the month, or (ii) add more than 25 million shares of liquidity per day during the month and route or remove more than 65 million share of liquidity per day during the month.

Currently, members adding more than 30 million shares of liquidity per day during the month receive a liquidity provider credit of $0.0025 per share executed; members providing less liquidity receive a credit of $0.002. The proposed rule change raises the threshold needed to qualify for the $0.0025 rebate to 35 million shares per day. However, the proposed rule change also introduces an intermediate credit of $0.0022 per share executed for members that provide more than 20 million shares of liquidity during the month.

The fees reflected in this proposed rule change were announced by Nasdaq on November 30, 2006,[7] as part of a market-wide evolution in the pricing structure for non-Nasdaq listed securities and an effort by Nasdaq to adopt consistent pricing for all types of securities. Previously, the fees charged by Nasdaq and other venues for non-Nasdaq securities had been characterized by low execution and routing fees and no credits for liquidity providers. During the fall of 2006, however, other markets began to adopt higher execution fees, coupled with liquidity provider credits, thereby moving toward a structure that had long been in effect for Nasdaq-listed securities. As of January 2, 2007, NASD likewise introduced fees for the ITS/CAES and Inet that reflected this evolving pricing structure.[8] However, the fees filed for January were intended as a one-month transition away from the previous structure, and therefore included lower thresholds to qualify for favorable pricing. In addition, the new higher thresholds proposed by this proposed rule change reflect the growing volumes of orders for NYSE-listed securities that are executed or routed through Inet and ITS/CAES, and are intended to encourage further usage.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with Section 15A of the Act,[9] in general, and furthers the objectives of Section 15A(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD 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

NASD 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[11] and subparagraph (f)(2) of Rule 19b-4 thereunder,[12] because it establishes or changes a due, fee, or other charge imposed by the NASD. 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

[6] The consideration of volumes through the Nasdaq Exchange is a function of the phased transition of Nasdaq from an operator of NASD facilities to a separate national securities exchange. As such, NASD fee schedules will be amended to remove all references to Nasdaq at or shortly after the time when the Nasdaq Exchange begins to trade non-Nasdaq exchange-listed securities, which is currently expected to occur on February 12, 2007. The Nasdaq Exchange has submitted a comparable filing to establish the same fees for Nasdaq-listed securities, which likewise considers trading volumes through ITS/CAES and Inet. *See SR–NASDAQ–2007–003.*

When the Nasdaq Exchange begins to trade non-Nasdaq securities, Inet will no longer be operated as an NASD facility for trading non-Nasdaq securities. Accordingly, for the month of February, the volumes used to determine fees for ITS/CAES and Inet will also consider volumes in non-Nasdaq securities through the Nasdaq Market Center. For this reason, a reference to ''Nasdaq-listed securities'' is being deleted from the explanatory text of Rule 7010(i)(1). This change is necessary to ensure that members using Inet and ITS/CAES prior to the anticipated transition on February 12, 2007 pay fees for that period that reflect a full month's worth of their trading activity.

[7] *See* Nasdaq Head Trader Alert #2006–199 (November 30, 2006), available at *http://www.nasdaqtrader.com/trader/news/2006/headtraderalerts/hta2006–199.stm.*

[8] *See* Securities Exchange Act Release No. 55129 (January 18, 2007), 72 FR 03894 (January 26, 2007).

[9] 15 U.S.C. 78o-3.

[10] 15 U.S.C. 78o-3(b)(5).

[11] 15 U.S.C. 78s(b)(3)(a)(ii).

[12] 17 CFR 240.19b-4(f)(2).

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2007–010 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–2007–010. 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 offices 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–2007–010 and should be submitted on or before March 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2841 Filed 2–16–07; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55280; File No. SR–NASD–2007–003]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees and Credits for the NASD/BSE Trade Reporting Facility

February 12, 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 16, 2007, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. NASD filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it 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

NASD proposes to adopt a new NASD Rule 7000D Series relating to fees and credits for the Trade Reporting Facility (''NASD/BSE TRF'') established by NASD and the Boston Stock Exchange (''BSE''). The text of the proposed rule change is available at *www.nasd.com,* NASD, 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, NASD 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. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[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).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 13, 2006, the Commission approved SR–NASD–2006–115,[5] which established rules relating to the new NASD/BSE TRF. The NASD/BSE TRF will provide NASD members with another mechanism for reporting to NASD locked-in transactions in exchange-listed securities effected otherwise than on an exchange. It is anticipated that the NASD/BSE TRF will commence operation in February 2007 upon successful completion of system testing and certification. The instant proposed rule change would adopt a new NASD Rule 7000D Series relating to fees and credits applicable to the NASD/BSE TRF.

NASD is proposing that under new Rule 7002D there will be no transaction fee for reporting locked-in trades to the NASD/BSE TRF in securities listed on the New York Stock Exchange (''Tape A''), the American Stock Exchange (''Tape B''), and the Nasdaq Exchange (''Tape C''). Although NASD is not required to file a proposed rule change where no fees are to be assessed, for members' convenience and to avoid potential confusion with the fee structures of other NASD facilities, NASD is proposing Rule 7002D to clarify that there will be no charge for use of the NASD/BSE TRF to report locked-in transactions in exchange-listed securities effected otherwise than on an exchange. The text of proposed Rule 7002D is identical to the text of current Rule 7002C relating to the NASD/NSX TRF.

In addition, NASD is proposing a transaction credit program under new Rule 7001D that is identical to the existing transaction credit program for the NASD/Nasdaq TRF under Rule 7001B.[6] NASD members reporting trades in Tape A, Tape B and Tape C stocks to the NASD/BSE TRF will receive a 50% pro rata credit on market data revenue earned by the NASD/BSE TRF with respect to those trade reports after deducting the amount, if any, that the Trade Reporting Facility pays to the

[5] *See* Securities Exchange Act Release No. 54932 (December 13, 2006), 71 FR 76409 (December 20, 2006)(order).

[6] *See* Securities Exchange Act Release No. 54353 (August 23, 2006), 71 FR 51255 (August 29, 2006).

NASD also notes that the proposed transaction credit program is substantially equivalent to the existing transaction credit program for the NASD/NSX TRF under Rule 7001C. The only difference between the two programs is that under the NASD/NSX TRF transaction credit program, members receive 50% of gross revenue.

Consolidated Tape Association or the Nasdaq Securities Information Processor for capacity usage. Credits will be paid on a quarterly basis. To the extent that market data revenue is subject to any adjustment, credits may be adjusted accordingly.

Tape A and Tape B revenue is currently distributed to NASD and the exchanges based on number of trades reported, while Tape C revenue is distributed based on an average of the number of trades and number of shares reported. Thus, under the proposed program, the Tape A and Tape B revenue attributable to a member will be based on number of trades reported, while the Tape C revenue attributable to a member would be based on number of trades and number of shares reported. A member will receive 50% of the revenue attributable to it in each of the three tapes.

NASD filed the proposed rule change for immediate effectiveness. NASD proposes to implement the proposed rule change on the first day of operation of the NASD/BSE TRF, which is currently anticipated to be in February 2007.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[7] in general, and with Section 15A(b)(5) of the Act,[8] in particular, which requires, among other things, that NASD rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. NASD believes that the proposed rule change is a reasonable and equitable fee and credit structure in that there will be no fees charged for trade reporting to the NASD/BSE TRF and the proposed transaction credit program is identical to existing credits for the NASD/Nasdaq TRF.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

[7] 15 U.S.C. 7*o*-3.

[8] 15 U.S.C. 8*o*–3(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] 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.

NASD has asked that the Commission waive the 30-day operative delay set forth in Rule 19b–4(f)(6)(iii) under the Act[11] to allow the proposed rule change to be implemented on the first day of operation of the NASD/BSE TRF, which is currently anticipated to be in February 2007. The Commission believes such waiver is consistent with the protection of investors and the public interest, for it will allow the proposed fees and credits to be in place at the time NASD begins operating the NASD/BSE TRF. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2007–003 on the subject line.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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–2007–003. 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–2007–003 and should be submitted on or before March 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2852 Filed 2–16–07; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55267; File No. SR–NSCC–2006–16]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow Retirement and Other Benefit Plans and Programs Offered By Registered Broker/Dealers To Be Processed Through Its Insurance Processing Service

February 9, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 13, 2006, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [2] and Rule 19b–4(f)(4) thereunder [3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend NSCC's Rules related to the Insurance Processing Services (''IPS'') and Insurance Carrier Members in order to allow retirement and other benefit plans and programs offered by registered broker/dealers to be processed on the IPS platform.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to amend NSCC's Rules related to IPS and Insurance Carrier Members in order to allow retirement and other benefit plans and programs offered by registered broker/dealers to be processed on the IPS platform.

Background

NSCC's IPS is a non-guaranteed service, meaning that NSCC does not function as a central counterparty or guarantor with respect to payment obligations arising in connection with IPS transactions. IPS was established in 1997 as the Annuities Processing Service, a centralized communication link that connected participating insurance carriers with broker/dealers and other entities that distributed annuities issued by the participating insurance carrier.[5] The service was later expanded to accommodate processing of life insurance products in addition to annuities, and its name was changed to IPS. Similarly, the name of the participating insurance carriers using IPS was changed from ''Annuities Carrier Members'' to ''Insurance Carrier Members.'' [6]

Currently, IPS provides for the communication of data relating to insurance products (both annuities and life insurance products) and for the settlement of certain payments relating to insurance products, as set forth in NSCC Rule 57, ''Insurance Processing Service.'' Participating insurance carriers that use IPS to communicate with their distributors information regarding their insurance products are called ''Insurance Carrier Members.'' Their distributors are called ''Members'' or ''Mutual Fund/Insurance Services Members'' and use IPS under authority of NSCC Rule 2, ''Members.'' The qualifications of Insurance Carrier Members are set forth in Rule 56 and Addendum Q of NSCC's Rules.

Certain retirement and other benefit plans and programs offered by a broker/dealer are functionally similar to annuities in that the broker/dealer (functioning as an administrator and/or custodian of the program) offers multiple investment options (typically mutual funds or annuities) within the ''wrap'' of the program for sale to plan sponsors through distributing broker/dealer intermediaries. Current IPS functionality that is used for annuities and other insurance products is useful in the context of these programs. Examples of such functionalities included the communication of customer positions and activity among the investment options within the program, information regarding the values of the various investment options included within the program, data concerning program commissions and other compensation due to the distributing broker/dealers, and the payment of such commissions and compensation through NSCC's daily money settlement.

(A) Proposed Amendments to NSCC's Rules

Under the proposed amendments, the IPS is renamed the ''Insurance and Retirement Processing Services'' (and is still referred to as ''IPS'') and the products processed through IPS are renamed ''IPS Eligible Products.'' IPS Eligible Products now include, in addition to insurance products, retirement and other benefit plans and programs.

''Insurance Carrier Member'' is renamed ''Insurance Carrier/Retirement Services Member.'' Formerly, only insurance companies could qualify under this membership category. Pursuant to the proposed rule change, registered broker/dealers will also be eligible to qualify as Insurance Carrier/Retirement Services Members. The membership qualifications applicable to insurance companies in their capacity as Insurance Carrier/Retirement Services Members are unchanged. The membership qualifications applicable to a broker/dealer in its capacity as an Insurance Carrier/Retirement Services Member will be the same as the qualifications currently applicable to a broker/dealer which acts as a Mutual Fund/Insurance Services Member processing transactions on IPS today as a distributor of insurance products issued by an Insurance Carrier Member. These qualifications, such as the requirement that the broker/dealer maintain $50,000 in excess net capital over that required by the Commission or the broker/dealer's designated examining authority (''Excess Net Capital''), are also the same qualifications required of a broker/dealer that participates in NSCC's Mutual Fund Services, whether acting as a Fund Member (analogous to an Insurance Carrier/Retirement Services Member on IPS) or as a Mutual Fund/Insurance Services Member distributing

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] The Commission has modified the text of the summaries prepared by NSCC.

[5] Securities Exchange Act Release No. 39096 (September 19, 1997), 62 FR 50416 (September 25, 1997) [File No. SR–NSCC–96–21].

[6] Securities Exchange Act Release Nos. 40634 (November 4, 1998), 63 FR 63096 (November 10, 1998) [File No. SR–NSCC–98–13] and 41477 (June 4, 1999), 64 FR 31666 (June 11, 1999) [File No. SR–NSCC–99–04].

mutual funds and similar fund products on NSCC's mutual fund processing platform, Fund/Serv.

Rule 1, ''Definitions and Descriptions'' The definition of ''Eligible Insurance Plan'' is deleted and has been replaced by the term ''IPS Eligible Product'' in order to include retirement and other benefit plans and programs as products that may be processed through IPS. The defined term ''Insurance Carrier Member'' is changed to ''Insurance Carrier/Retirement Services Member, as discussed above. Conforming changes are also made throughout NSCC's Rules.[7]

An unrelated technical change is made to defined terms ''TPA'' and ''TPA Member'' to clarify that a TPA Member must be a third party administrator. Although implied, this had not been expressly stated.

Rule 3, ''Lists to be Maintained'' Section 9 of Rule 3 is revised to refer to ''IPS Eligible Products,'' rather than insurance plans, as the subject of transactions processed on IPS.

Rule 50, ''Automated Customer Account Transfer Service'' (''ACATs'') Section 8 of Rule 50 is revised to delete references to an ''Insurance Company'' as the entity which would confirm or reject an ACATs transfer of IPS Eligible Products. ''Insurance Carrier/Retirement Services Member'' is substituted in its place. Similar changes are also made to the description of ACATs for Eligible IPS Products in Section 6 of Rule 57.

Rule 56, ''Insurance Carrier Member'' Rule 56 is revised to include broker/dealers as entities which can become Insurance Carrier/Retirement Services Members.

Rule 57, ''Insurance Processing Service'' Rule 57 is revised to refer to the ''Insurance and Retirement Processing Services'' in place of the ''Insurance Processing Service.'' In addition, an error in Section 2(a) is corrected to state that the service is offered by NSCC.

Addendum Q, ''Standards of Financial and Operational Capability for Insurance Carrier Members'' Addendum Q is revised to reflect that broker/dealers that are Insurance Carrier/Retirement Services Members or are applicants must meet the general qualifications currently applicable to Insurance Carrier Members (other than with respect to financial qualifications that are applicable solely to insurance companies). In addition, Addendum Q is revised to reflect that such broker/dealers must also maintain $50,000 in Excess Net Capital.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the addition of retirement and other benefit plans and programs offered by registered broker/dealers will permit the processing of additional financial products through NSCC and is designed to promote the prompt and accurate clearance and settlement of transactions and to assure the safeguarding of securities and funds in the custody and control of NSCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(4) thereunder[9] because the proposed rule effects a change in an existing service of NSCC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of NSCC and (ii) does not significantly affect the respective rights or obligations of NSCC or those members using the service. At any time within sixty days of the filing of such 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–NSCC–2006–16 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–NSCC–2006–16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. The text of the proposed rule change is available at NSCC, the Commission's Public Reference Room, and *http://www.nscc.com/legal/2006/2006–16.pdf*. 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–NSCC–2006–16 and should be submitted on or before March 13, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2845 Filed 2–16–07; 8:45 am]

BILLING CODE 8011–01–P

[7] References to ''Insurance Carrier Members'' and the ''Insurance Processing Service'' are replaced with the new terms throughout NSCC's Rules; however, due to the extent of their use throughout the Rules, these changes have not been reflected in Exhibit 5 to the proposed rule change.

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(4).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55268; File No. SR–NYSE–2007–03]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Regarding CurrencyShares SM Japanese Yen Trust

February 9, 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 January 9, 2007, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. On January 26, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On February 1, 2007, the Exchange filed Amendment No. 2 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and is granting accelerated approval to the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to list and trade the following under Rules 1300A *et seq.* (''Currency Trust Shares'' or ''Shares''): CurrencyShares SM Japanese Yen Trust (''Trust''). The Trust issues Shares that represent units of fractional undivided beneficial interest in and ownership of the Trust.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original filing in its entirety.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Trust issues Japanese Yen Shares, referred to herein as ''Shares''. Rydex Specialized Products LLC is the sponsor of the Trust (''Sponsor''), The Bank of New York is the trustee of the Trust (''Trustee''), JPMorgan Chase Bank, N.A., London Branch, is the depository for the Trust (''Depository''), and Rydex Distributors, Inc. is the distributor for the Trust (''Distributor''). The Sponsor, Trustee, Depository and Distributor are not affiliated with the Exchange or one another, with the exception that the Sponsor and Distributor are affiliated. The Exchange currently lists and trades Shares of the Euro Currency Trust; CurrencyShares SM Australian Dollar Trust; CurrencyShares SM British Pound Sterling Trust; CurrencyShares SM Canadian Dollar Trust; CurrencyShares SM Mexican Peso Trust; CurrencyShares SM Swedish Krona Trust; and CurrencyShares SM Swiss Franc Trust (''CurrencyShares Trusts''), all of which have the same Sponsor, Trustee, Depository and Distributor as the Trust.[4]

According to the Trust's Registration Statement,[5] the investment objective of the Trust is for the Shares issued by the Trust to reflect the price of the Japanese Yen. The Shares are intended to provide institutional and retail investors with a simple, cost-effective means of hedging their exposure to Japanese Yen and otherwise implement investment strategies that involve foreign currency (*e.g.*, diversify more generally against the risk that the U.S. Dollar (''USD'') will depreciate).

Overview of the Foreign Exchange Industry [6]

According to the Registration Statement, the foreign exchange market is the largest and most liquid financial market in the world. The Exchange states that, as of April 2004, the foreign exchange market experienced average daily turnover of approximately $1.88 trillion, which was a 57% increase (at current exchange rates) from 2001 daily averages. The foreign exchange market is predominantly an over-the-counter market, with no fixed location and it operates 24 hours a day, seven days a week. London, New York and Tokyo are the principal geographic centers of the worldwide foreign exchange market, with approximately 58% of all foreign exchange business executed in the U.K., U.S., and Japan. Other smaller markets include Singapore, Zurich and Frankfurt.[7]

The Exchange states that there are three major kinds of transactions in the traditional foreign exchange markets: spot transactions, outright forwards and foreign exchange swaps. ''Spot'' trades are foreign exchange transactions that settle typically within two business days with the counterparty to the trade. Spot transactions account for approximately 35% of reported daily volume in the traditional foreign exchange markets. ''Forward'' trades, which are transactions that settle on a date beyond spot, account for 12% of the reported daily volume, ''Swap'' transactions, in which two parties exchange two currencies on one or more specified dates over an agreed period and exchange them again when the period ends, account for the remaining 53% of volume. There also are transactions in currency options, which trade both over-the-counter and, in the U.S., on the Philadelphia Stock Exchange (''Phlx''). Currency futures are transactions in which an institution buys or sells a standardized amount of foreign currency on an organized exchange for delivery on one of several specified dates. Currency futures are traded on a number of regulated markets, including the International Monetary Market division of the Chicago Mercantile Exchange (''CME''), the Singapore Exchange Derivatives Trading Limited (''SGX,'' formerly the Singapore International Monetary Exchange or SIMEX), and the London International Financial Futures Exchange (''LIFFE''). Over 85% of currency derivative products (swaps, options and futures) are traded over-the-counter.[8]

[4] *See* Securities Exchange Act Release Nos. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR–NYSE–2005–65); and 54020 (June 20, 2006), 71 FR 36579, (June 27, 2006) (SR–NYSE–2006–35).

[5] The Sponsor, on behalf of the Trust, filed a Form S–1 for the Trust on November 21, 2006 (the ''Registration Statement''). *See* Registration No. 333–138881.

[6] Except as otherwise specifically noted, the information provided in this Form 19b–4 filing relating to the Shares, foreign currency markets, movements in foreign currency pricing, and related information is based entirely on information included in the Registration Statement.

[7] For April 2004, the daily average foreign exchange turnover of the U.S. dollar against the Japanese Yen was approximately $296 billion. *See* Bank for International Settlements, Triennial Central Bank Survey, March 2005, Statistical Annex Tables, Table E–2. In April 2004, the daily average foreign exchange turnover in USD of the Japanese Yen against all other currencies was approximately $359 billion. *See* Statistical Annex Tables, Table E–1.

[8] *See* Bank for International Settlements, Triennial Central Bank Survey of Foreign Exchange

Continued

Futures on Japanese Yen are traded on the CME (both exchange pit trading and GLOBEX trading). Standardized options on the Japanese Yen trade on Phlx. Phlx also offers more customized options on certain currency pairs.[9]

According to the Exchange, participants in the foreign exchange market have various reasons for participating. Multinational corporations and importers need foreign currency to acquire materials or goods from abroad. Banks and multinational corporations sometimes require specific wholesale funding for their commercial loan or other foreign investment portfolios. Some participants hedge open currency exposure through off-balance-sheet products.

The Exchange further represents that the primary market participants in foreign exchange are banks (including government-controlled central banks), investment banks, money managers, multinational corporations and institutional investors. The most significant participants are the major international commercial banks that act both as brokers and as dealers. In their dealer role, these banks maintain long or short positions in a currency and seek to profit from changes in exchange rates. In their broker role, the banks handle buy and sell orders from commercial customers, such as multinational corporations. The banks earn commissions when acting as agent. They profit from the spread between the rates at which they buy and sell currency for customers when they act as principal.

Typically, banks engage in transactions ranging from $5 million to $50 million in amount. Although banks will engage in smaller transactions, the fees that they charge have made the foreign currency markets relatively inaccessible to individual investors. Some banks allow individual investors to engage in spot trades without paying traditional commissions on the trades. Such trading is often not profitable for individual investors, however, because the banks charge the investor the spread between the bid and the ask price maintained by the bank on all purchases and sales. The overall effect of this fee structure depends on the spread maintained by the bank and the frequency with which the investor trades. Generally this fee structure is particularly disadvantageous to active traders.

The Trust's assets will consist only of Japanese Yen on demand deposit in two Japanese Yen-denominated accounts at JPMorgan Chase Bank, N.A., London Branch; an interest-bearing primary deposit account and a non-interest bearing secondary account. The Trust will not hold any derivative products. Each Share represents a proportional interest, based on the total number of Shares outstanding, in the Japanese Yen owned by the Trust, plus accrued and unpaid interest less accrued but unpaid expenses (both asset-based and non-asset based) of the Trust. The Sponsor expects that the price of a Share will fluctuate in response to fluctuations in the price of the Japanese Yen and that the price of a Share will reflect accumulated interest as well as the estimated accrued but unpaid expenses of the Trust.

Because the Shares will be traded on the NYSE, investors will be able to access the Japanese Yen foreign currency market through a traditional brokerage account which will provide investors with an efficient means of implementing investment tactics and strategies that involve Japanese Yen.

Foreign Currency Regulation

Most trading in the global over-the-counter (OTC) foreign currency markets is conducted by regulated financial institutions such as banks and broker-dealers. In addition, in the United States, the Foreign Exchange Committee of the New York Federal Reserve Bank has issued Guidelines for Foreign Exchange Trading, and central-bank sponsored committees in Japan and Singapore have published similar best practice guidelines. In the United Kingdom, the Bank of England has published the Non-Investment Products Code, which covers foreign currency trading. The Financial Markets Association, whose members include major international banking organizations, has also established best practices guidelines called the Model Code.

Participants in the U.S. OTC market for foreign currencies are generally regulated by their oversight regulators. For example, participating banks are regulated by the banking authorities. In addition, in the U.S., the SEC regulates trading of options on foreign currencies on the Phlx and the Commodity Futures Trading Commission (''CFTC'') regulates trading of futures, and options on futures on foreign currencies on regulated futures exchanges.[10]

The Exchange states that the Phlx and CME have authority to perform surveillance on their members' trading activities, review positions held by members and large-scale customers, and monitor the price movements of options and/or futures markets by comparing them with cash and other derivative markets' prices.

Foreign Exchange Markets [11]

The Exchange represents that the average daily turnover of the USD in the foreign exchange market is approximately $1.57 trillion, which makes it the most-traded currency in the world, accounting for approximately 89% of global foreign exchange transactions.

The Japanese Yen is the official currency of Japan and the currency of the Bank of Japan, the central bank of Japan. The average daily turnover in the foreign exchange markets is approximately $1.9 trillion. Japanese Yen was on one side of 20% of all currency transactions. The USD/Japanese Yen pair has an average daily turnover of approximately $296 billion, which makes it the second most traded currency pair, accounting for approximately 17% of global foreign exchange transactions. From the beginning of 2002 to the end of 2005, the Noon Buying Rate for Japanese Yen as reported by the Federal Reserve Bank of New York ranged from 102.50 on January 14, 2005 to 134.71 on February 8, 2002. As of November 20, 2006, the Noon Buying Rate for the Japanese Yen was 118.16.

The Sponsor

The Sponsor of the Trust is Rydex Specialized Products LLC, a Delaware limited liability company that is wholly-owned by PADCO Advisors II, Inc., a Maryland corporation, a privately-held company owned by Rydex Holdings, Inc., a Maryland Corporation, which is

and Derivatives Market Activity in April 2004, September 2004 (Tables 2 and 6).

[9] For the period January through October, 2006, Japanese Yen and E-mini Japanese Yen futures contract volume on the CME was 15,687,056 and 7,629 contracts, respectively. For the same period, Japanese Yen options volume on the Phlx was 3,228 contracts.

[10] The CFTC is an independent government agency with the mandate to regulate commodity futures and options markets in the United States under the Commodity Exchange Act. In addition to its oversight of regulated futures exchanges, the CFTC has jurisdiction over certain foreign currency futures, and options on futures transactions occurring other than on a regulated exchange and involving retail customers. Both the SEC and CFTC have established rules designed to prevent market manipulation, abusive trading practices and fraud, as do the exchanges on which the foreign currency products trade.

[11] The primary source of the statistical information in this section is the Bank of International Settlements Survey, note 7, supra. Other information came from the websites of the central banks for the applicable countries and other sources the Sponsor believes to be reliable.

controlled by two irrevocable trusts. The Sponsor and its affiliates collectively do business as ''Rydex Investments.''

The Sponsor is responsible for establishing the Trust and for the registration of the Shares. The Sponsor generally oversees the performance of the Trustee and the Trust's principal service providers, but does not exercise day-to-day oversight over the Trustee or such service providers. The Sponsor regularly communicates with the Trustee to monitor the overall performance of the Trust. The Sponsor, with assistance and support from Rydex affiliates who also do business as ''Rydex Investments,'' the Trustee and outside professionals, are responsible for preparing and filing periodic reports on behalf of the Trust with the SEC.[12] The Sponsor will designate the auditors of the Trust and may from time to time employ legal counsel for the Trust.

The Distributor is assisting the Sponsor in developing a marketing plan for the Trust, preparing marketing materials on the Shares, executing the marketing plan for the Trust and providing strategic and tactical research on the global foreign exchange markets. The Sponsor will not enter into an agreement with the Distributor covering these services, because the Distributor is an affiliate and will not be paid any compensation by the Sponsor for performing these services.

The Sponsor with the Distributor's assistance maintains a public Web site on behalf of the Trust, *www.currencyshares.com,* which contains information about the Trust and the Shares, and oversees certain Shareholder services, such as a call center and prospectus delivery.

The Sponsor may direct the Trustee in the conduct of its affairs, but only as provided in the Depositary Trust Agreement. For example, the Sponsor may direct the Trustee to sell Japanese Yen to pay certain extraordinary expenses, to suspend a redemption order, postpone a redemption settlement date, or to terminate the Trust if certain criteria are met. The Sponsor anticipates that, if the market capitalization of the Trust is less than $300 million for five consecutive trading days beginning after the first anniversary of the Trust's inception, then the Sponsor will, in accordance with the Depositary Trust Agreement, direct the Trustee to terminate and liquidate the Trust.

The Sponsor's fee accrues daily at an annual nominal rate of 0.40% of the Japanese Yen in the Trust (including all unpaid interest but excluding unpaid fees, each as accrued through the immediately preceding day) and is paid monthly.

The Trustee

The Bank of New York, the Trustee, is generally responsible for the day-to-day administration of the Trust, including keeping the Trust's operational records. The Trustee's principal responsibilities include selling Japanese Yen held by the Trust if needed to pay the Trust's expenses, calculating the Net Asset Value (''NAV'') of the Trust and the NAV per Share, receiving and processing orders from Authorized Participants to create and redeem Baskets (as discussed below) and coordinating the processing of such orders with the Depository and DTC. The Trustee will earn a monthly fee that will be paid by the Sponsor.

The Trustee intends to regularly communicate with the Sponsor to monitor the over-all performance of the Trust. The Trustee, along with the Sponsor, consults with the Trust's legal, accounting and other professional service providers as needed. The Trustee assists and supports the Sponsor with the preparation of all periodic reports required to be filed with the SEC on behalf of the Trust.

Affiliates of the Trustee may from time to time act as Authorized Participants, purchase or sell foreign currency, or Shares for their own account.

The Depository

JPMorgan Chase Bank, N.A., London Branch (the ''Bank'') is the Depository. The Depository accepts Japanese Yen deposited with it as a banker by Authorized Participants in connection with the creation of Baskets. The Depository facilitates the transfer of Japanese Yen into and out of the Trust through the primary and secondary deposit accounts maintained with it as a banker by the Trust.

The Depository will pay interest on the primary deposit account. Interest on the primary deposit account accrues daily at an initial annual nominal rate of the Bank of Japan Overnight Call Rate minus 27 basis points, and is paid monthly. Each month the Depository will deposit into the secondary deposit account accrued but unpaid interest.

The Depository will not be paid a fee for its services to the Trust. The Depository may earn a ''spread'' or ''margin'' over the rate of interest it pays to the Trust on the Japanese Yen deposit balances.

The Depository is not a trustee for the Trust or the Shareholders. The Depository and its affiliates may from time to time act as Authorized Participants or purchase or sell Japanese Yen or Shares for their own account, as agent for their customers and for accounts over which they exercise investment discretion.

The Distributor

Rydex Distributors, Inc. is the Distributor. The Distributor is a registered broker-dealer with the SEC and is a member of NASD.

The Distributor is assisting the Sponsor in developing a marketing plan for the Trust on an ongoing basis, preparing marketing materials regarding the Shares, including the content on the Trust's Web site, *www.currencyshares.com,* executing the marketing plan for the Trust, and providing strategic and tactical research on the global foreign exchange market. The Distributor and the Sponsor are affiliates of one another. There is no written agreement between them, and no compensation is paid by the Sponsor to the Distributor in connection with services performed by the Distributor for the Trust.

Description of the Trust

According to the Registration Statement for the Trust, the Trust will be formed under the laws of the State of New York as of the date the Sponsor and the Trustee sign the Depositary Trust Agreement and the Initial Purchaser makes the initial deposit for the issuance of three Baskets. A Basket is a block of 50,000 Shares. The Trust holds Japanese Yen[13] and is expected

[12] The Sponsor has obtained a no-action letter from the SEC Division of Corporation Finance with respect to the Euro Currency Trust pursuant to which the Sponsor's principal executive officer and principal financial officer will provide any certifications that are required from a ''registrant's'' principal executive officer and principal financial officer. *See* No-Action Letter from Charles Kwon, Special Counsel, Division of Corporation Finance, Commission, dated March 22, 2006. The Sponsor will be requesting the same type of no-action ruling for the Trust.

[13] The Exchange notes that, in addition to the CurrencyShares Trusts (*See* note 4, *supra*), the Commission has previously permitted the listing of securities products for which the underlying was a commodity or otherwise was not a security trading on a regulated market. *See, e.g.*, Securities Exchange Act Release Nos. 54013 (June 16, 2006), 71 FR 36372 (June 26, 2006) (approving listing of iShares® GSCI Commodity Indexed Trust); 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (approving listing and trading on NYSE of StreetTRACKS® Gold Shares); 19133 (October 14, 1982), 47 FR 46946 (October 21, 1982) (SR–Phlx–81–4) (approving the listing of standardized options on foreign currencies); 36505 (November 22, 1995), 60 FR 61277 (November 29, 1995) (SR–Phlx–95–42) (approving the listing of dollar-denominated delivery foreign currency options on the Japanese Yen); and 36165 (August 29, 1995), 60 FR 46653 (September 7, 1995) (SR–NYSE–94–41) (approving listing standards for,

Continued

from time to time to issue Baskets in exchange for deposits of Japanese Yen and to distribute Japanese Yen in connection with redemptions of Baskets. The investment objective of the Trust is for the Shares to reflect the price USD of Japanese Yen. The Shares represent units of fractional undivided beneficial interest in, and ownership of, the Trust. The Trust is not managed like a business corporation or an active investment vehicle. Japanese Yen held by the Trust will only be sold: (1) If needed to pay Trust expenses, (2) in the event the Trust terminates and liquidates its assets or (3) as otherwise required by law or regulation. The sale of Japanese Yen by the Trust is a taxable event to Shareholders.

According to the Registration Statement, the Trust is not registered as an investment company under the Investment Company Act and is not required to register under such Act.

The Trust's assets will consist only of Japanese Yen on demand deposit in two Japanese Yen-denominated accounts at JPMorgan Chase Bank, N.A., London Branch; an interest-bearing primary deposit account and a non-interest bearing secondary account. The Trust will not hold any derivative products. Each Share represents a proportional interest, based on the total number of Shares outstanding, in Japanese Yen owned by the Trust, plus accrued but unpaid interest, less the estimated accrued but unpaid expenses (both asset-based and non-asset based) of the Trust. The Sponsor expects that the price of a Share will fluctuate in response to fluctuations in the price of Japanese Yen and that the price of a Share will reflect accumulated interest as well as the estimated accrued but unpaid expenses of the Trust.

Investors may obtain, 24 hours a day, foreign exchange pricing information based on the spot price of Japanese Yen from various financial information service providers. Current spot prices are also generally available with bid/ask spreads from foreign exchange dealers. In addition, the Trust's Web site will provide ongoing pricing information for Japanese Yen spot prices and the Shares. Market prices for the Shares are available from a variety of sources, including brokerage firms, financial information Web sites and other information service providers. One such Web site is hosted by Bloomberg, *http://www.bloomberg.com/markets/currencies/asiapac_currencies.html*, and it regularly reports current foreign exchange pricing information. The NAV of the Trust is published by the Sponsor on each day that the NYSE is open for regular trading and will be posted on the Trust's Web site.

The Trust will terminate upon the occurrence of any of the termination events listed in the Depositary Trust Agreement and will otherwise terminate on February 1, 2047.

The Sponsor, on behalf of the Trust, will rely on relief previously granted by the Division of Market Regulation [14] from certain trading requirements of the Act.[15] The Sponsor also intends to request guidance from the Commission on the application of the certification rules for quarterly and annual reports adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. In addition, the Trust will not be subject to the Exchange's corporate governance requirements, including the Exchange's audit committee requirements.[16]

Trust's Expenses

The Trust's only ordinary recurring expense is expected to be the Sponsor's fee. The Sponsor is obligated under the Depositary Trust Agreement to pay the following administrative and marketing expenses for the Trust: the Trustee's monthly fee, the Distributor's fee, NYSE listing fees, SEC registration fees, printing and mailing costs, audit fees and expenses and up to $100,000 per annum in legal fees and expenses. The Sponsor is also obligated to pay the costs of the Trust's organization and the costs of the initial sale of the Shares, including the applicable SEC registration fees.

The Sponsor's fee accrues daily at an annual nominal rate of 0.40% of the Japanese Yen in the Trust. Each month, the Trust will first withdraw Japanese Yen the Trust has earned as interest to pay the Sponsor's fee and any other Trust expenses that have been incurred. If that interest is not sufficient to fully pay the Sponsor's fee and Trust expenses, then the Trustee will withdraw Japanese Yen from the primary deposit account as needed. If the Trust incurs expenses in USD (which is not anticipated), Japanese Yen will be converted to USD at the prevailing market rate at the time of conversion to pay expenses.

In certain exceptional cases the following expenses may be charged to the Trust in addition to the Sponsor's fee: (1) Expenses and costs of any extraordinary services performed by the Trustee or the Sponsor on behalf of the Trust or action taken by the Trustee or the Sponsor to protect the Trust or interests of Shareholders; (2) indemnification of the Sponsor; (3) taxes and other governmental charges; and (4) expenses of the Trust other than those the Sponsor is obligated to pay pursuant to the Depositary Trust Agreement, including legal fees and expenses over $100,000. If these additional expenses are incurred, the Trust will be required to pay these expenses by withdrawing deposited Japanese Yen and the amount of Japanese Yen represented by a Share will decline at such time. Accordingly, the Shareholders will effectively bear the cost of these other expenses, if incurred.

In order to pay the Trust's expenses, the Trustee will first withdraw Japanese Yen the Trust has earned as interest. In the event the Sponsor's fee and any other Trust expenses exceed the interest earned, additional Japanese Yen will be withdrawn from the primary deposit account as required to cover the expenses. For expenses not payable in Japanese Yen, the Trustee will direct that Japanese Yen be converted to USD as necessary for the Trustee to pay the Trust's expenses. The Trustee will direct that the smallest amount of Japanese Yen required to purchase amounts of U.S. Dollars sufficient to pay Trust expenses and the costs of currency conversion be withdrawn from the Trust.

Liquidity

The amount of the discount or premium in the trading price relative to the NAV per Share may be influenced

among other things, currency and currency index warrants).

[14] *See* letter from Racquel L. Russell, Branch Chief, SEC Division of Market Regulation, to George T. Simon, Foley & Lardner, dated June 21, 2006 (''June 21, 2006 letter'') (granting relief from certain rules under the Act for the CurrencyShares Trusts); letter from James A. Brigagliano, Assistant Director, SEC Division of Market Regulation to Michael Schmidtberger, Sidley, Austin, Brown & Wood, dated January 19, 2006 (''January 19, 2006 Letter'') (granting relief from certain rules under the Act for the DB Commodity Index Tracking Master Fund). The Sponsor is relying on the June 21, 2006 Letter regarding Rule 10a–1, Rule 200(g) of Regulation SHO, and Rules 101 and 102 of Regulation M under the Act, and is relying on the January 19, 2006 Letter regarding Section 11(d)(1) of the Act and Rule 11d1–2 thereunder.

[15] *See infra* note 30.

[16] *See* Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (SR–NYSE–2002–33, SR–NASD–2002–77, *et al.*) (specifically noting that the corporate governance standards will not apply to, among others, passive business organizations in the form of trusts). *See also* Securities Exchange Act Release No. 47654 (April 25, 2003), 68 FR 18787 (April 16, 2003) (noting in Section II(F)(3)(c) that ''SROs may exclude from Exchange Act Rule 10A–3's requirements issuers that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.'')

by non-concurrent trading hours between the major foreign currency markets and the NYSE. The period of greatest liquidity in the Japanese Yen market is typically that time of the day when trading in the European time zones or Japan overlaps with trading in the United States, which is when OTC market trading in London, New York, and other centers coincides with futures and options trading on those currencies. While the Shares will trade on the NYSE until 4:15 p.m. (New York time), liquidity in the OTC market for the Japanese Yen will be slightly reduced after the close of the London foreign currency markets and before the opening of the Tokyo foreign currency market. Because of the potential for arbitrage inherent in the structure of the Trust, the Sponsor believes that the Shares will not trade at a material discount or premium to the value of underlying currency held by the Trust. The arbitrage process, which in general provides investors the opportunity to profit from differences in prices of assets, increases the efficiency of the markets, serves to prevent potentially manipulative efforts and can be expected to operate efficiently in the case of the Shares and Japanese Yen. If the price of the Shares deviates enough from the price of Japanese Yen to create a material discount or premium, an arbitrage opportunity is created. If the Shares are inexpensive compared to Japanese Yen, an Authorized Participant, either on its own behalf or acting as agent for investors, arbitrageurs or traders, may buy the Shares at a discount, immediately redeem them in exchange for Japanese Yen and sell Japanese Yen in the cash market at a profit. If the Shares are expensive compared to Japanese Yen that underlies them, an Authorized Participant may sell the Shares short, buy enough Japanese Yen to create the number of Shares sold short, acquire the Shares through the creation process and deliver the Shares to close out the short position.[17] In both instances the arbitrageur serves efficiently to correct price discrepancies between the Shares and Japanese Yen.

[17] The Exchange notes that the Trust, which will only hold Japanese Yen as an asset in the normal course of its operations, differs from index-based exchange-traded funds, which may involve a trust holding hundreds or even thousands of underlying component securities, necessarily involving in the arbitrage process movements in a large number of security positions. *See, e.g.*, Securities Exchange Act Release No. 46306 (August 2, 2002), 67 FR 51916 (August 9, 2002) (SR–NYSE–2002–28) (approving the UTP trading of Vanguard Total Market VIPERs based on the Wilshire 5000 Total Market Index).

Description of the Shares

According to the Registration Statement, the Shares are not a traditional investment. They are dissimilar from the ''shares'' of a corporation operating a business enterprise, with management and a board of directors. Trust Shareholders do not have rights normally associated with owning shares of a business corporation, including, for example, the right to bring ''oppression'' or ''derivative'' actions. Shareholders have only those rights explicitly set forth in the Depositary Trust Agreement. All Shares are of the same class with equal rights and privileges. Each Share is transferable, is fully paid and non-assessable and entitles the holder to vote on the limited matters upon which Shareholders may vote under the Depositary Trust Agreement. The Shares do not entitle their holders to any conversion or pre-emptive rights or, except as provided in the Registration Statement, any redemption or distribution rights.

Distributions

Each month the Depository will deposit into the secondary deposit account accrued but unpaid interest and the Trustee will withdraw Japanese Yen from the secondary deposit account to pay the accrued Sponsor's fee for the previous month plus other Trust expenses, if any. In the event the Sponsor's fee and any other Trust expenses exceed the interest earned on the primary deposit account, additional Japanese Yen will be withdrawn from the primary deposit account as required to cover the expenses. In the event that the interest deposited exceeds the sum of the Sponsor's fee for the prior month plus other Trust expenses, if any, then the Trustee will direct that the excess be converted into U.S. Dollars at a prevailing market rate and the Trustee will distribute the U.S. Dollars as promptly as practicable to Shareholders on a pro rata basis (in accordance with the number of Shares that they own).

Fees and Expenses

Under the Deposit Account Agreement, the Depository is entitled to invoice the Trustee or debit the secondary deposit account for out-of-pocket expenses. The Trust has also agreed to reimburse the Depository for any taxes, levies, imposts, deductions, charges, stamp, transaction and other duties and withholdings in connection with the Deposit Accounts, except for such items imposed on the overall net income of the Depository. Except for the reimbursable expenses just described, the Depository will not be paid a fee for its services to the Trust. The Depository may earn a ''spread'' or ''margin'' on the Japanese Yen deposit balances it holds.

Voting and Approvals

Shareholders have no voting rights under the Depositary Trust Agreement, except in limited circumstances. If the holders of at least 25% of the Shares outstanding for the Trust determine that the Trustee is in material breach of its obligations under the Depositary Trust Agreement, they may provide written notice to the Trustee (or require the Sponsor to do so) specifying the default and requiring the Trustee to cure such default. If the Trustee fails to cure such breach within 30 days after receipt of the notice, the Sponsor, acting on behalf of the Registered Owners, may remove the Trustee for the Trust. The holders of at least 66⅔% of the Shares outstanding may vote to remove the Trustee. The Trustee must terminate the Trust at the request of the holders of at least 75% of the outstanding Shares.

Book-Entry Form

The Sponsor and the Trustee will apply to DTC for acceptance of the Shares in its book-entry settlement system. If the Shares are eligible for book-entry settlement, all Shares will be evidenced by global certificates issued by the Trustee to DTC and registered in the name of Cede & Co., as nominee for DTC. The global certificates will evidence all of the Shares outstanding at any time. In order to transfer Shares through DTC, Shareholders must be DTC Participants. The Shares will be transferable only through the book-entry system of DTC. A Shareholder that is not a DTC Participant will be able to transfer its Shares through DTC by instructing the DTC Participant holding its Shares. Transfers will be made in accordance with standard securities industry practice.

Issuance of the Shares

The Trust creates and redeems Shares in Baskets on a continuous basis. A Basket is a block of 50,000 Shares. The creation and redemption of Baskets requires the delivery to the Trust or the distribution by the Trust of the amount of Japanese Yen represented by the Baskets being created or redeemed. This amount is based on the combined NAV per Share of the number of Shares included in the Baskets being created or redeemed, determined on the day the order to create or redeem Baskets is accepted by the Trustee.

Authorized Participants are the only persons that may place orders to create and redeem Baskets. An Authorized

Participant is a DTC Participant that is a registered broker-dealer or other securities market participant such as a bank or other financial institution that is not required to register as a broker-dealer to engage in securities transactions and has entered into a Participant Agreement with the Trustee. Only Authorized Participants may place orders to create or redeem Baskets. Before initiating a creation or redemption order, an Authorized Participant must have entered into a Participant Agreement with the Sponsor and the Trustee. The Participant Agreement provides the procedures for the creation and redemption of Baskets and for the delivery of foreign currency required for creations and redemptions. The Participant Agreements may be amended by the Trustee, the Sponsor and the relevant Authorized Participant. Authorized Participants pay a transaction fee of $500 to the Trustee for each order that they place to create or redeem one or more Baskets. Authorized Participants who make deposits with the Trust in exchange for Baskets receive no fees, commissions or other form of compensation or inducement of any kind from either the Sponsor or the Trust. No Authorized Participant has any obligation or responsibility to the Sponsor or the Trust to effect any sale or resale of Shares.

Certain Authorized Participants are expected to have the facility to participate directly in the global foreign exchange market. In some cases, an Authorized Participant may acquire foreign currency from, or sell foreign currency to, an affiliated foreign exchange trading desk, which may profit in these instances. The Sponsor believes that the size and operation of the foreign exchange market make it unlikely that an Authorized Participant's direct activities in the foreign exchange and securities markets will impact the price of Japanese Yen or the price of Shares. Each Authorized Participant will be registered as a broker-dealer under the Act and will be regulated by the National Association of Securities Dealers, Inc., or else will be exempt from being (or otherwise will not be required to be) so registered or regulated, and will be qualified to act as a broker or dealer in the states or other jurisdictions where the nature of its business so requires. Certain Authorized Participants may be regulated under federal and state banking laws and regulations. Each Authorized Participant will have its own set of rules and procedures, internal controls and information barriers as it determines to be appropriate in light of its own regulatory regime.

Authorized Participants may act for their own accounts or as agents for broker-dealers, depositaries and other securities or foreign currency market participants that wish to create or redeem Baskets. An order for one or more Baskets may be placed by an Authorized Participant on behalf of multiple clients.

Creation and Redemption

In order to create a Basket, the Authorized Participant deposits the applicable Basket Amount with the Depository and orders Shares from the Trustee.[18] The Trustee directs DTC to credit Shares to the Authorized Participant. The Authorized Participant will then be able to sell Shares to Purchasers on the NYSE or any other market in which the Shares may trade.

On any business day, an Authorized Participant may place an order with the Trustee to create one or more Baskets. The creation or redemption of Shares can occur only in a Basket of 50,000 Shares or multiples thereof. For purposes of processing both purchase and redemption orders, a ''business day'' means any day other than a day when the NYSE is closed for regular trading. Purchase orders placed by 4:00 p.m. (New York time) on a business day will have that date as the purchase order date. By placing a purchase order, an Authorized Participant agrees to deposit Japanese Yen with the Trust. Before the delivery of Baskets for a purchase order, the Authorized Participant must also have wired to the Trustee the non-refundable transaction fee due for the purchase order.

The total deposit required to create each Basket, called the Basket Amount, is an amount of Japanese Yen bearing the same proportion to the number of Baskets to be created as the total assets of the Trust (net of estimated accrued but unpaid expenses) bears to the total number of Baskets outstanding on the date that the order to purchase is properly received. The amount of the required deposit is determined by dividing the number of units of Japanese Yen held by the Trust (net of estimated accrued but unpaid expenses) by the number of Baskets outstanding. All questions as to the composition of a Basket Amount are finally determined by the Trustee. The Trustee's determination of the Basket Amount shall be final and binding on all persons interested in the Trust.

An Authorized Participant who places a purchase order is responsible for delivering the Basket Amount to the Trust's primary deposit account with the Depository as directed in the Authorized Participant's Participant Agreement. Authorized Participants will use the SWIFT system to make timely deposits through their bank correspondents in London. Upon receipt of a Japanese Yen deposit from an Authorized Participant, the Trustee will direct DTC to credit the number of Baskets ordered to the Authorized Participant's DTC account. The expense and risk of delivery, ownership and safekeeping of Japanese Yen until such currency has been received by the Depository shall be borne solely by the Authorized Participant.

In order to redeem Shares, an Authorized Participant must send the Trustee a Redemption Order specifying the number of Baskets that the Authorized Participant wishes to redeem. The Trustee then instructs the Depository to send the Authorized Participant the Japanese Yen and directs DTC to cancel the Authorized Participant's Shares that were redeemed.

The procedures by which an Authorized Participant can redeem one or more Baskets mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place an order with the Trustee to redeem one or more Baskets. Redemption orders must be placed by 4 p.m. (New York time) on a business day. A redemption order so received will have that day as the order redemption date and will normally be effective on the date it is received in satisfactory form by the Trustee. The redemption procedures allow Authorized Participants to redeem Baskets and do not entitle an individual Shareholder to redeem any Shares in an amount less than a Basket or to redeem Baskets other than through an Authorized Participant.

By placing a redemption order, an Authorized Participant agrees to deliver the Baskets to be redeemed through DTC's book-entry system to the Depository as directed in the Authorized Participant's Participant Agreement. Before the delivery of the redemption distribution for a

[18] The Trustee shall determine the Basket Amount ''as promptly as practicable'' after the Federal Reserve Bank of New York announces the Noon Buying Rate on each day that the NYSE is open for regular trading. Ordinarily, this will occur by 2 p.m. (New York time). The Basket Amount will be published on the Trust's Web site every day the NYSE is open for regular trading. The Registration Statement, the Participant Agreement and the Trust Agreement do not state a precise time each day for publication of the Basket Amount. It will be published simultaneously with the NAV. The Sponsor for the Trust has represented to the Exchange that the NAV and the Basket Amount for the Trust will be available to all market participants at the same time.

redemption order, the Authorized Participant must also have wired to the Trustee the non-refundable transaction fee due for the redemption order.

Determination of Redemption Distribution

The redemption distribution from the Trust is a wire transfer, to an account of the redeeming Authorized Participant identified by the Authorized Participant, in the amount of Japanese Yen held by the Trust evidenced by the Shares being redeemed, giving effect to all estimated accrued but unpaid interest and expenses. Redemption distributions are subject to the deduction of any applicable tax or other governmental charges that may be due.[19] All questions as to the amount of a redemption distribution are finally determined by the Trustee. The Trustee's determination of the amount shall be final and binding on all persons interested in the Trust.

Delivery of Redemption Distribution

The redemption distribution due from the Trust is delivered to the Authorized Participant as directed in the Authorized Participant's Participant Agreement.

The Depository wires the redemption amount from the Deposit Account to an account of the redeeming Authorized Participant identified by the Authorized Participant. The Authorized Participant and the Trust are each at risk in respect of Japanese Yen credited to their respective accounts in the event of the Depository's insolvency.

The Trustee will reject a redemption order if the order is not in proper form as described in the Participant Agreement or if the fulfillment of the order, in the opinion of its counsel, might be unlawful.

Valuation of Japanese Yen, Definition of Net Asset Value and Adjusted Net Asset Value

The Trustee will calculate, and the Sponsor will publish, the Trust's NAV each business day. To calculate the NAV, the Trustee will add to the amount of Japanese Yen in the Trust at the end of the preceding day accrued but unpaid interest, Japanese Yen receivable under pending purchase orders and the value of other Trust assets, and will subtract the accrued but unpaid Sponsor's fee, Japanese Yen payable under pending redemption orders and other Trust expenses and liabilities, if any.

The result is the NAV of the Trust for that business day. The Trustee shall also divide the NAV of the Trust by the number of Shares outstanding for the date of the evaluation then being made, which figure is the ''NAV per Share.'' The NAV will be expressed in USD based on the Noon Buying Rate as determined by the Federal Reserve Bank of New York. If, on a particular evaluation day, the Noon Buying Rate has not been determined and announced by 2 p.m. (New York time), then the most recent Federal Reserve Bank of New York determination of the Noon Buying Rate shall be used to determine the NAV of the Trust unless the Trustee, in consultation with the Sponsor, determines that such price is inappropriate to use as the basis for such valuation. In the event that the Trustee and the Sponsor determine that the most recent Federal Reserve Bank of New York determination of the Noon Buying Rate is not an appropriate basis for valuation of the Trust's Japanese Yen, they shall determine an alternative basis for such evaluation to be employed by the Trustee. Such an alternative basis may include reference to other exchange traded securities that reflect the value of the Japanese Yen relative to the USD. The use of any alternative basis to determine NAV would be disclosed on the Trust's Web site. The Trustee also determines the NAV per Share, which equals the NAV of the Trust divided by the number of outstanding Shares. The Sponsor will publish the NAV and NAV per Share on each day that the NYSE is open for regular trading on the Trust's Web site, *www.currencyshares.com.*

Clearance and Settlement

The Sponsor and the Trustee will apply to DTC for acceptance of the Shares in its book-entry settlement system. If the Shares are eligible for book-entry settlement, all Shares will be evidenced by one or more global certificates that the Trustee will issue to DTC. The Shares will be available only in book-entry form. Shareholders may hold their Shares through DTC, if they are DTC Participants, or through Authorized Participants or Indirect Participants.

If the Shares are eligible for book-entry settlement, individual certificates will not be issued for the Shares. Instead, global certificates will be signed by the Trustee and the Sponsor on behalf of the Trust, registered in the name of Cede & Co., as nominee for DTC, and deposited with the Trustee on behalf of DTC. The representations, undertakings and agreements made on the part of the Trust in the global certificates will be made and intended for the purpose of binding only the Trust and not the Trustee or the Sponsor individually.

Upon the settlement date of any creation, transfer or redemption of Shares, DTC will credit or debit, on its book-entry registration and transfer system, the amount of the Shares so created, transferred or redeemed to the accounts of the appropriate DTC Participants. The Trustee and the Authorized Participants will designate the accounts to be credited and charged in the case of creation or redemption of Shares.

Beneficial ownership of the Shares is limited to DTC Participants, Indirect Participants and persons holding interests through DTC Participants and Indirect Participants. Ownership of beneficial interests in the Shares will be shown on, and the transfer of ownership will be effected only through, records maintained by DTC (with respect to DTC Participants), the records of DTC Participants (with respect to Indirect Participants) and the records of Indirect Participants (with respect to Shareholders that are not DTC Participants or Indirect Participants). A Shareholder is expected to receive from or through the DTC Participant maintaining the account through which the Shareholder purchased its Shares a written confirmation relating to the purchase.

DTC may discontinue providing its service with respect to Baskets or the Shares (or both) by giving notice to the Trustee and the Sponsor. Under such circumstances, the Trustee and the Sponsor would either find a replacement for DTC to perform its functions at a comparable cost or, if a replacement is unavailable, terminate the Trust.

Risk Factors To Investing in the Shares

An investment in the Shares carries certain risks. The following risk factors are taken from and discussed in more detail in the Registration Statement:

- The value of the Shares relates directly to the value of the Japanese Yen held by the Trust. Fluctuations in the price of Japanese Yen could materially and adversely affect the value of the Shares.
- The Japanese Yen/USD exchange rate, like foreign exchange rates in general, can be volatile and difficult to predict. This volatility could materially

[19] Authorized Participants are responsible for any transfer tax, sales or use tax, recording tax, value added tax or similar tax or governmental charge applicable to the creation or redemption of Baskets, regardless of whether or not such tax or charge is imposed directly on the Authorized Participant, and agree to indemnify the Sponsor, the Trustee and the Trust if they are required by law to pay any such tax, together with any applicable penalties, additions to tax or interest thereon.

and adversely affect the performance of the Shares.

• If interest earned by the Trust does not exceed expenses, the Trustee will withdraw Japanese Yen from the Trust to pay these excess expenses which will reduce the amount of Japanese Yen represented by each Share on an ongoing basis.

• If the Trust incurs expenses in USD, the Trust would be required to sell Japanese Yen to pay these expenses. The sale of the Trust's Japanese Yen to pay expenses in USD at a time of low Japanese Yen prices could adversely affect the value of the Shares.

• Purchasing activity in the Japanese Yen market associated with the purchase of Baskets from the Trust may cause a temporary increase in the price of Japanese Yen. This increase may adversely affect an investment in the Shares.

• The Deposit Accounts are not entitled to payment at any office of JP Morgan Chase Bank, N.A. located in the United States.

• Shareholders will not have the protections associated with ownership of a demand deposit account insured in the United States by the Federal Deposit Insurance Corporation or the protection provided under English law.

Japanese Yen deposited in the Deposit Accounts by an Authorized Participant will be commingled with Japanese Yen deposited by other Authorized Participants and will be held by the Depository in either the primary deposit account or the secondary deposit account of the Trust. Japanese Yen held in the Deposit Accounts will not be segregated from the Depository's other assets. If the Depository becomes insolvent, then its assets might not be adequate to satisfy a claim by the Trust or any Authorized Participant. In addition, in the event of the insolvency of the Depository or the U.S. bank of which it is a branch, there may be a delay and costs incurred in recovering the Japanese Yen held in the Deposit Accounts.

• The Shares are a new securities product. Their value could decrease if unanticipated operational or trading problems were to arise.

• Shareholders will not have the protections associated with ownership of shares in an investment company registered under the Investment Company Act of 1940.

• Shareholders will not have the rights enjoyed by investors in certain other financial instruments.

• The Shares may trade at a price that is at, above, or below the NAV per Share.

• The interest rate earned by the Trust, although competitive, may not be the best rate available. If the Sponsor determines that the interest rate is inadequate, then its sole recourse will be to remove the Depositary and terminate the Deposit Accounts.

• The Depository owes no fiduciary duties to the Trust or the Shareholders, is not required to act in their best interest and could resign or be removed by the Sponsor with respect to the Trust, triggering early termination of the Trust.

• Shareholders may incur significant fees upon the termination of the Trust.

• Redemption orders are subject to rejection by the Trustee under certain circumstances.

• Substantial sales of Japanese Yen by the official sector could adversely affect an investment in the Shares.

• Shareholders that are not Authorized Participants may only purchase or sell their Shares in secondary trading markets.

• The liability of the Sponsor and the Trustee under the Depositary Trust Agreement is limited; and, except as set forth in the Depositary Trust Agreement, they are not obligated to prosecute any action, suit or other proceeding in respect to any Trust property.

• The Depositary Trust Agreement may be amended to the detriment of Shareholders without their consent.

• The License Agreement with the Bank of New York may be terminated by the Bank of New York in the event of a material breach by the Sponsor. Termination of the License Agreement might lead to early termination and liquidation of the Trust.

Availability of Information Regarding Foreign Currency Prices

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a foreign currency over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Shares, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of foreign currency price and market information available on public Web sites and through professional and subscription services. As is the case with equity securities generally and exchange-traded funds specifically, in most instances, real-time information is only available for a fee, and information available free of charge is subject to delay (typically, 15 to 20 minutes).

Investors may obtain on a 24-hour basis foreign currency pricing information based on the foreign currency spot price of each applicable foreign currency from various financial information service providers. Complete real-time data for foreign currency futures and options prices traded on the CME and Phlx are also available by subscription from information service providers. The CME and Phlx also provide delayed futures and options information on current and past trading sessions and market news free of charge on their respective Web sites.

There are a variety of other public Web sites available at no charge that provide information on the Japanese Yen and other foreign currencies underlying CurrencyShares, which service providers include Bloomberg, (*http://www.bloomberg.com/markets/currencies/fxc.html*), CBS Market Watch (*www.marketwatch.com/tools/stockresearch/globalmarkets*), Yahoo! Finance (*www.finance.yahoo.com/currency*), moneycentral.com, cnnfn.com and reuters.com, which provide spot price or currency conversion information about the Japanese Yen and other currencies. Many of these sites offer price quotations drawn from other published sources, and as the information is supplied free of charge, it generally is subject to time delays. In addition, major market data vendors regularly report current currency exchange pricing for a fee for the Japanese Yen and other currencies.[20] Like bond securities traded in the OTC market with respect to which pricing information is available directly from bond dealers, current foreign currency spot prices are also generally available with bid/ask spreads from foreign currency dealers.[21]

In addition, the Trust's Web site will provide the following information: (1) The spot price for Japanese Yen,[22]

[20] There may be incremental differences in the Japanese Yen spot price among the various information service sources. While the Exchange believes the differences in the Japanese Yen spot price may be relevant to those entities engaging in arbitrage or in the active daily trading of Japanese Yen or derivatives thereon, the Exchange believes such differences are likely of less concern to individual investors intending to hold the Shares as part of a long-term investment strategy.

[21] *See, e.g.*, Securities Exchange Act Release No. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) (SR–Amex–2001–35) (noting that quote and trade information regarding debt securities is widely available to market participants from a variety of sources, including broker-dealers, information service providers, newspapers and Web sites).

[22] The Trust's website's foreign currency spot price will be provided by FactSet Research Systems (*www.factset.com*). The NYSE will provide a link to the Trust's website. FactSet Research Systems is not affiliated with the Trust, Trustee, Sponsor, Depository, Distributor or the Exchange. In the event that the Trust's website should cease to provide this foreign currency spot price information

including the bid and offer and the midpoint between the bid and offer for the Japanese Yen spot price, updated every 5 to 10 seconds,[23] which is an essentially real-time basis; (2) an intraday indicative value (''IIV'') per share for the Shares calculated by multiplying the indicative spot price of the Japanese Yen by the quantity of Japanese Yen backing each Share, updated at least every 15 seconds; [24] (3) a delayed indicative value (subject to a 20 minute delay), which is used for calculating premium/discount information; (4) premium/discount information, calculated on a 20 minute delayed basis; (5) the NAV of the Trust as calculated each business day by the Trustee; (6) accrued interest per Share; (7) the daily Federal Reserve Bank of New York Noon Buying Rate; (8) the Basket Amount for the Japanese Yen; and (9) the last sale price of the Shares as traded in the U.S. market, subject to a 20-minute delay, as it is provided free of charge.[25] The Exchange will provide on its own public Web site (*www.nyse.com*) a link to the Trust's Web site.

Other Characteristics of the Shares

Set forth below is a table that shows the initial number of currency units per Share, the number of Shares per Basket and the number of currency units per Basket:

Trust name	Currency units per share	Shares per basket	Currency units per basket
CurrencyShares Japanese Yen Trust	10,000	50,000	500,000,000

For the Trust, a minimum of three Baskets, representing 150,000 Shares, will be outstanding at the commencement of trading on the Exchange.

Trading in Shares on the Exchange will be effected normally until 4:15 p.m. each business day. The minimum trading increment for Shares on the Exchange will be $0.01.

Listing Fees

The Exchange original listing fee applicable to the listing of the Trust will be $5,000. The annual continued listing fee for the Trust will be $2,000.

Continued Listing Criteria

Under the applicable continued listing criteria, the Exchange will commence delisting proceedings with respect to Shares of the Trust as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Shares, there are fewer than 50 record and/or beneficial holders of the Shares for 30 or more consecutive trading days; (2) the value of the Japanese Yen is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, the Trust, the Trustee, or the Exchange or the Exchange stops providing a hyperlink on the Exchange's Web site to any such unaffiliated foreign currency value; (3) the IIV is no longer made available on at least a 15-second delayed basis; or (4) such other event shall occur or condition exist that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. In addition, the Exchange will remove Shares from listing and trading upon termination of the Trust.

Exchange Trading Rules and Policies

The Shares are considered ''securities'' pursuant to NYSE Rule 3 and are subject to all applicable trading rules. Trading in the Shares will be subject to all provisions of Rules 1300A *et seq.*[26] The Exchange does not currently exempt Currency Trust Shares from the Exchange's ''Market-on-Close/Limit-on-Close/Pre-Opening Price Indications'' Policy, although the Exchange may do so by means of a rule change in the future if, after having experience with the trading of the Shares, the Exchange believes such an exemption is appropriate.

The Exchange has adopted Rule 1301A (''Currency Trust Shares: Securities Accounts and Orders of Specialists'') to ensure that specialists handling Currency Trust Shares provide the Exchange with all necessary information relating to their trading in the applicable non-U.S. currency, options, futures contracts and options thereon or any other derivative on such currency.[27] As a general matter, the Exchange has regulatory jurisdiction over its member organizations and any person or entity controlling a member organization. The Exchange also has regulatory jurisdiction over a subsidiary or affiliate of a member organization that is in the securities business. A member organization subsidiary or affiliate that does business only in commodities would not be subject to NYSE jurisdiction, but the Exchange could obtain certain information regarding the activities of such subsidiary or affiliate through reciprocal agreements with regulatory organizations that are members or affiliates of the Intermarket Surveillance Group (''ISG'') of which such subsidiary or affiliate is a member.

Surveillance

The Exchange's surveillance procedures will be comparable to those used for Investment Company Units, and streetTRACKS® Gold Shares and the currently-traded CurrencyShares Trusts and will incorporate and rely upon existing NYSE surveillance procedures governing equities. The

from an unaffiliated source and the intraday indicative value of the Shares, the NYSE will commence delisting proceedings for the Shares.

[23] The midpoint will be calculated by the Sponsor. The midpoint is used for purposes of calculating the premium or discount of the Shares. For example, assuming a Japanese Yen spot bid of $.0086 and an offer of $.0087, the mid point would be calculated as follows: (Japanese Yen spot bid plus ((spot offer minus spot bid) divided by 2)) or ($.0086 + ($.0087 − $.0086/2)) = $.00865.

[24] The intraday indicative value of the Shares is analogous to the intraday optimized portfolio value (sometimes referred to as the IOPV), indicative portfolio value and the intraday indicative value (sometimes referred to as the IIV) associated with the trading of exchange-traded funds. *See, e.g.,* Securities Exchange Act Release No. 46686 (October 18, 2002), 67 FR 65388 (October 24, 2002) (SR–NYSE–2002–51) for a discussion of indicative portfolio value in the context of an exchange-traded fund.

[25] The last sale price of the Shares in the secondary market is available on a real-time basis for a fee from regular data vendors.

[26] In particular, Rule 1300A provides that Rule 105(m) is deemed to prohibit an equity specialist, his member organization, other member, allied member or approved person in such member organization or officer or employee thereof from acting as a market maker or functioning in any capacity involving market-making responsibilities in the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency, except as otherwise provided therein.

[27] Rule 1301A also states that, in connection with trading the applicable non-U.S. currency, options, futures or options on futures or any other derivatives on such currency (including Currency Trust Shares), the specialist shall not use any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in the applicable non-U.S. currency, options, futures or options on futures, or any other derivatives on such currency. For purposes of Rule 1301A, ''person associated with a member'' shall have the same meaning ascribed to it in section 3(a)(21) of the Act.

Exchange believes that these procedures are adequate to monitor Exchange trading of the Shares, to detect violations of Exchange rules, consequently deterring manipulation.

The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Shares, foreign currency options and foreign currency futures, including Japanese Yen options and futures, through NYSE members, in connection with such members' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG. Specifically, the NYSE can obtain such information from the Phlx in connection with Japanese Yen options trading on the Phlx and from the CME in connection with Japanese Yen futures trading on those exchanges.[28]

The Exchange's surveillance procedures will be comparable to those used for investment company units currently trading on the Exchange and will incorporate and rely upon existing NYSE surveillance procedures governing equities.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include (1) the extent to which trading is not occurring in Japanese Yen or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares is subject to trading halts caused by extraordinary market volatility pursuant to Exchange's ''circuit breaker'' rule.[29] If the value of Japanese Yen updated at least every 15 seconds from a source not affiliated with the Sponsor, Trust or the Exchange; or (2) the IIV per Share updated every 15 seconds is not being disseminated, the Exchange may halt trading during the day in which the interruption to such dissemination occurs. If the interruption to the dissemination of the value of the Japanese Yen or the IIV persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

Due Diligence

Before a member, member organization, allied member or employee thereof recommends a transaction in the Shares, such person must exercise due diligence to learn the essential facts relative to the customer pursuant to Exchange Rule 405, and must determine that the recommendation complies with all other applicable Exchange and Federal rules and regulations. A person making such recommendation should have a reasonable basis for believing, at the time of making the recommendation, that the customer has sufficient knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks and any special characteristics of the recommended transaction, and is financially able to bear the risks of the recommended transaction.

Information Memo

The Exchange will distribute an Information Memo to its members in connection with the trading in the Shares. The Memo will discuss the special characteristics and risks of trading this type of security. Specifically, the Memo, among other things, will discuss what the Shares are, that Shares are not individually redeemable but are redeemable only in Baskets of 50,000 shares or multiples thereof, how a Basket is created and redeemed, applicable Exchange rules, the indicative price of Japanese Yen and IIV, dissemination information, trading information and the applicability of suitability rules.[30] The Information Memo will also state that the number of units Japanese Yen required to create a Basket or to be delivered upon redemption of a Basket may gradually decrease over time in the event that the Trust is required to withdraw or sell units of foreign currency to pay the Trust's expenses. The Memo also will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Memo also will reference the fact that there is no regulated source of last sale information regarding foreign currency, and that the Commission has no jurisdiction over the trading of foreign currency. Finally, the Memo also will note to members language in the Registration Statement regarding prospectus delivery requirements for the Shares.

2. Statutory Basis

The basis under the Act for this proposed rule change, as amended, is the requirement under section 6(b)(5) of the Act[31] that an Exchange have rules that are 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–03 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.

[28] Phlx is a member of ISG. CME is an affiliate member of ISG.

[29] NYSE Rule 80B.

[30] The Information Memo will discuss exemptive relief granted by the Commission from certain rules under the Act. *See* note 14, *supra.*

[31] 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR–NYSE–2007–03. 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 will also be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR–NYSE–2007–03 and should be submitted by March 13, 2007.

IV. Commission Findings and Order Granting Accelerated Approval of a Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act [32] and the rules and regulations thereunder applicable to a national securities exchange.[33] In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,[34] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

A. Surveillance

The Commission finds that the proposed rule change provides the NYSE with the tools necessary to monitor trading in the Shares and is designed to prevent fraudulent and manipulative acts and practices. Information sharing agreements with markets trading securities underlying a derivative, or primary markets trading derivatives on the same underlying instruments, are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products.[35] Although an information sharing agreement is not possible with the OTC foreign exchange market, the Commission believes that the Exchange's comprehensive surveillance sharing agreements with the Phlx and CME, by virtue of their memberships in the ISG, together with NYSE Rules 1301A and 1300A(b), will allow the NYSE to monitor for fraudulent and manipulative trading practices.[36]

NYSE Rule 1301A requires that the specialist handling the Shares provide the Exchange with information relating to its trading in options, futures or options on futures on the Japanese Yen, or any other derivatives based on the Japanese Yen. These reporting and recordkeeping requirements will assist the Exchange in identifying situations potentially susceptible to manipulation. NYSE Rule 1301A(c) also prohibits the specialist in the Shares from using any material, nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in the Japanese Yen, or options, futures or options on futures on the Japanese Yen, or any other derivatives based on the Japanese Yen (including the Shares). In addition, NYSE Rule 1300A(b) prohibits the specialist in the Shares from being affiliated with a market maker in the Japanese Yen, or options, futures or options on futures on the Japanese Yen, or any other derivative based on the Japanese Yen, unless information barriers are in place that satisfy the requirements in NYSE Rule 98.

The Exchange also represents that it can obtain, through its ISG membership, information from CME regarding the trading of the Japanese Yen futures, and options on those futures, that trade on CME, and from Phlx regarding the trading of options on the Japanese Yen that trade on Phlx. In addition, the Exchange represents that it is able to obtain information regarding trading in the Shares, and options and futures on the Japanese Yen, through its members, in connection with such members' proprietary or customer trades that they effect on any relevant market.

B. Dissemination of Information

The Commission believes that sufficient venues for obtaining reliable information exist so that investors in the Shares can monitor the underlying Japanese Yen spot market relative to the NAV of their Shares. As discussed above, the Exchange represents that there is a considerable amount of foreign currency price and market information available 24 hours a day through public Web sites and through professional and subscription services, including Bloomberg and Reuters.[37] The Exchange further represents that major market data vendors regularly report current currency exchange pricing for a fee for the Japanese Yen underlying the Shares. In addition, the Exchange will provide a link to the Trust's Web site on the NYSE's public Web site. The Trust's Web site will provide, among other things, the Japanese Yen spot prices,[38] including the bids and offers and the midpoints between the bids and offers for the Japanese Yen, updated no less than every 5 to 10 seconds, and the daily Federal Reserve Bank of New York Noon Buying Rate.

The Commission also notes that the Trust's Web site will contain: (1) An IIV per Share for the Shares, updated at least every 15 seconds; (2) a delayed indicative value (subject to a 20 minute delay), which is used for calculating premium/discount information; (3) premium/ discount information, calculated on a 20 minute delayed basis; (4) the NAV of the Trust, as calculated

[32] 15 U.S.C. 78f.

[33] 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* U.S.C. 78c(f).

[34] 15 U.S.C. 78f(b)(5).

[35] *See, e.g.*, Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (approving proposal by the NYSE to list and trade trust shares that correspond to a fixed amount of gold).

[36] The Commission notes that it has previously approved the listing and trading of foreign currency options and warrants. *See, e.g.*, Securities Exchange Act Release Nos. 19133 (October 14, 1982), 47 FR 46946 (October 21, 1982) (order approving a Phlx proposal to accommodate the listing and trading of standardized option contracts on five foreign currencies, including the British Pound and Swiss Franc); 22471 (September 26, 1985), 50 FR 40636 (October 4, 1985) (order approving a proposed rule change by the Chicago Board Options Exchange, Inc. (''CBOE'') to trade standardized option contracts on six foreign currencies, including the British Pound, Canadian Dollar, and Swiss Franc); 23945 (December 30, 1986), 52 FR 633 (January 7, 1987) (order approving a proposal by the CBOE to trade standardized options on the Australian Dollar); and 35806 (June 5, 1995), 60 FR 30911 (June 12, 1995) (order approving a Phlx proposal to trade currency warrants based on the value of the U.S. dollar in relation to the Mexican Peso).

[37] The Exchange notes that, in most instances, real-time information is available for a fee, and information available free of charge is subject to delay (typically, 15 to 20 minutes).

[38] As noted above, the spot price for the Japanese Yen published on the Trusts' Web site will be provided by FactSet Research Systems, which is not affiliated with the Trust, the Trustee, the Sponsor, the Depository, the Distributor or the Exchange.

each business day by the Trustee;[39] (5) accrued interest per Share; (6) the Basket Amount for the Japanese Yen; and (7) the last sale price of the Shares as traded in the U.S. market, subject to a 20-minute delay, as it is provided free of charge.[40] Further, the Exchange represents that real-time information for prices for futures and options on the Japanese Yen traded on CME and Phlx are available from information service providers, and that CME and Phlx provide delayed futures and options information free of charge on their respective Web sites. The Commission believes that the wide availability of such information, as described above, will facilitate transparency with respect to the Shares and diminish the risk of manipulation or unfair informational advantage.

C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Shares are consistent with the Act. Shares will trade as equity securities subject to NYSE rules including, among others, rules governing trading halts, responsibilities of the specialist, account opening, and customer suitability requirements. In addition, the Shares will be subject to NYSE listing and delisting rules and procedures governing the trading of ICUs on the NYSE. The Commission believes that listing and delisting criteria for the Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares. Finally, the Commission believes that the Information Memo the Exchange will distribute will inform members and member organizations about the terms, characteristics, and risks in trading the Shares, including their prospectus delivery obligations.

D. Acceleration

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission has previously granted approval to a NYSE proposal to adopt NYSE Rules 1300A and 1301A that govern the trading of Currency Trust Shares, and a proposal to list and trade Euro Shares pursuant to such rules.[41] The Shares proposed to be listed and traded in this proposed rule change, are substantially similar in structure and operation to the Euro Shares, will be listed and traded pursuant to the same rules, and do not raise any new issues. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[42] to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[43] that the proposed rule change (SR–NYSE–2007–03), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[44]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2844 Filed 2–16–07; 8:45 am]

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[39] According to the Exchange, the Sponsor has represented to the Exchange that the NAV for the Trust will be available to all market participants at the same time. The Exchange further represents that therefore, no market participant will have a time advantage in using such data.

[40] As noted above, the last sale price of the Shares in the secondary market will be disseminated over the Consolidated Tape.

[41] *See* Securities Exchange Act Release No. 52843, (November 28, 2005), 70 FR 72486 (December 5, 2005), (SR–NYSE–2005–65) (order granting accelerated approval, after a 15-day comment period, to a NYSE proposal to list and trade Euro Shares, which represent units of fractional undivided beneficial interest in and ownership of the Euro Currency Trust).

[42] 15 U.S.C. 78s(b)(2).

[43] 15 U.S.C. 78s(b)(2).

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55281; File No. SR–NYSE–2007–07]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Extension of the Crossing Session III and IV Pilot

February 12, 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 26, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder, which renders it effective upon filing with the Commission.[4] 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 NYSE proposes to extend until February 1, 2008 the following pilot programs (''Pilots''): Crossing Session III, for the execution of guaranteed price coupled orders by member organizations to fill the balance of customer orders at a price that was guaranteed to a customer prior to the close of the Exchange's 9:30 a.m. to 4:00 p.m. trading session; and Crossing Session IV, whereby an unfilled balance of an order may be filled at a price such that the entire order is filled at no worse price than the Volume Weighted Average Price (''VWAP'') for the subject security. The text of the proposed rule change is available at the NYSE, the Commission's Public Reference Room, and *http://www.nyse.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 NYSE 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 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 SR–NYSE–2002–40,[5] the Commission approved an order establishing two new crossing sessions (Crossing Sessions III and IV) in the Exchange's Off-Hours Trading Facility (''OHTF'') as a pilot program (''Pilot''), expiring on December 1, 2004. Subsequently, the Commission published two notices of filing and immediate effectiveness of a proposed rule change extending the Pilot until

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 48857 (December 1, 2003), 68 FR 68440 (December 8, 2003).

February 1, 2006[6] and until February 1, 2007.[7]

This proposal extends the Pilot until February 1, 2008.[8] Crossing Sessions III and IV are described below.

Background

The purpose of the original proposed rule change was to add two additional ''Crossing Sessions'' (Crossing Sessions III and IV) to the Exchange's OHTF. Before the proposed rule change, the OHTF consisted of Crossing Sessions I and II. Crossing Session I permits the execution, at the Exchange's closing price, of single-stock, single-sided closing price orders and crosses of single-stock, and closing price buy and sell orders. Crossing Session II permits the execution of crosses of multiple-stock (''basket'') aggregate priced buy and sell orders. For Crossing Session II, trade reporting is accomplished by reporting to the Consolidated Tape the total number of shares and the total market value of the aggregate-price trades. There is no indication of the individual component stocks involved in the aggregate-price transactions.

Crossing Session III

The Exchange is proposing to extend until February 1, 2008, the Pilot in Crossing Session III. Crossing Session III is described in Exchange Rule 907. This Pilot would continue to allow for the execution on the NYSE of ''guaranteed price coupled orders'' whereby member organizations could fill the unfilled balance of a customer order at a price which was guaranteed to the customer prior to the close of the Exchange's 9:30 a.m. to 4:00 p.m. trading session.

The Granting of ''Upstairs Stops''

In serving their institutional customers, member firms may offer them a guarantee that a large size order will receive no worse than a particular price. Such a practice is usually referred to as an ''upstairs stop'' meaning that the firm guarantees that its customer's order will be executed at no worse price than the agreed-upon, guaranteed price, with the member firm trading for its own account, if necessary, to effectuate the guarantee.

Typically, a member firm will seek to execute as much of the order as possible during the trading day at or below the ''stop'' price (in the case of a buy order) or at or above the ''stop'' price (in the case of a sell order). Any portion of the order not filled during the trading day will be completed after hours, with the firm either buying from, or selling to, its customer at a price which ensures that the entire order is executed at a price which is no worse than the ''stop'' price.

Member firms typically execute the unfilled balance of the order, after the U.S. Consolidated Tape is closed, in the London over-the-counter market, where trades are not reported in real time. The purpose of this is simply to minimize the possibility that other market participants may ascertain the firm's, or the customer's inventory position, and possibly trade in the subject security to the detriment of the firm that granted the ''upstairs stop.'' It is more transparent to print the trade in the NYSE primary market during U.S. Consolidated Tape hours.

Crossing Session IV

The Exchange is also proposing to extend the Pilot in Crossing Session IV (which is also described in NYSE Rule 907), until February 1, 2008. Crossing Session IV is a facility whereby member organizations may fill the unfilled balance of a customer's order at a price such that the overall order is filled at a price that is no worse than the VWAP for the subject security on that trading day. The member organization would be required to document its VWAP agreement with the customer and the basis upon which the VWAP price would be determined.

Operation of Crossing Sessions

As described in NYSE Information-Memos 04–30 and 05–57 and NYSE Rule 907, Crossing Sessions III and IV would continue to operate as follows:

(i) The original order as to which an ''upstairs stop'' or ''VWAP'' has been granted may be of any size;

(ii) The customer must have received a ''stop'' (guaranteed price) or VWAP for the entire order;

(iii) The member firm must record all details of the order, including the price it has guaranteed its customer or that the entire order will be filled at no worse than the VWAP;

(iv) An order or the unfilled balance of an order that would be executed in Crossing Session III or Crossing Session IV may be of any size;

(v) The customer's order must be executed in Crossing Session III or Crossing Session IV at a price that ensures that the entire order is executed at a price that is no worse than the guaranteed price or the VWAP;

(vi) Orders may be entered in Crossing Session III or Crossing Session IV between 4 p.m. and 6:30 p.m., and must be identified as either a Crossing Session III or Crossing Session IV order;

(vii) Member firms will receive an immediate report of execution upon entering an order into Crossing Session III or Crossing Session IV; (viii) Orders may be entered into Crossing Session III for execution at prices outside the trading range in the subject security during the 9:30 a.m. to 4 p.m. trading session;

(ix) Orders may not be entered into Crossing Session III or Crossing Session IV in a security that is subject to a trading halt at the close of the regular 9:30 a.m. to 4 p.m. trading session; and

(x) At 6:30 p.m., the Exchange will print trades reported through Crossing Session III as guaranteed price coupled orders or in Crossing Session IV as VWAP executions.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[9] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

[6] *See* Securities Exchange Act Release No. 51091 (January 28, 2005), 70 FR 6484 (February 7, 2005) (SR–NYSE–2005–01).

[7] *See* Securities Exchange Act Release No. 53275 (February 13, 2006), 71 FR 8626 (February 17, 2006) (SR-NYSE–2006–02).

[8] The NYSE confirmed that the Pilots will continue to function in the same manner that they operated prior to the one-year extension. Telephone conversation between Jean Walsh, Principal Rule Counsel, Office of General Counsel, NYSE, and Tim Fox, Special Counsel, Division of Market Regulation, Commission and Johnna B. Dumler, Attorney, Division, Commission on February 8, 2007.

[9] 15 U.S.C. 78f(b)(5).

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[10] and Rule 19b–4(f)(6) thereunder.[11] 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.

NYSE has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes such waivers are consistent with the protection of investors and the public interest because they would allow the Pilots to operate without interruption.[12] For this reason, the Commission designates the proposal to be operative upon filing with the Commission.

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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–07. 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 will also be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–07 and should be submitted on or before March 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2848 Filed 2–16–07; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55282; File No. SR–Phlx–2007–03]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Eliminating the Telephone System Line Extension Charge

February 12, 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 11, 2007, 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 substantially prepared by the Phlx. The Phlx 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 Phlx, pursuant to Section 19(b)(1) of the Act[5] and Rule 19b–4 thereunder,[6] proposes to eliminate from Appendix A of the Exchange's fee schedule the telephone system line extension charge of $22.50 per month per extension. Any member, participant, and member or participant organization may, however, keep their telephone system line extensions without being charged. The Exchange proposes to make effective beginning January 2007 the elimination of the telephone system line extension charge.[7]

The text of the proposed rule change is available at the Phlx, the Commission's Public Reference Room, and *http://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

Currently, the Exchange assesses a fee of $22.50 per month per extension for telephone system line extensions on the options and foreign currency trading floors. The Exchange recently eliminated this fee for members and member organizations on the equity trading floor in connection with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] 15 U.S.C. 78s(b)(1).

[6] 17 CFR 240.19b–4.

[7] The monthly telephone system line extension charge for the month of January is not scheduled to be billed until the beginning of February 2007. The Exchange generally issues its invoices at the beginning of the subsequent month, with such invoices covering billing for the preceding month. Therefore, the monthly telephone system line extension charge for the month of January will be deleted from the January 2007 invoice, which is currently scheduled to be issued at the beginning of February 2007. Telephone conversation between Cynthia Hoekstra, Vice President, Phlx, and Molly M. Kim, Special Counsel, Division of Market Regulation, Commission, on February 7, 2007.

implementation of the Exchange's new equity system.[8] The Exchange proposes at this time to also eliminate this fee for members, participants, and member or participant organizations on the options and foreign currency trading floors. Any member, participant, and member or participant organization may, however, keep their telephone system line extensions without being charged. The purpose of this proposal is to simplify the Exchange's fee schedule and billing process. The Exchange proposes to eliminate the telephone system line extension charge for the billing period beginning January 2007.[9]

2. Statutory Basis

The Exchange believes that its proposal to amend Appendix A of its fee schedule by deleting the telephone system line extension charge for its members, participants, and member or participant organizations is consistent with Section 6(b) of the Act [10] in general and furthers the objectives of Section 6(b)(4) of the Act [11] 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 [12] and paragraph (f)(2) of Rule 19b–4 thereunder, because it establishes or changes a due, fee, or other charge.[13] 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–2007–03 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–2007–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2007–03 and should be submitted on or before March 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2838 Filed 2–16–07; 8:45 am]

BILLING CODE 8010–01–P

[8] *See* Securities Exchange Act Release No. 54941 (December 14, 2006), 71 FR 77079 (December 22, 2006) (SR–Phlx–2006–70).

[9] *See* note 5 *supra.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55273; File No. SR–Phlx–2007–11]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Trading Phase Date of Regulation NMS

February 12, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 6, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Phlx. 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 clarify the operation of XLE, the Exchange's new equity trading system, and various Phlx Rules in light of the Commission's extension of the Trading Phase Date of Regulation NMS from February 5, 2007 until March 5, 2007.[5] There is no change to Phlx 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, the Phlx included statements concerning the purpose of and basis for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007).

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 effect on XLE and various Phlx Rules of the Commission's extension of the Trading Phase Date of Regulation NMS from February 5, 2007 until March 5, 2007.[6] The Trading Phase Date is significant to the Exchange because that is the ''[f]inal date for full operation of Regulation NMS-compliant trading systems [by exchanges] that intend to qualify their quotations for trade-through protection under Rule 611 [during the roll-out of Regulation NMS].'' [7] The Phlx intends to qualify its quotations for trade-through protection under Rule 611 during the roll-out of Regulation NMS and therefore intends to operate a Regulation NMS-compliant trading system no later than the Trading Phase Date.[8]

A number of Phlx Rules or portions of Rules adopted by Phlx in connection with XLE were approved with delayed effectiveness by the Commission until the Trading Phase Date that was in effect at that time, which was February 5, 2007.[9] With this proposed rule change, the Exchange clarifies that the effectiveness of these rules or portions of rules is tied to the Trading Phase Date, currently March 5, 2007, not to February 5, 2007. The Phlx Rules that are affected by this clarification include, but are not necessarily limited to the following: Phlx Rule 1(cc), Definition of Protected Bid, Offer or Quotation; Phlx Rule 185(b)(2)(C), regarding Intermarket Sweep Orders (''ISOs''); [10] Phlx Rule 185(c)(2)(D), regarding IOC Cross Orders marked by the XLE Participant entering the order as meeting the requirements of an intermarket sweep order in Regulation NMS Rule 600(b)(30); [11] Phlx Rule 185(c)(3), regarding IOC Cross Orders marked Benchmark or Qualified Contingent Trade; [12] Phlx Rule 185(h), regarding the ''self-help'' exemption to Rule 611; and Phlx Rule 186, Locking or Crossing Quotations in NMS Stocks. The Exchange also clarifies that the use of the term ''Trading Phase Date'' in Phlx Rule 185A means the Trading Phase Date, currently March 5, 2007, not February 5, 2007.

Finally, the XLE Approval Order noted that the certain features of XLE would be rolled out in three phases. Phases 1 and 2, concerning two-sided orders and ''Do Not Route'' orders, are completed. Phase 3, routing functionally, is currently being rolled out and is scheduled to be completed before March 5, 2007.

2. Statutory Basis

The Exchange believes that its 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 clarifying the effect on Phlx Rules of the recent extension of the Trading Phase Date of Regulation NMS from February 5, 2007 until March 5, 2007.

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 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 effect on Phlx Rules of the recent extension of the Trading Phase Date of Regulation NMS from February 5, 2007 until March 5, 2007.[20] Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the

[6] *Id.*

[7] *Id.* at 4203.

[8] *See* Phlx Rule 160.

[9] *See* Securities Exchange Act Release No. 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) (''XLE Approval Order'').

[10] Phlx notes, however, ISOs and IOC Cross Orders marked by the XLE Participant entering the order as meeting the requirements of an intermarket sweep order in Regulation NMS Rule 600(b)(30) currently have a limited effectiveness pursuant to Phlx Rule 185A(b). *See* Securities Exchange Act Release Nos. 54788 (November 20, 2006), 71 FR 68877 (November 28, 2006) (SR–Phlx–2006–77) and 54760 (November 15, 2006), 71 FR 67687 (November 22, 2006) (SR–Phlx–2006–76).

[11] *See supra* note 10.

[12] Phlx notes, however, IOC Cross Orders marked Benchmark or Qualified Contingent Trade for Nasdaq securities currently are effective pursuant to Phlx Rule 185A(c) and (d). *See* Securities Exchange Act Release No. 55044 (January 5, 2007), 72 FR 1361 (January 11, 2007) (SR–Phlx–2006–92). In addition, Phlx may file additional proposed rule change(s) regarding IOC Cross Orders marked Benchmark or Qualified Contingent Trade for non-Nasdaq securities before March 5, 2007.

[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] 17 CFR 240.19b–4(f)(6)(iii).

[20] For the purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2007–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of 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–2007–11 and should be submitted on or before March 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2843 Filed 2–16–07; 8:45 am]

BILLING CODE 8011–01–P

[21] *See* 15 U.S.C. 78s(b)(3)(C).

[22] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with P.L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed, faxed or e-mailed to the individuals at the addresses and fax numbers listed below:

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

(SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov.*

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Application for Benefits under the Italy-U.S. International Social Security Agreement—0960–0445—20 CFR 404.1925.* The United States and Italy entered into an agreement on November 1, 1978. Article 19.2 of that agreement provides that an applicant for benefits can file his application with either country. Article 4.3 of the Protocol to the Agreement provides that the country that receives the application will forward agreed upon forms and applications to the other country. Form SSA–2528 is the form agreed upon that is completed by individuals who file an application for U.S. benefits directly with one of the Italian Social Security Agencies. The information collected on Form SSA–2528 is required by SSA in order to determine entitlement to benefits. The respondents are applicants for old-age, survivors or disability benefits, who reside in Italy.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 200.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 67 hours.

2. *Social Security Benefits Applications—20 CFR Subpart D, 404.310–404.311 and 20 CFR Subpart F, 404.601–401.603—0960–0618.* One of the requirements for obtaining Social Security benefits is the filing of an application so that a determination may be made on the applicant's eligibility for monthly benefits. In addition to the traditional paper application, SSA has developed various options for the public to add convenience and operational efficiency to the application process. The total estimated number of respondents to all application collections formats is 3,843,369 with a cumulative total of 995,457 burden hours. The respondents are applicants for retirement insurance benefits (RIB), disability insurance benefits (DIB), and/or spouses' benefits.

Type of Request: Extension of an OMB-approved information collection.

Internet Social Security Benefits Application (ISBA)

ISBA, which is available through SSA's Internet site, is one method that an individual can choose to file an application for benefits. Individuals can use ISBA to apply for retirement insurance benefits RIB, DIB and spouse's insurance benefits based on age. SSA gathers only information relevant to the individual applicant's circumstances and will use the

information collected by ISBA to entitle individuals to RIB, DIB, and/or spouses' benefits. The respondents are applicants for RIB, DIB, and/or spouses benefits.

Number of Respondents: 169,000.

Frequency of Response: 1.

Average Burden Per Response: 21.4 minutes.

Estimated Annual Burden: 60,277 hours.

Paper Application Forms

Application for Retirement Insurance Benefits (SSA–1)

The SSA–1 is used by SSA to determine an individual's entitlement to retirement insurance benefits. In order to receive Social Security retirement insurance benefits, an individual must file an application with the SSA. The SSA–1 is one application that the Commissioner of Social Security prescribes to meet this requirement. The information that SSA collects will be used to determine entitlement to retirement benefits. The respondents are individuals who choose to apply for Social Security retirement insurance.

Approximately 1,460,692 respondents complete the SSA–1 annually. Of this total 97% (1,416,871) are completed through SSA's Modernized Claims System (MCS) and 50% of the MCS respondents will use Signature Proxy (708,435.5). The breakdown is displayed on the following chart.

Collection method	Number of respondents	Estimated completion time	Burden hours
MCS	708,436	10.5 minutes	123,976
MCS/Signature Proxy	708,435	9.5 minutes	112,169
Paper	43,821	10.5 minutes	7,669
Totals	1,460,692		243,814

Application for Wife's or Husband's Insurance Benefits (SSA–2)

SSA uses the information collected on Form SSA–2 to determine if an applicant (including a divorced applicant) can be entitled to benefits as the spouse of the worker and the amount of the spouse's benefits. The respondents are applicants for wife's or husband's benefits, including those who are divorced. Approximately 700,000 respondents complete the SSA–2 annually. Of this total 95% (665,000) are completed through MCS and 50% of the MCS respondents will use Signature Proxy (332,500). The breakdown is displayed on the following chart:

Collection method	Number of respondents	Estimated completion time	Burden hours
MCS	332,500	15 minutes	83,125
MCS/Signature Proxy	332,500	14 minutes	77,583
Paper	35,000	15 minutes	8,750
Totals	700,000		169,458

Application for Disability Insurance Benefits (SSA–16)

Form SSA–16–F6 obtains the information necessary to determine whether the provisions of the Act have been satisfied with respect to an applicant for disability benefits, and detects whether the applicant has dependents who would qualify for benefits on his or her earnings record. The information collected on form SSA–16 helps to determine eligibility for Social Security disability benefits. The respondents are applicants for Social Security disability benefits.

Approximately 1,513,677 respondents complete the SSA–16 annually. Of this total 97% (1,468,267) are completed through SSA's Modernized Claims System (MCS) and 50% of the MCS respondents will use Signature Proxy (734,133.5). The breakdown is displayed on the following chart:

Collection method	Number of respondents	Estimated completion time	Burden hours
MCS	734,134	20 minutes	244,711
MCS/Signature Proxy	734,133	19 minutes	232,476
Paper	45,410	20 minutes	15,137
Totals	1,513,677		492,324

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Pain Report Child—20 CFR 416.912 and 416.1512—0960–0540.* The information collected by form SSA–3371–BK will be used to obtain the types of information specified in SSA's regulations, and to provide disability interviewers (and applicants/claimants in self-help situations) with a convenient means of recording the information. This information is used by the State disability determination services (DDS) adjudicators and administrative law judges to assess the effects of symptoms on functionality for determining disability under the Social Security Act. The respondents are applicants for Supplemental Security Income (SSI) benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 250,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 62,500 hours.

2. *Request for Hearing by Administrative Law Judge—20 CFR 404.929, 404.933, 416.1429, 404.1433, 405.722, 418.1350—0960–0269.* SSA uses form HA–501 to document when applicants for Social Security benefits have their claims denied and want to request an administrative hearing to appeal SSA's decision. The scope of this form is now being expanded to include people who wish to appeal the decision that has been made regarding their obligation to pay a new Income-Related Monthly Adjustment Amount (IRMAA) for Medicare Part B, as per the requirements of the Medicare Modernization Act of 2003. Although this information will be collected by SSA, the actual hearings will take place before administrative law judges (ALJ) who are employed by the Department of Health and Human Services (HHS). The current respondents include applicants for various Social Security benefits programs who want to request a hearing where they can appeal their denial; the new additional respondents are Medicare Part B recipients whom SSA has determined will have to pay the new Medicare Part B IRMAA and who wish to appeal this decision at a hearing before an HHS ALJ.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 669,469.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 111,578 hours.

3. *Request to Resolve Questionable Quarters of Coverage (QC); Request for QC History Based on Relationship—0960–0575.* Form SSA–512 is used by states to request clarification from SSA on questionable QC information. The Personal Responsibility and Work Opportunity Reconciliation Act states that aliens admitted for lawful residence that have worked and earned 40 qualifying QCs for Social Security purposes can generally receive state benefits. Form SSA–513 is used by states to request QC information for an alien's spouse or child in cases where the alien does not sign a consent form giving permission to access his/her Social Security records. QCs can also be allocated to a spouse and/or to a child under age 18, if needed, to obtain 40 qualifying QCs for the alien. The respondents are state agencies that require QC information in order to determine eligibility for benefits.

Type of Request: Extension of an OMB-approved information collection.

Collections	Number of respondents	Frequency of response	Average burden per response (minute)	Estimated annual burden (hours)
SSA–512	200,000	1	2	6,667
SSA–513	350,000	1	2	11,667
Totals	550,000			18,334

Dated: February 9, 2007.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E7–2662 Filed 2–16–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5698]

Debarment Involving Henry L. Lavery III and Security Assistance International, Inc.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed an administrative debarment against Henry L. Lavery III and Security Assistance International, Inc. pursuant to a December 12, 2006 Consent Agreement and other authority based upon section 127.7(a) and (b)(2) of the International Traffic in Arms Regulations (ITAR) (22 CFR sections 120 to 130).

EFFECTIVE DATE: December 12, 2006.

FOR FURTHER INFORMATION CONTACT: David Trimble, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 663–2700.

SUPPLEMENTARY INFORMATION: Section 127.7 of the ITAR authorizes the Assistant Secretary of State for Political-Military Affairs to debar any person who has been found pursuant to Section 128 of the ITAR to have committed a violation of the Arms Export Control Act (AECA) or the ITAR of such character as to provide a reasonable basis for the Office of Defense Trade Controls Compliance to believe that the violator cannot be relied upon to comply with the AECA or ITAR in the future. Such debarment prohibits the subject from participating directly or indirectly in the export of defense articles or defense services for which a license or approval is required by the ITAR.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see e.g., sections 120.1(c) and (d), 126.7, 127.1(c), and 127.11(a)). The Department of State will not consider applications for licenses or requests for approvals that involve any debarred person.

Henry L. Lavery III doing business as Security Assistance International, Inc., (SAI) was under a Consent Agreement dated June 3, 1999, as a result of a Proposed Charging Letter alleging numerous ITAR violations between April 1993 and April 1999. Mr. Lavery and his company, SAI, were cited for submitting export applications on behalf of clients containing falsified applicant signatures; failing to maintain records as required under the ITAR; obtaining export licenses for firms whose registrations expired or who were never registered; and brokering without being registered and without authorization. Under the June 3, 1999, Consent Agreement, Mr. Lavery was required to pay a $10,000 penalty, register as a broker, reconstruct export records, cease participating directly or indirectly in exports of defense articles and/or defense services and implement a compliance program outlining SAI's operating procedures and internal controls for adherence to the ITAR. On or about August 1, 2001, Mr. Lavery completed the requirements of the Consent Agreement and his export privileges were reinstated by the Department.

On July 11, 2005, the Office of Defense Trade Controls Compliance conducted a review of SAI's ITAR

compliance program. The review determined that many of the practices, which led to the June 3, 1999, Consent Agreement, had not been corrected. A July 14, 2003 license application for the temporary export of Night Vision equipment was submitted by Mr. Lavery on behalf of an unregistered company; Mr. Lavery was unable to provide complete records and/or was unable to produce records required to be maintained by the ITAR for his current authorized exports; and Mr. Lavery violated a license proviso requiring proof of export be provided to the Department.

On December 12, 2006, as the result of these continuing violations, the Department and Mr. Lavery entered into a new Consent Agreement, which debarred Mr. Lavery and SAI until December 12, 2007. Reinstatement after December 12, 2007 is not automatic but contingent on full compliance with the terms of the December 12, 2006 Consent Agreement and evidence that the underlying problems that gave rise to the violations have been corrected. At the end of the debarment period, Mr. Lavery and SAI may apply for reinstatement. Until licensing privileges are reinstated, Mr. Lavery and SAI will remain debarred.

This notice is provided to make the public aware that the persons listed above are prohibited from participating directly or indirectly in any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR.

Exceptions may be made to this denial policy on a case-by-case basis at the discretion of the Directorate of Defense Trade Controls. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: Whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and law enforcement concerns.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedures Act. Because the exercise of this foreign affairs function is highly discretionary, it is excluded from review under the Administrative Procedures Act.

Dated: January 29, 2007.

Ambassador Stephen Mull,

Acting Assistant Secretary for Political-Military Affairs.

[FR Doc. E7–2831 Filed 2–16–07; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–98–4334, FMCSA–00–7363, FMCSA–02–13411]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 15 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective March 4, 2007. Comments must be received on or before March 22, 2007.

ADDRESSES: You may submit comments identified by DOT Docket Management System (DMS) Docket Numbers FMCSA–98–4334, FMCSA–00–7363, FMCSA–02–13411, using any of the following methods.

- *Web site: http://dmses.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket numbers for this Notice. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@dot.gov,* FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Exemption Decision

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 15 individuals who have requested renewal of their exemptions in a timely manner. FMCSA has evaluated these 15

applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Howard K. Bradley
Kirk G. Braegger
Ambrosio E. Calles
Jose G. Cruz
Everett A. Doty
Donald J. Goretski
Harry P. Henning
Christopher L. Humphries
Ralph J. Miles
William R. New
Thomas C. Rylee
Stanley B. Salkowski, III
Michael G. Thomas
William H. Twardus
Ronald Watt

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 15 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 67 FR 76439; 68 FR 10298; 70 FR 7545; 65 FR 45817; 65 FR 77066; 67 FR 71610). Each of these 15 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by March 22, 2007.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 15 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: February 9, 2007.

Pamela M. Pelcovits,

Office Director, Policy, Plans and Regulations.

[FR Doc. E7–2846 Filed 2–16–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of Applications for Modification of Special Permit.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for special permits to facilitate processing.

DATES: Comments must be received on or before March 7, 2007.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of special permits is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 7, 2007.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits & Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
MODIFICATION SPECIAL PERMITS				
8915–M		Matheson Tri Gas	49 CFR 173.302a(a)(3); 173.301(d); 173.302a(a)(5).	To modify the special permit to authorize the transportation in commerce of additional Division 2.1 materials in DOT Specification 3A, 3AA, 3AX, 3AAX and 3T cylinders.
10885–M		U.S. Department of Energy, Washington, DC.	49 CFR 172.101 Col. 9(b), 172.204(c)(3); 173.27(b)(2); 173.27(f) Table 2; 175.30(a)(1); 173.27(b)(3).	To modify the special permit to authorize the transportation in commerce of additional hazardous materials and to provide relief from segregation by highway.
12274–M	1999–5707	Snow Peak, Inc., Clackamas, OR.	49 CFR 172.301, 173.302a(b)(2), (b)(3) and (b)(4); 180.205(c) and (g) and 180.209(a).	To modify the special permit to authorize larger non-DOT specification nonrefillable inside containers.
12283–M	1999–5767	Interstate Battery of Alaska, Anchorage, AK.	49 CFR 173.159(c)(1); 173.159(c).	To modify the special permit to authorize the round trip transportation in commerce of batteries within the State of Alaska.
12571–M	2000–8315	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 173.304(a)(2); 180.209.	To modify the special permit to authorize markings on the sides of the trailers rather than on each individual tube.
13167–M		ITT Industries Space, Systems, LLC, Rochester, NY.	49 CFR 173.301(f); 173.304.	To modify the special permit to authorize an additonal non-DOT specification packaging.
14392–M		Department of Defense, Ft. Eustis, VA.	49 CFR 172.101 Column (10B); 176.65, 176.83(a)(b)(g), 176.84(c)(2); 176.136; and 176.144(a).	To reissue the special permit of originally issued on an emergency basis for the transportation in commerce of explosives by vessel in an alternative stowage configuration.
14466–M	2007–27095	Northern Air Cargo, Anchorage, AK.	49 CFR 172.101 Column (9B).	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of certain Class I explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available.

[FR Doc. 07–733 Filed 2–16–07; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of Applications for Modification of Special Permit.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (*e.g.,* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for special permits to facilitate processing.

DATES: Comments must be received on or before March 7, 2007.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of special permits is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 7, 2007.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits & Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
8915–M		Matheson Tri Gas	49 CFR 173.302a(a)(3); 173.301(d); 173.302a(a)(5).	To modify the special permit to authorize the transportation in commerce of additional Division 2.1 materials in DOT Specification 3A, 3AA, 3AX, 3AAX and 3T cylinders.
10885–M		U.S. Department of Energy, Washington, DC.	49 CFR 172.101 Col. 9(b); 172.204(c)(3); 173.27(b)(2); 173.27(f) Table 2; 175.30(a)(1); 173.27(b)(3).	To modify the special permit to authorize the transportation in commerce of additional hazardous materials and to provide relief from segregation by highway.
12274–M	1999–5707	Snow Peak, Inc., Clackamas, OR.	49 CFR 172.301, 173.302a(b)(2), (b)(3) and (b)(4); 180.205(c) and (g) and 180.209(a).	To modify the special permit to authorize larger non-DOT specification nonrefillable inside containers.
12283–M	1999–5767	Interstate Battery of Alaska, Anchorage, AK.	49 CFR 173.159(c)(1); 173.159(c).	To modify the special permit to authorize the round trip transportation in commerce of batteries within the State of Alaska.
12571–M	2000–8315	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 173.304(a)(2); 180.209.	To modify the special permit to authorize markings on the sides of the trailers rather than on each individual tube.
13167–M		ITT Industries Space Systems, LLC, Rochester, NY.	49 CFR 173.301(f); 173.304.	To modify the special permit to authorize an additional non-DOT specification packaging.
14392–M		Department of Defense, Ft. Eustis, VA.	49 CFR 172.101 Column 10B; 176.65, 176.83(a)(b)(g), 176.84(c)(2); 176.136; and 176.144(a).	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of explosives by vessel in an alternative stowage configuration.
14466–M	2007–27095	Northern Air Cargo, Anchorage, AK.	49 CFR 172.101 Column (9B).	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available.

[FR Doc. 07–734 Filed 2–16–07; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permit Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ann Mazzullo, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application
M—Modification request
X—Renewal
PM—Party to application with modification request

Issued in Washington, DC, on February 13, 2007.

Delmer F. Billings,

Director, Office of Hazardous Materials Safety, Special Permits & Approvals.

Application No.	Applicant	Reason for delay	Estimated date of completion
	New Special Permit Applications		
14314–N	North American Automotive Hazmat Action Committee	1	07–31–2007
14330–N	Chemical & Metal Industries, Inc., Hudson, CO	4	03–31–2007
14343–N	Valero St. Charles, Norco, LA	4	02–28–2007
14337–N	NKCF Co., Ltd. Jisa-Dong, Kangseo-Gu Busan	4	02–28–2007
14385–N	Kansas City Southern Railway Company, Kansas City, MO	4	02–28–2007
14397–N	UltraCell Corporation, Livermore, CA	1	03–31–2007
14398–N	Lyondell Chemical Company, Houston, TX	4	02–28–2007
10481–M	M–1 Engineering Limited, Bradford, West Yorkshire	4	03–31–2007

Application No.	Applicant	Reason for delay	Estimated date of completion
13598–M	Jadoo, Folsom, CA	4	03–31–2007
11447–M	SAES Pure Gas, Inc., San Louis Obispo, CA	4	02–28–2007

[FR Doc. 07–735 Filed 2–16–07; 8:45 am]

BILLING CODE 4910–60–M

Notices

Federal Register

Vol. 72, No. 33

Tuesday, February 20, 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.

AMERICAN BATTLE MONUMENTS COMMISSION

SES Performance Review Board

AGENCY: American Battle Monuments Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the ABMC Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Theodore Gloukhoff, Director of Personnel and Administration, American Battle Monuments Commission, Courthouse Plaza II, Suite 500, 2300 Clarendon Boulevard, Arlington, Virginia, 22201–3367, *Telephone Number:* (703) 696–6908.

American Battle Monuments Commission SES Performance Review Board

Dr. Susan L. Duncan, Director, Human Resources, US Army Corps of Engineers;

Mr. Joseph Tyler, Chief, Program Management Division, US Army Corps of Engineers;

Mr. Wesley C. Miller, Director, Resource Management, US Army Corps of Engineers.

Theodore Gloukhoff,

Director, Personnel and Administration.

[FR Doc. E7–2853 Filed 2–16–07; 8:45 am]

BILLING CODE 6120–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–803)

Heavy Forged Hand Tools from the People's Republic of China: Notice of Court Decision Not In Harmony With Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 9, 2007, the United States Court of International Trade (''CIT'') sustained the final remand redetermination made by the Department of Commerce (''the Department'') pursuant to the CIT's remand of the final results of the eleventh administrative review of the antidumping duty orders on heavy forged hand tools from the People's Republic of China. *See Shandong Huarong Machinery Co. v. United States and Ames True Temper*, Slip Op. 2007–3 (CIT, 2007) (''*Shandong Huarong II*''). This case arises out of the Department's final results in the administrative review covering the period February 1, 2001, through January 31, 2002. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges*, 68 FR 53347 (September 10, 2003) (''*Final Results*''). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''Federal Circuit'') in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (''Timken''), the Department is notifying the public that *Shandong Huarong II* is not in harmony with the Department's *Final Results*.

EFFECTIVE DATE: February 20, 2007

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Mark Manning; AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, DC 20230; telephone: (202) 482–3936 or (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION: In *Shandong Huarong Machinery Co. v. United States*, No. 03–00676 (CIT, 2005) (''*Shandong Huarong I*''), the CIT remanded the underlying final results to the Department to: (1) reopen the record in order to afford Shandong Huarong Machinery Co. (''Huarong'') a second opportunity to provide a scrap offset in which its scrap sales are allocated to the production of bars/wedges; (2) explain why its methodology of including distances greater than the distance from the nearest port to the factory, when calculating the weighted–average freight distance for multiple suppliers of one particular factor of production (''FOP''), satisfies the reasoning in *Sigma Corp. v. United States*, 117 F.3d 1401 (Fed. Cir. 1997) (''*Sigma*'') and *Lasko Metal Products Inc. v. United States*, 43 F.3d 1442, 1446 (Fed. Cir. 1994) (''*Lasko*''), or adjust its methodology; (3) explain its decision to disregard the effect of subsidies from the United States and other countries, in light of *Fuyao Glass Indus. Group Co. v. United States*, Slip Op. 2003–169 (CIT, 2003) (''*Fuyao I*'') and *Fuyao Glass Indus. Group Co. v. United States*, Slip Op. 2005–06 (CIT, 2005) (''*Fuyao II*''); (4) supply a more complete explanation to support its determination that labor costs and other factor inputs for making steel pallets are included in the cost of brokerage and handling; and (5) provide a more complete explanation to support its decision that the cost of movement from the truck to the container yard, demurrage and storage charges, and other port charges are included in the brokerage and handling cost.

The Department released the Draft Results of Redetermination Pursuant to Court Remand (''Draft Redetermination'') to Huarong and Ames True Temper[1] (''Ames'') for comment on October 7, 2005. The Department received timely filed comments from both Huarong and Ames on October 14, 2005, and rebuttal comments from Huarong on October 19, 2005. On October 16, 2006, the Department issued to the CIT its final results of redetermination pursuant to remand on November 30, 2005. In the remand redetermination the Department did the following: (1) reopened the record, and applied a steel scrap offset in its calculation of normal value to adjust for sales of steel scrap that was generated from the production of the subject bars and wedges; (2) applied the *Sigma* cap in its analysis and capped the distance for each supplier before calculating the weighted–average inland freight distance; (3) explained its decision in the *Final Results* to not exclude U.S. export data from the Indian import statistics used as the surrogate value because it would have resulted in an insignificant adjustment to normal value; (4) revised its FOP methodology to include labor costs and other factor inputs for making steel pallets in normal value; and (5) explained its reasoning for finding that movement expenses incurred at the port

[1] Ames True Temper is a domestic interested party to the proceeding, and was the petitioner in the underlying review.

of export were included in the calculation of brokerage and handing expenses. The Department recalculated the antidumping duty rate applicable to Huarong, and included the changes noted above. On January 9, 2007, the CIT sustained all aspects of the remand redetermination made by the Department pursuant to the CIT's remand of the *Final Results*.

In its decision in *Timken*, 893 F.2d at 341, the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (''the Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's decision in this case on January 9, 2007, constitutes a final decision of the court that is not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the CIT's ruling is not appealed or, if appealed, upheld by the Federal Circuit, the Department will instruct U.S. Customs and Border Protection to revise the cash deposit rates covering the subject merchandise.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: February 13, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–2836 Filed 2–19–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–201–822)

Stainless Steel Sheet and Strip in Coils from Mexico; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 20, 2007

FOR FURTHER INFORMATION CONTACT: Maryanne Burke, Deborah Scott or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5604, (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2006, the Department of Commerce (the Department) published a notice of opportunity to request administrative review of the antidumping duty order on, *inter alia*, stainless steel sheet and strip in coils from Mexico. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 37890 (July 3, 2006). On July 31, 2006, the Department received a timely request from Allegheny Ludlum Corporation, United Auto Workers Local 3303, Zanesville Armco Independent Organization, Inc. and the United Steelworkers (collectively, petitioners) to conduct an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico. Also on July 31, 2006, the Department received a timely request from the respondent in this review, ThyssenKrupp Mexinox S.A. de C.V. (Mexinox S.A.) and Mexinox USA, Inc. (Mexinox USA) (collectively, Mexinox) for revocation of the antidumping order on stainless steel sheet and strip in coils from Mexico. On August 30, 2006, the Department published a notice of initiation of this administrative review, covering the period July 1, 2005, to June 30, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (August 30, 2006). The preliminary results are currently due no later than April 2, 2007.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order for which a review is requested.

The Department has determined it is not practicable to complete this review within the statutory time limit because further analysis is needed with respect to Mexinox's affiliated party transactions and its cost of production data used in the margin calculation programs. We require additional information from Mexinox in order to complete our analysis and will not have time to analyze this information prior to the current deadline for the preliminary results. Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review until no later than July 31, 2007, which is 365 days from the last day of the anniversary month. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: February 13, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–2835 Filed 2–19–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 070207025–7025–01; I.D. 051906D]

RIN 0648–ZB55

FY 2007 Broad Agency Announcement Request for Extramural Research, Innovative Projects, and Sponsorships

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of the availability of Federal assistance.

SUMMARY: NOAA announces the availability of Federal assistance under the Broad Agency Announcement (BAA) for fiscal year 2007. The purpose of this notice is to request proposals for special projects and programs associated with the Agency's strategic plan and mission goals, as described in the **SUPPLEMENTARY INFORMATION** section, and to provide the general public with information and guidelines on how NOAA will select proposals and administer discretionary Federal assistance under this BAA. NOAA issued approximately $1 billion in Federal assistance funds in fiscal year 2006. Approximately 81 percent was for discretionary funding and 19 percent non-discretionary. This BAA is a mechanism to encourage research, technical projects, or sponsorships (e.g., conferences, newsletters, etc.) that are

not normally funded through our competitive discretionary programs.

DATES: Proposals will be accepted on a rolling basis up to 5 p.m. ET September 28, 2007. Applications shall be evaluated for funding generally within 3 to 6 months of receipt.

ADDRESSES: All proposals should be submitted through Grants.Gov. For those applicants without internet access, hard copy applications may be submitted to the individuals listed below under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: This announcement, the Federal Funding Opportunity (FFO) announcement, and application forms will be available through Grants.Gov: *http://www.grants.gov*. For those applicants without internet access, the above information can be acquired by contacting the following individuals:

National Marine Fisheries Service (NMFS), Joanna Grable, Route: F/MB2, Bldg: SSMC3 Rm: 14359, 1315 East-West Hwy, Silver Spring, MD 20910–3282, Phone: 301–713–1364.

National Ocean Service (NOS), Jane Piercy, Route: N/MB3, Bldg: SSMC4 Rm: 13250, 1305 East-West Hwy, Silver Spring MD 20910–3281, Phone: 301–713–3050.

Office of Atmospheric Research (OAR), Sharon Schroeder, Route: R/OM61, Bldg: SSMC3 Rm: 11464, 1315 East-West Hwy, Silver Spring, MD 20910–3282, Phone: 301–713–2474.

National Weather Service (NWS), Youngnan Cohan, Route: W/CFO2, Bldg: SSMC2 Rm: 18394, 1325 East-West Hwy, Silver Spring MD 20910–3283, Phone: 301–713–0420.

National Environmental Satellite Data Information Service (NESDIS), Ingrid Guch, Route: E/RA1, Bldg: WWBG RM: 701, 5200 Auth RD, Camp Springs, MD 20746–4304, Phone: 301–763–8282.

NOAA, Office of Education, Carrie McDougall, Bldg: HCHB Suite: M6863, 1401 Constitution Ave., NW, Washington, DC 20230–0001, Phone: 202–482–0875.

SUPPLEMENTARY INFORMATION: As an agency with responsibilities for maintaining and improving the viability of marine and coastal ecosystems, for delivering valuable weather, climate, and water information and services, for understanding the science and consequences of climate change, and for supporting the global commerce and transportation upon which we all depend, NOAA must remain current and responsive in an ever-changing world. We do this in concert with our partners and stakeholders in federal, state, and local governments and private organizations, applying a systematic approach that links our strategic goals through multi-year plans to the daily activities of our employees. Every year we are committed to re-evaluate our progress and priorities, look for efficiencies, and take advantage of new opportunities to improve our information, products, and services. In furtherance of this objective, NOAA issues this BAA for extramural research, innovative projects, and sponsorships that address one or more of the following five mission goal descriptions contained in the NOAA Strategic Plan:

1. Protect, Restore, and Manage the Use of Coastal and Ocean Resources through an Ecosystem Approach to Management;

2. Understand Climate Variability and Change to Enhance Society's Ability to Plan and Respond;

3. Serve Society's Needs for Weather and Water Information;

4. Support the Nation's Commerce with Information for Safe, Efficient, and Environmentally Sound Transportation; and

5. Provide Critical Support for NOAA's Mission.

A detailed description for each mission goal can be found in the FFO that can be accessed via the Grants.gov Web site, by contacting the program official identified in the **FOR FURTHER INFORMATION CONTACT** section, or by accessing the following: *http://www.spo.noaa.gov/pdfs/STRATEGIC%20PLANS/Strategic_Plan_2006_FINAL_04282005.pdf*.

Proposals that fall within the scope of a separate competitive program initiative or are duplicative of a nondiscretionary project/program will not be accepted under this BAA and will be rejected by the Line/Program Office. In addition, non-responsive applications, i.e., those not meeting the mission goals of NOAA or the intent of this notice, will not be considered. It should be noted that specific competitive program initiatives may have already been announced and those unanticipated at the time of the publication of this notice may be announced through future **Federal Register** notices.

This announcement also provides guidelines and details for the application process, eligibility, evaluation criteria, and selection procedures. Selected applicants will either enter into a grant or receive a cooperative agreement depending upon the amount of NOAA's involvement in the project - substantial involvement means a cooperative agreement.

Electronic Access

The full text of the full funding opportunity announcement for this BAA can be accessed via the Grants.gov Web site: *http://www.grants.gov*. The announcement will also be available by contacting the program officials identified under **FOR FURTHER INFORMATION CONTACT**. Applicants must comply with all requirements contained in the FFO. This **Federal Register** notice is available through the NOAA home page at: *http://www.noaa.gov*.

You will be able to access, download and submit electronic grant applications for this announcement at *http://www.grants.gov*. The closing dates will be the same as for the paper submissions noted in this announcement. NOAA strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov. Getting started with Grants.gov is easy! Go to *http://www.grants.gov*. There are two key features on the site: Find Grant Opportunities and Apply for Grants. Everything else on the site is designed to support these two features and your use of them. While you can begin searching for grant opportunities for which you would like to apply immediately, it is recommended that you complete the remaining Get Started steps sooner rather than later, so that when you find an opportunity for which you would like to apply, you are ready to go. Individuals do not need a DUNS number to register to submit applications. The system will generate a default value in that field. Individuals who plan to submit a grant application using Grants.gov are required to register with the Credential Provider (Step 3 B) and register with Grants.gov (Step 4 B).

Get Started, Step 1 B: Find Grant Opportunity for Which You Would Like To Apply

Start your search for Federal government-wide grant opportunities and register to receive automatic e-mail notifications of new grant opportunities or any modifications to grant opportunities as they are posted to the site by clicking the Find Grant Opportunities tab at the top of the page.

Get Started, Step 2 B: Organizations Must Register With Central Contractor Registry (CCR)

Your organization will also need to be registered with Central Contractor Registry. You can register with them online. This will take about 30 minutes. You should receive your CCR registration within 3 business days.

Important: You must have a DUNS number from Dun & Bradstreet before you register with CCR. Many organizations already have a DUNS number. To determine if your organization already has a DUNS number or to obtain a DUNS number, contact Dun & Bradstreet at 1–866–705–5711. This will take about 10 minutes and is free of charge. Be sure to complete the Marketing Partner ID (MPIN) and Electronic Business Primary Point of Contact fields during the CCR registration process. These are mandatory fields that are required when submitting grant applications through Grants.gov.

Get Started, Step 3 B: Register With the Credential Provider

You must register with a Credential Provider to receive a username and password. This will be required to securely submit your grant application.

Get Started, Step 4 B: Register With Grants.gov

The final step in the Get Started process is to register with Grants.gov. This will be required to submit grant applications on behalf of your organization. After you have completed the registration process, you will receive e-mail notification confirming that you are able to submit applications through Grants.gov.

Get Started, Step 5: B Log on to Grants.gov

After you have registered with Grants.gov, you can log on to Grants.gov to verify if you have registered successfully, to check application status, and to update information in your applicant profile, such as your name, telephone number, e-mail address, and title. In the future, you will have the ability to determine if you are authorized to submit applications through Grants.gov on behalf of your organization. In the interim, only the authorized representative can submit an application to Grants.gov. Please ensure your organization makes an authorized representative designation.

Electronic Application File Format and Naming Conventions

After the initial grant application package has been submitted to NOAA (e.g., via Grants.gov), requests for additional or modified forms may be requested by NOAA. Applicants should resubmit forms in Portable Document File (PDF) format and follow the following file naming convention to name resubmitted forms. For example: 98042—SF–424–mm–dd–yy—v2.pdf.

(1) 98042 = Proposal (provided to applicant by Grants.gov & NOAA)
(2) SF–424 = Form Number
(3) mm-dd-yy = Date
(4) v2 = Version Number

To learn how to convert documents to PDF go to: *http://www.grants.gov/assets/PDFConversion.pdf*.

The above is suggested in order to obtain consistency and have the documents readily identifiable to the appropriate program and/or grants office staff personnel responsible for the application. The Grants.gov website provides specific instructions regarding conversion. However, in FY2007 applicants can still submit the requested additional documents through the mail or facsimile as a last resort if needed.

Eligibility Criteria and Prescreening Process

Eligible Applicants

Eligible applicants may be institutions of higher education, non-profits, commercial organizations, international or foreign organizations, governments, individuals, state, local and Indian tribal governments. Eligibility also depends on the statutory authority that permits NOAA to fund the proposed activity. Eligible applicants should go to the Catalog of Federal Domestic Assistance (CFDA) to see if they are eligible. A current listing of the CFDA programs that may be eligible for funding can be found in the FFO posted at Grants.gov that accompanies this BAA.

Prescreening Process/Minimum Requirements Review

Upon receipt of a full application by NOAA, an initial administrative review will be conducted to determine eligibility for award, compliance with requirements and completeness of the application. This review includes determining whether or not:

1. Statutory authority exists to provide financial assistance for the project or organization;
2. A complete application package has been submitted;
3. The Project Description/Narrative is consistent with one or more of NOAA's mission goals;
4. The proposal falls within the scope of an existing NOAA competitive announcement or duplicates an existing nondiscretionary project (if it does, it cannot be funded under this announcement); and
5. The work in the proposal will directly benefit NOAA (if it will, it should be supported by a procurement contract, not a financial assistance award which cannot be funded under this announcement, as provided in 31 U.S.C. 6303).

Applications not passing this initial review will be returned to the applicant.

Evaluation Criteria and Selection Procedures

All proposals submitted in response to this BAA shall be evaluated and selected in accordance with the following procedures.

Proposal Review and Selection Process

NOAA will evaluate proposal(s) determined to be eligible under this BAA individually (i.e., proposals will be not compared to each other). Proposals are judged and awarded based on the evaluation factors described below so long as funds, if any, are available. The merit review is conducted by mail reviewers and/or peer panel reviewers. Each reviewer will individually evaluate the proposal(s) using the evaluation criteria provided below. A minimum of three merit reviewers per proposal is required. The reviewers may be any combination of Federal and/or non-federal personnel. The proposal(s) will be individually scored (i.e., a consensus is not reached) unless all reviewers are Federal employees. Only then can a consensus be reached by the Federal reviewers, at the discretion of the selection official. NOAA selects evaluators on the basis of their professional qualifications and expertise as related to the unique characteristics of the proposal. The NOAA Program Officer will assess the evaluations and make a fund or do not fund recommendation to the Selecting Official based on the evaluations of the reviewers. The Selecting Official selects proposal(s) after considering the reviews and recommendations of the Program Officer. Any application considered for funding may be required to address the issues raised in the evaluation of the proposal by the reviewers, Program Officer, Selecting Official, and/or Grants Officer before an award is issued.

Applications not selected for funding under this announcement in FY2007 may be considered for funding from FY2008 funds but, in response to NOAA's request, may be required to revalidate the terms of the original application or resubmit in the next BAA cycle if one is published for the next fiscal year.

Proposals not selected for funding will be destroyed.

The Program Officer, Selecting Official and/or Grants Officer may negotiate the final funding level of the proposal with the intended applicant. The Selecting Official makes the final recommendation for award to the

NOAA Grants Officer who is authorized to commit the Federal Government and obligate the funds.

Evaluation Criteria for BAA Projects

NOAA has standardized evaluation criteria for all competitive assistance announcements. The criteria as applied to this BAA are listed below. Since proposals responding to this BAA may vary significantly in their activities/objectives, assigning a set weight for each evaluation criterion is not feasible but is based on a total possible score of 100. The Program Office and/or Selection Official will determine which of the following criteria and weights will be applied. Some proposals, for example sponsorships, may not be able to be evaluated against all the criteria like technical/scientific merit. However, it is in your best interest to prepare a proposal that can be easily evaluated against these five criteria.

1. Importance and/or Relevance and Applicability of Proposed Project to the Mission Goals

This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, federal, regional, state, or local activities: i.e., How does the proposed activity enhance NOAA's strategic plan and mission goals? Proposals should also address significance/possibilities of securing productive results: i.e., Does this study address an important problem?; If the aims of the application are achieved, how will scientific knowledge be advanced?; What will be the effect of these studies on the concepts or methods that drive this field?; What effect will the project have on improving public understanding of the role the ocean, coasts, and atmosphere in the global ecosystem? Proposals will also be scored for innovation: i.e., Does the project employ novel concepts, approaches or methods?: Are the aims original and innovative?: Does the project challenge existing paradigms or develop new methodologies or technologies?

2. Technical/Scientific Merit

This assesses whether the approach is technically sound and if the methods are appropriate, and whether there are clear project goals and objectives. Proposals should address the approach/soundness of design: i.e., Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project?; Does the applicant acknowledge potential problem areas and consider alternative tactics? This criterion should also address the applicant's proposed methods for monitoring, measuring, and evaluating the success or failure of the project: i.e., What are they? Are they appropriate?

3. Overall Qualifications of Applicants

This ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project. If appropriate, proposals should also address the physical environment and collaboration, if any: i.e., Does the environment in which the work will be done contribute to the probability of success? Do the proposed experiments or activities take advantage of unique features of the intended environment or employ useful collaborative arrangements?

4. Project Costs

The Budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame.

5. Outreach and Education

NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's environmental resources. For example, how will the outcomes of the project be communicated to NOAA and the interested public to ensure it has met the project objectives over the short, medium or long term? Does the project address any of the goals or employ any of the strategies of the NOAA Education Plan (*http://www.oesd.noaa.gov/NOAA_Ed_Plan.pdf*)?

STATUTORY AUTHORITY: The specific program authority will vary depending on the nature of the proposed project. A list of the most prevalent assistance authorities are 15 U.S.C. 1540; 15 U.S.C. 2901 *et seq.*; 16 U.S.C. 661; 16 U.S.C. 1456c; 33 U.S.C. 883a-d; 33 U.S.C. 1442; 49 U.S.C. 44720(b).

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER: The CFDA number will vary depending on the nature of the proposed project. The applicant should consult the Catalog of Federal Domestic Assistance series 11.400 - 11.481 and review the subset of CFDA's applicable to this BAA to select the most accurate program for the proposed project. The link to the catalog for NOAA programs is as follows: *http://12.46.245.173/pls/portal30/CATALOG.BROWSE_SUBAGENCY_PROGRAM_RPT.SHOW?p_arg_names=agency_id&p_arg_values=206*.

FUNDING AVAILABILITY: There is no direct level of Congressional funding available for this BAA. Funding of a project is completely at the discretion of the program office willing to support the proposed activities. Appropriations from FY2007 or FY2008 (if and when available) may be used to fund applications in response to this BAA.

APPLICATION DEADLINE: Full applications can be submitted on a rolling basis up to 5 p.m. Eastern Time September 28, 2007. Applications received after this time will be returned without review. Applications shall be evaluated for funding generally within 3 to 6 months of receipt. An applicant can expect to receive either a rejection notice, request for additional information, and/or award within that timeframe.

COST SHARING REQUIREMENTS: Cost sharing is not required unless it is determined that a project can only be funded under an authority that requires matching funds.

APPLICATION REQUIREMENTS: Full applications will be required to submit the standard forms as posted in the FFO, in addition to a project narrative (which must include a synopsis which is not to exceed one page), budget narrative, and project timeline.

INTERGOVERNMENTAL REVIEW: Applications under this program may be subject to Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs.'' Refer to the appropriate CFDA number listed on your application for the applicability of this E.O. to your proposal.

Limitation of Liability

Funding for potential projects in this notice is contingent upon the availability of fiscal year 2007 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for any proposed activities in this notice. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Universal Identifier

Applicants should be aware that, for programs which have deadline dates on or after October 1, 2003, they may be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 **Federal Register** (67 FR 66177) for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the internet (*http://www.dunandbradstreet.com*).

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216--6--TOC.pdf*, NEPA Questionnaire, *http://www.nepa.noaa.gov/questionnaire.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc--ceq.htm*. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations

a. This section applies to the extent that this BAA results in financial assistance awards involving access to export-controlled information or technology.

b. In performing a financial assistance award, the recipient may gain access to export-controlled information or technology. The recipient will then be responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including deemed exports. The recipient shall establish and maintain throughout performance of the financial assistance award effective export compliance procedures at non-NOAA facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled information and technology.

c. Definitions

1. *Deemed export.* The Export Administration Regulations (EAR) define a deemed export as any release of technology or source code subject to the EAR to a foreign national, both in the United States and abroad. Such release is ''deemed'' to be an export to the home country of the foreign national. 15 CFR 734.2(b)(2)(ii).

2. *Export-controlled information and technology.* Export-controlled information and technology is information and technology subject to the EAR (15 CFR parts 730 *et seq.*), implemented by the DOC Bureau of Industry and Security, or the International Traffic I Arms Regulations (ITAR) (22 CFR parts 120–130), implemented by the Department of State, respectively. This includes, but is not limited to, dual-us items, defense articles and any related assistance, services, software or technical data as defined in the EAR and ITAR.

d. The recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of a financial assistance award, to ensure that access is restricted, or licensed, as required by applicable Federal laws, Executive Orders, and/or regulations.

e. Nothing in the terms of this section is intended to change, supersede, or waive any of the requirements of applicable Federal laws, Executive Orders or regulations.

f. The recipient shall include this clause, including this paragraph (f), in all lower tier transactions (subawards, contracts, and subcontracts) under the financial assistance award that may involve access to export-controlled information technology.

NOAA implementation of Homeland Security Presidential Directive - 12

If the performance of a financial assistance award, if approved by NOAA, requires recipients to have physical access to Federal premises for more than 180 days or access to a Federal information system, any items or services delivered under a financial assistance award shall comply with the Department of Commerce personal identity verification procedures that implement Homeland Security Presidential Directive - 12, FIPS PUB 201, and the Office of Management and Budget Memorandum M–05–24. The recipient shall insert this clause in all subawards or contracts when the subaward recipient or contractor is required to have physical access to a Federally controlled facility or access to a Federal information system.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424 and 424A, 424B, 424C, 424D, SF-LLL, and CD–346 has been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical

requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: February 12, 2007.

Daniel L. Clever,

Deputy Director, Acquisition and Grants Office, National Oceanic and Atmospheric Administration.

[FR Doc. E7–2833 Filed 2–19–07; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021207B]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Applications for three scientific research permits and one modification.

SUMMARY: Notice is hereby given that NMFS has received four scientific research permit application requests relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts.

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on March 22, 2007.

ADDRESSES: Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to 503–230–5441 or by e-mail to *resapps.nwr@NOAA.gov.*

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (ph.: 503–231–2005, Fax: 503–230–5441, e-mail: *Garth.Griffin@noaa.gov*). Permit application instructions are available from the address above.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened lower Columbia River (LCR), endangered upper Columbia River (UCR), threatened Snake River (SR) spring/summer-run (spr/sum), threatened SR fall-run, threatened Puget Sound (PS).

Chum salmon (*O. keta*): threatened Columbia River (CR), threatened Hood Canal (HC).

Steelhead (*O. mykiss*): threatened LCR, threatened middle Columbia River (MCR), threatened Snake River (SR), threatened UCR, proposed threatened PS.

Coho salmon (*O. kisutch*): threatened LCR.

Sockeye salmon (*O. nerka*): threatened Ozette Lake (OL), endangered SR.

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et. seq*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1339

The Columbia River Inter-tribal Fish Commission (CRITFC) is currently authorized to annually take adult, threatened, SR spr/sum Chinook salmon and adult, threatened, SR steelhead while conducting research in a number of the tributaries to the Imnaha River in Oregon. Their permit to do so is expiring this year and they desire to renew it for another five years. The purpose of the research is to acquire information on the status (escapement abundance, genetic structure, life history traits) of steelhead in the Imnaha River Basin. The research will continue to benefit the listed species by providing information that fisheries managers can use to determine if recovery actions are helping increase wild Snake River salmonid populations. Baseline information on steelhead populations in the Imnaha River Basin would also be used to help guide future management actions. Adult salmon and steelhead would be observed/harassed during spawning ground surveys and snorkeling activities. They would also be collected using temporary/portable picket weirs, sampled for biological information, sampled for fin tissues and scales, marked with opercule punches, tagged with Tyvek disc tags, and released. Adult steelhead carcasses would also be collected and sampled for tissues and/or scales and biological information. The CRITFC does not intend to kill any of the fish being captured but a small number may die as an unintended result of the activities.

Permit 1379 — Modification 2

For a number of years, CRITFC has been permitted to annually take UCR Chinook salmon, UCR steelhead, SR spr/sum Chinook salmon, SR fall Chinook salmon, SR sockeye salmon, LCR Chinook salmon, and LCR coho salmon while conducting three studies designed to increase what we know about the status and productivity of various fish populations, collect data on migratory and exploitation (harvest) patterns, and develop baseline information on various population and habitat parameters in order to guide salmonid restoration strategies. The studies are: Project 1 Juvenile Upriver Bright Fall Chinook Sampling at the Hanford Reach; Project 2 Adult Chinook, Sockeye, and Coho Sampling at Bonneville Dam; and Project 3 Adult Sockeye Sampling at Tumwater Dam, Wenatchee River.

This year, CRITFC is seeking to add three new aspects to their currently allowed research: (1) They wish add adult tagging as a permitted activity for all species sampled at Bonneville Dam; (2) they are seeking to add adult steelhead sampling at Bonneville Dam to their permit rather than having it covered by a separate permit (this action would necessitate adding MCR steelhead to the permit); and (3) they seek to increase their allowable take for the Hanford project as it appears likely they will receive funding for a new project which would increase the number of UCR and SR spring-run Chinook salmon they catch.

The research would benefit listed fish by helping managers set in-river and ocean harvest regimes so that they have minimal impacts on listed populations. It would also help managers prioritize projects in a way that gives maximum benefit to listed species including projects designed to help the listed fish recover. The CRITFC does not intend to kill any of the fish being captured but a small number may die as an unintended result of the activities.

Permit 1590

The U.S. Army Corps of Engineers (USACE) is requesting a permit to annually take juvenile PS Chinook salmon and HC chum salmon over the next five years. The research would also affect the PS steelhead (currently proposed for listing as ''threatened''). The purpose of the research is to study the marine phase of ''resident'' Chinook salmon, a life-history type that rears to adulthood in the Puget Sound marine zone foregoing the typical ocean migration of the species. The goals are to describe the behavior and life history of resident Chinook salmon, and determine whether the proportion of PS Chinook salmon adopting this resident pattern varies among populations and hatchery stocks. Research activities would be conducted throughout the marine zone of Puget Sound and Hood Canal, Washington. The information gathered by this research would be used to develop a conceptual model of the life history of resident PS Chinook. The research would benefit PS Chinook by helping managers develop a better understanding of the abundance, distribution, and habitat requirements of this life history strategy. The USACE proposes to capture fish using shoreline and boat angling, beach seining, and purse-seining. Captured fish would be anesthetized, measured, checked for fin clip or CWT, tagged with acoustic or archival loggers, and fin clipped for tissue samples. Additionally, stomach content samples would be collected from a portion of the captured fish. The USACE does not intend to kill any of the fish being captured but a small number may die as an unintended result of the activities.

Permit 1598

The Washington Department of Transportation (WSDOT) is requesting a 5-year research permit to annually take all fish species identified in this notice while conducting research throughout the State of Washington. The purpose of the research is determine the distribution and diversity of anadromous fish species in waterbodies crossed by or adjacent to the state transportation systems (highways, railroads, and/or airports). The surveys would help establish presence of listed salmon and steelhead in waterbodies about which we currently have little data. That information would be used to assess the impacts proposed projects may have on listed species. The research would benefit the listed species by helping WSDOT develop best management practices and in-water work window timing so they can minimize the harm their projects may do to listed fish. Survey methods would depend on the size of the stream system and may include snorkel surveys, dip nets, stick seines, baited gee minnow traps and electrofishing. Fish would be captured, identified, and released in the same location. The WSDOT does not intend to kill any of the fish being captured but a small number may die as an unintended result of the activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: February 14, 2007.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–2847 Filed 2–19–07; 8:45 am]

BILLING CODE 3510–22–S

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Wednesday, February 21, 2007 at 10 a.m.

PLACE: 999 E. Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 07–781 Filed 2–15–07; 3:42 pm]

BILLING CODE 6715–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Thursday, February 22, 2007, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Regulations Priority.

Future Meeting Dates.

Management and Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 07–782 Filed 2–15–07; 3:42 pm]

BILLING CODE 6715–01–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; United States-Caribbean Basin Trade Partnership Act

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the United States-Caribbean Basin Trade Partnership Act. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 23, 2007, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C., 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments

should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: United States-Caribbean Basin Trade Partnership Act.

OMB Number: 1651–0083.

Form Number: CBP–450.

Abstract: The collection of information is required to implement the duty preference provisions of the United States-Caribbean Basin Trade Partnership Act.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 440.

Estimated Time Per Respondent: 42.5 hours.

Estimated Total Annual Burden Hours: 18,720.

Estimated Total Annualized Cost on the Public: N/A.

Dated: February 12, 2007.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. E7–2827 Filed 2–16–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; African Growth and Opportunity Act Certificate of Origin

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the African Growth and Opportunity Act Certificate of Origin. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 23, 2007, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C., 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: African Growth and Opportunity Act Certificate of Origin.

OMB Number: 1651–0082.

Form Number: None.

Abstract: The collection of information is required to implement the duty preference provisions of the African Growth and Opportunity Act (AGOA) to provide extension of duty-free treatment under the Generalized System of Preferences (GSP) to sensitive articles normally excluded from GSP duty treatment. It also provides for the entry of specific textile and apparel articles free of duty and free of any quantitative limits to the countries of sub-Saharan Africa.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 440.

Estimated Time Per Respondent: 23 hours.

Estimated Total Annual Burden Hours: 10,400.

Estimated Total Annualized Cost on the Public: N/A.

Dated: February 12, 2007.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. E7–2829 Filed 2–16–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Issuance of Final Determination Concerning Bolt Container Seals and Cable Seals

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that the Bureau of Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of certain bolt container seals and cable seals to be offered to the United States Government under an undesignated government procurement contract. For each of the

two products, two different manufacturing scenarios were presented. Based upon the facts presented, the final determination found that China is the country of origin of the bolt container seal for purposes of U.S. Government procurement where the product is assembled in the United States from components of Chinese and Malaysian origin. Where a U.S.-origin lock body is used in the assembly of the bolt container seal in the United States, the final determination found that the country of origin of the lock body assembly is the United States and the country of origin of the imported bolt shank is China. With regard to the cable seal, the final determination found that the country of origin of the cable seal assembled in the United States from components of Chinese and Malaysian origin is China for purposes of U.S. Government procurement. The final determination also found that where a U.S.-origin lock body is used in the assembly of the cable seal in the United States, the country of origin of the cable seal is the United States for purposes of U.S. Government procurement.

DATES: The final determination was issued on February 8, 2007. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of February 20, 2007.

FOR FURTHER INFORMATION CONTACT: Holly Files, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202–572–8817).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on February 8, 2007, pursuant to Subpart B of Part 177, Customs Regulations (19 CFR Part 177, subpart B), CBP issued a final determination concerning the country of origin of certain bolt container seals and cable seals to be offered to the United States Government under an undesignated government procurement contract. The CBP ruling number is HQ W563587. This final determination was issued at the request of TydenBrammall under procedures set forth at 19 CFR Part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18).

The final determination examined four different manufacturing scenarios. The first two scenarios involve the manufacture of the bolt container seal. The third and fourth scenarios involve the manufacture of the cable seal. The first scenario proposed the assembly of the bolt container seal in the United States solely from parts of foreign origin. In the second scenario, the bolt container seal was assembled in the United States from parts of U.S. and foreign origin. The final determination concluded that, based upon the facts presented in the first scenario, the assembly and packaging in the United States of five foreign-origin components to create the bolt container seal did not substantially transform the foreign components into a product of the United States. In the second scenario, the final determination found that the assembly of a U.S.-origin lock body with other foreign-origin components in the United States to form a lock body assembly substantially transformed the foreign components of the lock body assembly into a product of the United States. However, as one foreign-origin component, the bolt shank, was merely packaged with the lock body assembly, the final determination found that the bolt shank was not substantially transformed into a product of the United States. In the third scenario, the cable seal was assembled in the United States solely from parts of foreign origin. The fourth scenario involved the assembly of the cable seal in the United States from parts of U.S. and foreign origin. Based upon the facts presented in the third scenario, the final determination concluded that the assembly in the United States of four components of foreign origin to create the container seal did not substantially transform the foreign-origin components into a product of the United States. With regard to the facts presented in the fourth scenario, the final determination concluded that the assembly in the United States of a U.S.-origin lock body with foreign-origin components to create the container seal substantially transformed the foreign components into a product of the United States.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, Customs Regulations (19 CFR 177.30), states that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: February 13, 2007.

Sandra L. Bell,

Executive Director, Office of Regulations and Rulings, Office of International Trade.

HQ W563587

February 8, 2007.

MAR–2–05 RR:CTF:VS W563587 HEF

Category: Marking

Mr. William L. Matthews
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037–1122

RE: U.S. Government Procurement; Final Determination; country of origin of bolt container seals and cable seals; substantial transformation; 19 CFR Part 177

Dear Mr. Matthews:

This is in response to your letter dated September 5, 2006, requesting a final determination on behalf of TydenBrammall, pursuant to subpart B of Part 177, Customs Regulations (19 CFR 177.21 *et seq.*). Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 USC 2511 *et seq.*), U.S. Customs and Border Protection (''CBP'') issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated foreign country or instrumentality for the purpose of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of certain bolt container seals and cable seals. We note that TydenBrammall is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination. Confidential treatment for certain business information identified in your request for a final determination will be extended in accordance with your request. Photographs of the bolt container seals and cable seals were submitted with your request. In preparing this final determination, consideration was given to your supplemental submission dated December 12, 2006.

Facts:

I. Vu Bolt Container Seal

You advise us that TydenBrammall will manufacture Vu Bolt Container Seals at its production facility in Angola, Indiana. The container seals are used to secure rail, container, and truck cargo shipments. The container seal is composed of the following five components: bolt shank, lock body, locking ring, inner cover, and clear cover. The bolt shank, lock body, and locking ring are manufactured in China. The inner cover and clear cover are manufactured in Malaysia.

At the Indiana facility, a machine operator uses a press to seat the locking ring within the grooves of the lock body, and the operator gauges the locking ring to ensure proper placement within the lock body. Next, the lock body is inserted into the inner cover to form the lock body subassembly. The lock body subassembly is placed into a linear inkjet marking machine where a custom serialization number is applied to the subassembly. Then, the serialized subassemblies are inspected to ensure the correct serialization and quality. The serialized subassemblies are moved to an ultrasonic welding station where they are aligned in rows of five by ten and covered by the clear cover. There, the subassembly

and clear cover are ultrasonically welded together and then inspected for quality. Finally, the completed subassemblies are packaged together with the bolt shanks in packages of 200 Vu Bolt Container Seals per box.

You also request that CBP issue a final determination for an identical assembly process except that the lock body is of U.S. origin.

II. XBorder Cable Seal

You advise us that TydenBrammall will manufacture the XBorder Cable Seal at its production facility in Angola, Indiana. The XBorder Cable Seal is intended for one-time use on trucks, shipping containers, and freight rail cars. A TydenBrammall press release emphasizes that the seal has a secure and permanent locking mechanism that makes cargo tampering virtually impossible without detection. Press Release, TydenBrammall, Xborder™ Seal Secures High Risk Cargo, *http://www.tydenbrammall.com/cargoguy/pressreleases/xborder.pdf* (last visited November 15, 2006). The XBorder Cable Seal is composed of the following four components: bolt shank, lock body, non-preformed cable, and locking ring. The bolt shank, lock body, and locking ring are manufactured in China, and the non-preformed cable is manufactured in Malaysia.

To begin the U.S. assembly operation, a machine operator uses a press to seat the locking ring within the grooves of the lock body and gauges the locking ring to ensure its proper placement. Then, the operator uses a multi-headed electrical resistance cutting machine to cut the non-preformed cable to a specified length. Next, both ends of the cable are ground using an abrasive belt to taper the welded tips of the cable. Then, one end of the cable is positioned at the bolt shank to form the bolt shank subassembly. The bolt shank subassembly is inserted into a swaging press that applies an eight-axis crimp to the subassembly. The other end of the cable is positioned at the lock body to form the lock body subassembly. The lock body subassembly is inserted into a swaging press that applies an eight-axis crimp to the subassembly. Then, both crimps of the cable seal are inspected for quality by examining the depth and position of the crimps. Next, a custom serial number is applied to the cable seal using a laser. The finished XBorder Cable Seals are inspected for quality, bundled into groups of 10 and packaged 100 per box.

You also request that CBP issue a final determination for an identical assembly process except that the lock body is of U.S. origin.

Issue:

What are the countries of origin of the bolt container seal and the cable seal for purposes of U.S. Government procurement?

Law and Analysis:

Pursuant to Subpart B of Part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 CFR 177.22(a).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens* v. *United States*, 6 Ct. Int'l Trade 204, 573 F. Supp. 1149 (1983), aff'd, 741 F.2d 1368 (Fed. Cir. 1984). If the manufacturing or combining process is a minor one which leaves the identity of the imported article intact, a substantial transformation has not occurred. *Uniroyal Inc.* v. *United States*, 3 Ct. Int'l Trade 220, 542 F. Supp. 1026 (1982). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See C.S.D. 80–111, C.S.D. 85–25, and C.S.D. 90–97.

In order to determine whether a substantial transformation occurs when components of various origins are assembled to form completed articles, CBP considers the totality of the circumstances and makes such decisions on a case-by-case basis. The country of origin of the article's components, the extent of the processing that occurs within a given country, and whether such processing renders a product with a new name, character, or use are primary considerations in such cases. Additionally, facts such as resources expended on product design and development, extent and nature of post-assembly inspection procedures, and worker skill required during the actual manufacturing process will be considered when analyzing whether a substantial transformation has occurred; however, no one such factor is determinative.

I. Vu Bolt Container Seal

CBP has considered a number of different scenarios involving the assembly of locking apparatus. Each case presents a slightly different set of facts. In Headquarters Ruling Letter (''HRL'') 734440, dated March 30, 1992, CBP found that a lock apparatus was substantially transformed in the United States as a result of combining it with pieces manufactured in the United States. CBP noted that the predominant expense of the assembled lock was in the parts produced in the United States, which required extensive manufacturing and development. By contrast, the imported piece was a generic mechanism that was inserted into the U.S. pieces.

In HRL 734923, dated May 14, 1993, CBP determined that imported components of a door lockset, the rosettes and parts of the latch, were substantially transformed when they were assembled together with significant U.S. components in the United States to make the finished door lockset. CBP noted that the manufacture of the rosettes in China was relatively simple and did not require a great deal of precision as compared to the manufacture of the other components in the United States, which required significant precision and substantial machinery and tooling.

Similarly, in HRL 735198, dated March 1, 1995, CBP held that imported lock cases and cylinder retainer blocks were substantially transformed into industrial padlocks in the United States as a result of their assembly with a substantial number of U.S.-origin components. CBP found that the character of the lock case and cylinder retainer block was changed as a result of their incorporation into the finished padlock.

By contrast, in HRL 734227, dated June 26, 1992, CBP found that chrome plated levers did not lose their separate identity when they were combined with domestic locksets to form completed lever locksets. CBP reasoned that the levers were a significant component of the completed article, and their assembly in no way changed the character of the levers. The levers were clearly recognizable both before and after the assembly. Moreover, the lever was a separate component, which had to be disassembled from the rest of the lockset prior to its installation.

In HRL 734629, dated October 1, 1992, CBP found that a lock cylinder was not substantially transformed where it was not attached to the remaining pieces of the lock until after it was received by the installer. Furthermore, CBP noted that the lock cylinder did not lose its separate identity when combined with the remaining pieces. The cylinder remained visible even after assembly by the installer and the attachment process was a simple screw mount, which meant that the cylinder easily could be replaced.

In HRL 735133, dated May 5, 1994, CBP held that imported lock parts and assemblies were not substantially transformed when assembled in the United States with a U.S.-origin coverplate screw. CBP noted that most of the cost in making the finished lock was attributable to operations performed in Taiwan and that the production in the United States was a simple manual assembly operation of basically finished parts.

In the first scenario, TydenBrammall proposes to assemble the Vu Bolt Container Seal entirely from imported parts. You contend that the various components are substantially transformed based on their assembly in the U.S. alone. The U.S. assembly operation that you describe consists of the assembly of a small number of parts, the addition of a serial number, the ultrasonic welding of a clear cover to the lock body assembly, and the packaging of the finished lock body assembly with the imported bolt shank. Similar to the situation described in HRL 735133, *supra,* we find that the described manufacturing process is a simple assembly operation of imported

components that is not complex and meaningful enough to result in a substantial transformation. In considering the last country in which the container seal underwent a substantial transformation, we believe that the lock body primarily imparts the essential character of the container seal. While the seal numbers are a unique feature to the container seal, the lock body is the component that imparts the ability of the container seal to actually lock and secure the cargo. The lock body is also the most valuable component of the container seal. Therefore, based on the facts presented in the first scenario, we find that China is the country of origin of the Vu Bolt Container Seal.

In the second scenario, TydenBrammall proposes to assemble the Vu Bolt Container Seal in the same manner except that the lock body is of U.S. origin. According to the confidential figures you have provided, the cost of the lock body represents a significant percentage of the total cost of the components used in the Vu Bolt Container Seal. In fact, under this scenario, most of the cost in making the container seal is attributable to the U.S. part and the labor performed in the United States. Furthermore, as noted above, we find that the lock body imparts the essential character of the container seal. Thus, we find that the imported locking ring, inner cover, and clear cover are substantially transformed when assembled in the United States with the U.S.-origin lock body to form the lock body assembly.

However, we also find that the Chinese-origin bolt shank is not substantially transformed when packaged with the lock body assembly in the United States. In HRL 734219, dated September 3, 1991, CBP ruled that water pans and charcoal pans were not substantially transformed when combined in the United States with other domestic and foreign components of smoker/grill units. CBP reasoned that the water pans and charcoal pans were completely finished articles when imported, there was no extensive manufacturing process involved, and that placing the pans into a container with other domestic and foreign articles was a minor operation, required no skill, and was not time-consuming. CBP noted that the pans were not permanently attached either before sale or once assembly of the unit was completed by the consumer. Moreover, Customs observed that the pans were functionally necessary to the use of the smoker/grill units, in that the units could not perform the essential operations of barbecuing, smoking, roasting or steaming without the pans.

In the instant case, the bolt shank is a finished article when it is imported into the United States. In the United States, it is merely packaged with the lock body assembly. This act is not an extensive manufacturing process. The bolt shank is not attached to the lock body assembly prior to the sale of the container seal. When the U.S. customer attaches the bolt shank, it remains clearly visible. Furthermore, the bolt shank is functionally necessary to the essential operation of the container seal. As such, the bolt shank is not substantially transformed as a result of packaging it with the lock body assembly. Therefore, the country of origin of the bolt shank is China. We note that the distinction between the origins of the bolt shank and the lock body assembly is not necessary in the first assembly scenario, as the country of origin for both the bolt shank and the lock body assembly is China.

Based upon the information provided, we find that China is the country of origin of the Vu Bolt Container Seal that is produced entirely from Chinese and Malaysian parts. Where TydenBrammall uses a U.S. lock body in the assembly of the product in the United States, the country of origin of the lock body assembly is the United States and the country of origin of the bolt shank is China.

II. XBorder Cable Seal

In the first scenario, you propose to manufacture the XBorder Cable Seal using imported components only. On numerous occasions, CBP has considered various manufacturing processes performed on wire and cable and whether such processes result in substantial transformations. In HRL 561392, dated June 21, 1999, CBP held that the cutting of a cable to length and the assembly of the cable to connectors did not result in a substantial transformation. In HRL 561392, all of the components were from Taiwan and the operations were performed in China.

In HRL 560214, dated September 3, 1997, CBP found that where imported wire rope cable was cut to length, U.S.-origin sliding hooks were put on the rope, and U.S.-origin end ferrules were swaged on in the United States, the wire rope cable was not substantially transformed.

In HRL 555774, dated December 10, 1990, CBP held that no substantial transformation occurred where Japanese wire was cut to length and U.S.-origin electrical connectors were crimped onto the ends of the wire in the United States.

Consistent with these decisions, we find that a substantial transformation does not occur as a result of operations described in the first scenario, which include cutting an imported cable to a specified length, grounding its ends, crimping an imported bolt shank and imported lock body onto the ends, and serializing the product with a laser. In considering the last country in which the cable seal underwent a substantial transformation, we believe that the essential character of the cable seal is derived from the lock body, which enables the cable ends to be sealed permanently to secure the cargo and prevent tampering without detection. Therefore, the country of origin of the XBorder Cable Seal is China.

In the second scenario, TydenBrammall proposes to assemble the XBorder Cable Seal in the same manner except that the lock body is of U.S. origin. According to the confidential figures you have provided, the lock body is by far the most valuable component of the cable seal. In fact, most of the cost in making the finished cable seal is attributable to the U.S. part and labor performed in the United States. As we stated above, we also believe that the lock body imparts the essential character of the cable seal. Therefore, we find that the components of foreign origin are substantially transformed when they are assembled with the U.S. lock body in the United States to form the cable seal. Based on these specific facts, the country of origin of the XBorder Cable Seal is the United States.

Holding:

Based upon the facts provided, we find that where the Vu Bolt Container Seal is assembled from Chinese and Malaysian components in the United States, the components are not substantially transformed. The country of origin for the Vu Bolt Container Seal for purposes of U.S. Government procurement is China.

Where the lock body assembly of the Vu Bolt Container Seal is assembled in the United States using a U.S.-origin lock body, we find that the imported locking ring, inner cover and clear cover are substantially transformed. Thus, the country of origin of the lock body assembly for purposes of U.S. Government procurement is the United States. In addition, we hold that the Chinese-origin bolt shank does not undergo a substantial transformation. Therefore, the country of origin of the bolt shank for purposes of U.S. Government procurement is China.

Where the XBorder Cable Seal is assembled from imported components in the United States, the imported components do not undergo a substantial transformation. Based on these facts, the country of origin of the XBorder Cable Seal for purposes of U.S. Government Procurement is China.

Where the XBorder Cable Seal is assembled in the United States from imported components and a U.S.-origin lock body, we find that the imported components undergo a substantial transformation. Therefore, the country of origin of this XBorder Cable Seal for purposes of U.S. Government procurement is the United States.

Notice of this final determination will be given in the **Federal Register** as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Any party-at-interest may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell,

Executive Director, Office of Regulations and Rulings, Office of International Trade.

[FR Doc. 07–740 Filed 2–16–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5055–N–02]

Use of Census Data in the Indian Housing Block Grant Program (IHBG); Notice of Reopening of Public Comment Period

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of reopening of public comment period.

SUMMARY: On December 12, 2006, HUD published a notice in the **Federal Register** seeking public comment on HUD's use of multi-race data in the computation of the Indian Housing Block Grant (IHBG) program formula. This notice reopens the public comment period.

DATES: *Comment Due Date:* April 23, 2007

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Interested persons may also submit comments electronically through the federal electronic rulemaking portal at: *www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically in order to make them immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically. Facsimile (FAX) comments are not acceptable. All communications must refer to the docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Divisions at (202) 708–3055 (this is not a toll-free number). Copies of the public comments submitted are also available for inspection and downloading at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW., Room 4126, Washington, DC 20410–5000; telephone 202–401–7914 (this telephone number is not toll-free). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On December 12, 2006 (71 FR 74748), HUD published a notice in the **Federal Register** that invited public comment on HUD's use of multi-race data in the computation of the IHBG program allocation formula. Specifically, HUD invited public comments on the feasibility of using either single race or multi-race data to determine funding for the Need component of the IHBG formula. See the December 12, 2006, notice for further information.

Since publication, HUD has learned that several commenters are unable to submit their comments by the original, February 12, 2006, deadline. Therefore, the deadline for public comments is being reopened for an additional 60 days to allow additional time for public input. Following HUD's review and consideration of the comments received on this notice, HUD may proceed with rulemaking as necessary.

Dated: February 12, 2007.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

[FR Doc. E7–2832 Filed 2–16–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5076–D–17]

Delegation and Redelegation of Authority for the Office of the Inspector General

AGENCY: Office of the Inspector General, HUD.

ACTION: Notice of delegation and redelegation of authority.

SUMMARY: This notice updates the delegation of authority of the Office of the Inspector General to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by the Inspector General Act to the Deputy Inspector General, the Assistant Inspectors General, the Deputy Assistant Inspectors General, the Special Agents in Charge, the Regional Inspectors General for Audit, and the Directors within the Office of Audit. This notice also redelegates to the above-mentioned officials the authority of the Inspector General to cause the seal of the Department to be affixed to certain documents and to certify that a copy of any book, record, paper, microfilm or other document is a true copy of that in the files of the Department. This notice also delegates the authority to the Deputy Inspector General, the Assistant Inspector General for Investigation, the Deputy Assistant Inspectors General for Investigation, and the Special Agents in Charge, to request information under 5 U.S.C. section 552a(b)(7).

EFFECTIVE DATE: February 12, 2007.

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Counsel to the Inspector General, Office of the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8260, Washington, DC 20410–4500, telephone (202) 708–1613. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 6(a)(4) of the Inspector General Act of 1978 (5 U.S.C. app.) authorizes the Inspector General to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by the Inspector General Act. This notice delegates this authority to issue subpoenas from the Inspector General to the Deputy Inspector General, the Assistant Inspectors General, the Deputy Assistant Inspectors General, the Special Agents in Charge, the Regional Inspectors General for Audit, and the Directors within the Office of Audit.

This notice also redelegates to the above-mentioned officials the authority delegated to the Inspector General by the Secretary of HUD in the Delegation of Authority published on July 15, 2003, at 68 FR 41840, which delegated to various officials, including the Inspector General, the authority to cause the seal of the Department to be affixed to certain documents and to certify that a copy of any book, record, paper, microfilm or other document is a true copy of that in the files of the Department.

Section 552a(b)(7) authorizes the Inspector General to request information protected by the Privacy Act for a civil or criminal law enforcement activity. This notice delegates to the Deputy Inspector General, the Assistant Inspector General for Investigations, the Deputy Assistant Inspectors General for Investigations, and the Special Agents in Charge, the authority to request information under 5 U.S.C. section 552a(b)(7).

The Inspector General has not limited his authority to issue subpoenas or to affix the Departmental seal and certify copies of records, or to request information under 5 U.S.C. § 552a by this delegation or redelegation. Also, this delegation and redelegation of authority prohibits further delegation or redelegation.

Accordingly, the Inspector General delegates and redelegates as follows:

Section A. Authority Delegated and Redelegated

The HUD Inspector General delegates to the Deputy Inspector General, the Assistant Inspectors General, the Deputy Assistant Inspectors General, the Special Agents in Charge, the Regional Inspectors General for Audit and the Directors within the Office of Audit, the authority to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by the Inspector General Act pursuant to Section 6(a)(4) of the Inspector General Act of 1978.

Additionally, the Inspector General redelegates to the Deputy Inspector General, the Assistant Inspectors General, the Deputy Assistant Inspectors General, the Special Agents in Charge, the Regional Inspectors General for Audit and the Directors within the Office of Audit, the authority under the delegation of authority published at 68 FR 41840 (July 15, 2003) to cause the seal of the Department of Housing and Urban Development to be affixed to such documents as may require its application and to certify that a copy of any book, record, paper, microfilm or other document is a true copy of that in the files of the Department.

Additionally, the Inspector General delegates to the Deputy Inspector General, the Assistant Inspector General for Investigations, the Deputy Assistant Inspectors General for Investigations, and the Special Agents in Charge, the authority to request information under 5 U.S.C. section 552a(b)(7).

Section B. No Further Delegation or Redelegation

The authority delegated and redelegated in Section A above may not be further delegated or redelegated.

Authority: Section 6(a)(4), Inspector General Act of 1978 (5 U.S.C. App.); Section 7(d), Department of HUD Act (42 U.S.C. 3535(d)); Delegation of Authority, April 15, 1987, at 52 FR 12259; 5 U.S.C. section 552a.

Dated: February 12, 2007.

Kenneth M. Donohue,

Inspector General.

[FR Doc. E7–2826 Filed 2–16–07; 8:45 am]

BILLING CODE 4210–67–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, December 15, 2006.

Time of Meeting: 9 a.m. to 12:30 p.m.

Place of Meeting: National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Rooms 500/501, 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, December 11, 2006. 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: February 12, 2007.

J. William Leonard,

Director, Information Security Oversight Office.

[FR Doc. E7–2866 Filed 2–16–07; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Pilgrim Nuclear Power Station, Entergy Nuclear Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards; Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–35 issued to Entergy Nuclear Operations, Inc. (the licensee) for operation of the Pilgrim Nuclear Power Station (Pilgrim), located in Plymouth County, Massachusetts.

The proposed amendment would revise Limiting Condition for Operation (LCO) 3.14.A to adopt the Technical Specification Task Force-484, Revision 0, ''Use of Technical Specification 3.10.1 for Scram Time Testing Activities.''

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Technical Specifications currently allow for operation at greater than [200]°F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

Technical Specifications currently allow for operation at greater than [200]°F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. No new operational conditions beyond those currently allowed by LCO 3.10.1 are introduced. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

Technical Specifications currently allow for operation at greater than [200]°F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact any margin of safety. Allowing completion of inspections and testing and supporting completion of scram time testing initiated in conjunction with an inservice leak or hydrostatic test prior to power operation results in enhanced safe operations by eliminating unnecessary maneuvers to control reactor temperature and pressure.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly-available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requester/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to

participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, *Attention:* Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Travis C. McCullough, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated December 27, 2006, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly-available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

For The Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 8th day of February 2007.

James Kim,

Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–2804 Filed 2–16–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Draft Interim Staff Guidance Document Hlwrs–Isg–03, ''Preclosure Safety Analysis—Dose Performance Objectives and Radiation Protection Program''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION, CONTACT: Jon Chen, Project Manager, Project Management Branch B, Division of High-Level Waste Repository Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Telephone:* (301) 415–5526; *fax number:* (301) 415–5399; *e-mail: jcc2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Yucca Mountain Review Plan (YMRP) (July 2003, NUREG–1804, Revision 2) provides guidance for U.S. Nuclear Regulatory Commission (NRC) Division of High-Level Waste Repository Safety (HLWRS) staff to evaluate a U.S. Department of Energy (DOE) license application for a geologic repository. NRC has prepared Interim Staff Guidance (ISG) to provide clarifications or refinements to the guidance provided in the YMRP. NRC is soliciting public comments on Draft HLWRS–ISG–03, which will be considered in the final version, or subsequent revisions, to HLWRS–ISG–03.

II. Summary

The purpose of this notice is to provide the public with an opportunity to review and comment on draft HLWRS–ISG–03, which is to supplement the YMRP, for the NRC staff review of consequence estimates for the preclosure safety analysis, and the associated radiation protection program that will be implemented by DOE during geologic repository operations area operations.

This ISG revises Sections 2.1.1.5 and 2.1.1.8 of the YMRP. A sufficient description of the radiation protection program and adequate technical bases for consequence estimates are needed to demonstrate compliance with the performance objectives in *Code of Federal Regulations* (CFR), Title 10, Part 63 (10 CFR Part 63), and radiation protection requirements of 10 CFR Part 20.

III. Further Information

The documents related to this action are available electronically at NRC's Electronic Reading Room, at *http://www.nrc.gov/reading-rm/adams.html.* From this site, a member of the public can access NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the document related to this notice is provided in the following table. If an individual does not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference (PDR) staff, at 1–800–397–4209, or (301) 415–4737, or by e-mail, at *pdr@nrc.gov.*

ISG	ADAMS accession number
Draft HLWRS–ISG–03, ''Preclosure Safety Analysis—Dose Performance Objectives and Radiation Protection Program''.	ML070230090.

These documents may also be viewed electronically, on the public computers located at NRC's PDR, O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents, for a fee. Comments and questions on draft HLWRS–ISG–03 should be directed to the NRC contact listed below by April 6, 2007. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Contact: Sheena Whaley, Nuclear Engineer, Technical Review Directorate, High-Level Waste Repository Safety Division of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments can also be submitted by telephone, fax, or e-mail, which are as follows: *telephone:* (301) 415–7965; *fax number:* (301) 415–5399; or *e-mail: saw2@nrc.gov.*

Dated at Rockville, Maryland this 9th day of February 2007.

For the Nuclear Regulatory Commission.

N. King Stablein,

Chief, Project Management Branch B, Division of High-Level Waste Repository Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E7–2803 Filed 2–16–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55272; File No. SR–Amex–2006–77]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto To Amend Rules 918 and 918–Ante Regarding Trading Rotations, Halts and Suspensions

February 12, 2007.

I. Introduction

On August 16, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change to amend Amex Rules 918 and 918–ANTE relating to trading rotations and trading halts. On December 5, 2006, Amex filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 29, 2006.[1] The Commission received no comments regarding the proposal. This order approves the proposed rule change as modified by Amendment No. 1.

II. Discussion and Commission Findings

The Exchange proposes to amend Amex Rules 918 and 918–ANTE relating to trading rotations and trading halts. Specifically, Amex Rules 918(a) and 918–ANTE(a) currently provide that a trading rotation shall be employed at the opening of each business day following the opening of the underlying security in the primary market. Amex Rules 918(b) and 918–ANTE(b) provide that trading on any Exchange option contract may be halted or suspended whenever the Exchange deems such action appropriate. Included in these rules is a list of factors that the Exchange may use to determine if a trading halt or suspension is warranted. Pursuant to Amex Rules 918(b)(1) and 918–ANTE(b)(1), the Exchange may halt or suspend trading in an option contract if the underlying security has been halted or suspended in the primary market. Similarly, the Exchange may also consider, pursuant to Amex Rules 918(b)(2) and 918–ANTE(b)(2), halting or suspending trading in an option contract if the opening of such underlying stock in the primary market has been delayed due to unusual circumstances.

''Primary market'' is defined in Amex Rules 900(b)(26) and 900–ANTE(b)(26) as (i) With respect to an underlying equity security which is principally traded on a national securities exchange, the principal exchange market in which the underlying security is traded, (ii) with respect to an underlying equity security which is principally traded in the over-the-counter market, the market reflected by Nasdaq,[2] and (iii) with respect to any other type of security, the market reflected by any widely recognized quotation dissemination system.

The Exchange proposes to amend Amex Rules 918(a)(1) and Amex Rule 918–Ante(a)(1) to permit the opening rotation to begin once the underlying security has opened for trading in any market. In addition, Amex proposes to amend Amex Rule 918–Ante Commentary .01(d) to provide that the automated opening rotation shall begin once the opening trade or quote is disseminated by any market. Amex proposes to amend Amex Rules 918(b)(1) and 918–ANTE(b)(1) to implement trading halts and suspensions in any options contract if the underlying security is subject to a trading halt or suspension across several markets or in the primary listed market. Amex also proposes to amend Amex Rules 918(b)(2) and 918–ANTE(b)(2) to institute trading halts and suspensions in any options contract if there is a delay in the opening of the underlying security across several markets or in the primary listed market because of unusual circumstances. Additionally, the Exchange proposes to amend Amex Rules 918 Commentary .01(c) and 918–ANTE Commentary .01(g) to permit the closing rotation to begin once the final price for the underlying security is established in the trading markets and/or the primary listed market. Finally, the Exchange proposes to make clarifying changes to Amex Rules 918 and 918–ANTE to clarify that trading rotations, halts and suspensions apply to any options on a stock, exchange traded fund and trust issued receipt.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act,[3] which requires, among other things, Amex's rules be 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.[4]

Amex represented that the analysis of which market is the ''primary market'' for purposes of trading rotations and halts has become burdensome and uncertain due to trading of underlying securities in multiple markets. The Commission believes that the proposed rule change will provide Amex with flexibility to determine when to permit opening and closing rotations to begin by removing the requirement that it analyze which market is the primary market. As proposed, Amex may

[1] *See* Securities Exchange Act Release No. 54995 (December 21, 2006), 71 FR 78474.

[2] The Commission notes that Nasdaq currently operates as a national securities exchange with respect to Nasdaq-listed securities and as a facility of the NASD with respect to non-Nasdaq exchange listed securities.

[3] 15 U.S.C. 78f(b)(5).

[4] 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).

institute opening and closing rotations based on any market trading the underlying security. With regard to trading halts, however, Amex proposes to halt trading if multiple underlying markets have halted trading or if the primary listed market halted trading. The Commission believes that this standard is sufficient to establish when Amex should halt trading in its option contracts.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (SR–Amex–2006–77), as modified by Amendment No. 1, be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2837 Filed 2–16–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55277; File No. SR–Amex–2007–19]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise the AEMI Rules to Conform to Changes Previously Made to the AEMI-One Rules for the Pilot

February 12, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 9, 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, II, and III below, which Items have been substantially prepared by the Exchange. Amex has filed this proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(5) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[5] 15 U.S.C. 78s(b)(2).

[6] 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)(5).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt changes to its AEMI rules to match several changes that have already been approved and implemented as part of the Exchange's AEMI-One rules. The proposed changes would: (i) Eliminate the order types ''buy minus'' and ''sell plus''; (ii) revise the descriptions of ''stop order'' and ''stop limit order'' to provide that ''too marketable'' stop and stop limit orders for exchange-traded funds (''ETFs'') will be executed, not rejected; (iii) codify the Exchange's interpretation that a Specialist will not be deemed to be ''trading ahead'' of a percentage order if an aggressing order that executes against the Specialist's quote automatically elects the percentage order but the percentage order is not executed by that aggressing order due to insufficient remaining interest; (iv) revise the definition of ''specialist emergency quote'' to provide for an Exchange-wide upper limit on the number of such quotes that can be sequentially generated; (v) revise the definition of ''stabilizing quote'' to provide that such a quote may be issued when orders or quotes on the AEMI Book are exhausted and that auto-ex would be disabled after such a quote is generated so that the Specialist may step in to re-quote the market; (vi) revise two rules (including the definition of ''intermarket sweep order'') to provide, as required by Regulation NMS, that members who choose to send intermarket sweep orders to the Exchange will be obligated to protect the same quotations of other market centers that the Exchange is obligated to protect; and (vii) correct two internal references in Rule 205–AEMI and add a new subparagraph to provide for the execution of an unexecuted odd-lot balance on an aggressing order that is the result of an unexecuted odd-lot balance on an intermarket sweep order that was routed to another market by the AEMI platform to access a better-priced protected quotation.

The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com*, at the Exchange's principal office, 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 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. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has recently adopted two sets of rules in connection with the operation of its new hybrid market trading platform for equity products and ETFs, designated as AEMI℠ (the ''Auction and Electronic Market Integration'' platform). The initial version of AEMI is referred to as ''AEMI-One'' and is currently operational on a pilot basis[5] through the day prior to the final date set by the Commission for full operation of all automated trading centers that intend to qualify their quotations for trade-through protection under Rule 611[6] of Regulation NMS (the latter date being referred to as the ''Trading Phase Date'').[7] On the Trading Phase Date, the regular AEMI rules will become effective[8] and the AEMI-One rules will cease to be operative. In the final amendment to the AEMI-One rules just prior to their approval by the Commission, the Exchange made several changes that are now reflected in those AEMI-One rules. In addition, the Exchange subsequently filed with the Commission a proposed change to the AEMI-One rule on odd-lot order execution that was immediately effective on filing and that provides for the execution of an unexecuted odd-lot balance on an aggressing order that is the result of an unexecuted odd-lot

[5] *See* Securities Exchange Act Release No. 54709 (November 3, 2006), 71 FR 65847 (November 9, 2006) (SR–Amex–2006–72) (Order Approving a Proposed Rule Change and Amendment No 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3, to Adopt New Rules to Implement on a Pilot Basis an Initial Version of AEMI, Its Proposed New Hybrid Market Trading Platform for Equity Products and Exchange Traded Funds).

[6] 17 CFR 242.611. The Order Protection Rule requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution of trades at prices inferior to protected quotations displayed by other trading centers, subject to certain exceptions.

[7] The Trading Phase Date is currently established as March 5, 2007.

[8] *See* Securities Exchange Act Release No. 54552 (September 29, 2006), 71 FR 59546 (October 10, 2006) (SR–Amex–2005–104) (Order Approving a Proposed Rule Change and Amendments No. 1, 2, 3, 4, and 5 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 6, to Establish a New Hybrid Trading System Known as AEMI).

balance on an order that was routed to another market by the AEMI platform to access a better-priced protected quotation.[9] The purpose of this filing is simply to make conforming changes to the regular AEMI rules so that they match the corresponding AEMI-One rules that have been approved by the Commission and that are currently effective.

Elimination of ''Buy Minus'' and ''Sell Plus'' Order Types

The Exchange proposes to remove the order types ''buy minus'' and ''sell plus'' from Rule 131–AEMI(n) (and all references thereto in the AEMI rules) due to lack of demand for these order types and the complexity of the coding that would be involved to incorporate them into the AEMI platform.

Execution of ''Too Marketable'' Stop and Stop Limit Orders for ETFs

The Exchange proposes to revise the descriptions of ''stop order'' in Rule 131–AEMI(o) and ''stop limit order'' in Rule 131–AEMI(p) to provide that ''too marketable'' stop and stop limit orders for ETFs will be executed, not rejected.

Codification of Exchange Interpretation Regarding ''Trading Ahead'' of a Percentage Order

The Exchange proposes to codify as Commentary .01 to Rule 154–AEMI its interpretation, based on several of the AEMI rules, that a Specialist will not be deemed to be ''trading ahead'' of a percentage order (of which he is the agent) if (i) An aggressing order that executes against the Specialist's quote automatically ''elects'' the percentage order (making it eligible for immediate execution) and (ii) the percentage order is not executed by that aggressing order due to insufficient remaining interest and therefore reverts back to unelected status. Additionally, the proposed Commentary will provide that any subsequent trade by the Specialist for his own account at the limit price of the percentage order will not constitute ''trading ahead'' if the percentage order has not been otherwise re-elected at that time.

Revised Definitions of ''Specialist Emergency Quote'' and ''Stabilizing Quote''

The Exchange proposes to revise the definition of ''specialist emergency quote'' in Rule 1A–AEMI to provide for an exchange-wide upper limit (not to exceed ten) on the number of specialist emergency quotes that may be sequentially generated. A change in the definition of ''stabilizing quote'' is also proposed to provide that a stabilizing quote may be issued when orders or quotes on the AEMI Book are exhausted, and that auto-ex would be disabled after the stabilizing quote is generated so that the Specialist may step in to re-quote the market.

Obligation of Members to Protected Quotations at Other Market Centers

The Exchange proposes to add language to the definition of an ''intermarket sweep order'' in Rule 131–AEMI(k) to provide, as required by Regulation NMS, that members who choose to send such orders to the Exchange will be obligated to protect the same quotations of other market centers that the Exchange is obligated to protect. Specifically, a member may submit an intermarket sweep order to the Exchange only if the member simultaneously sends an intermarket sweep order for the full displayed size of every other better-priced protected quotation displayed by other trading centers. The same requirement is being added to Rule 126A–AEMI (Protected Bids and Offers of Away Markets).

Revisions to Odd-Lot Order Execution Rule

The Exchange proposes to correct two internal rule references in Rule 205–AEMI so that they refer to the appropriate AEMI rules. In addition, the Exchange proposes to add a new subparagraph (b)(viii) to provide for the execution of an unexecuted odd-lot balance on an aggressing order that is the result of an unexecuted odd-lot balance on an intermarket sweep order that was routed to another market by the AEMI platform to access a better-priced protected quotation. Specifically, if a partial-lot trade is received from an away market in response to an intermarket sweep order sent by AEMI, resulting in an unexecuted balance which comprises an odd lot, then any unexecuted odd-lot balance on the aggressing order (including the unexecuted odd-lot balance from the intermarket sweep order) shall be traded immediately against the Specialist at the last trade price of the intermarket sweep order, and any remaining unexecuted round-lot balance shall reaggress the AEMI Book in accordance with Rule 126A–AEMI. Illustrative examples of the proposed rule provision were included in the related AEMI–One filing referenced above.[10]

The Exchange asserts that the proposal to effect the foregoing changes to the AEMI trading system does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and does not have the effect of limiting the access to or availability of the system.

2. Statutory Basis

The proposed rule change is designed to be consistent with Regulation NMS, as well as consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5),[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 remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no 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

Because the proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) have the effect of limiting the access to or availability of an existing order entry or trading system of the Exchange, the foregoing rule change has become effective immediately pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b–4(f)(5)[13] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission

[9] *See* Securities Exchange Act Release No. 54866 (December 4, 2006), 71 FR 71598 (December 11, 2006) (SR–Amex–2006–111) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Odd-Lot Rejections by Away Markets in the AEMI-One Pilot).

[10] The corresponding AEMI–One rule refers to an ''away market obligation'' (which is an immediate-or-cancel limit order) rather than an ''intermarket sweep order'' based on the expectation that not all markets would be able to receive and execute intermarket sweep orders during the period of the AEMI–One pilot.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(5).

may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

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 at *http://www.sec.gov/rules/sro.shtml;* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Amex–2007–19 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 No. SR–Amex–2007–19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Amex–2007–19 and should be submitted on or before March 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2840 Filed 2–16–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55275; File No. SR–CBOE–2006–94]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Off-Floor DPMs

February 12, 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 November 13, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''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 Exchange filed Amendment No. 1 to the proposed rule change on January 18, 2007. 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

CBOE proposes to amend CBOE rules to allow a Designated Primary Marker-Maker (''DPM'') to operate remotely away from CBOE's trading floor. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to amend its rules to allow a DPM to operate remotely away from CBOE's trading floor. DPMs are member organizations that function in option classes allocated to them as a Market-Maker, and also are subject to the obligations under Rule 8.85 or as otherwise provided in CBOE's Rules. Currently, all DPMs operate on CBOE's trading floor. However, some member organizations have expressed an interest in acting as a DPM remotely away from CBOE's trading floor. As discussed below, the proposed rule change is intended to provide DPMs with the flexibility to operate on CBOE's trading floor (''On-Floor DPM'') or remotely away from CBOE's trading floor (''Off-Floor DPM''). A DPM would only be permitted to operate as an Off-Floor DPM in equity option classes traded on the Hybrid Trading System.

CBOE proposes to amend Rule 8.83 to provide that in selecting an applicant for approval as a DPM, the appropriate exchange committee may place one or more conditions on the approval, including, but not limited to, whether the DPM will operate on-floor or off-floor. Additionally, CBOE proposes to amend Rule 8.83 to provide that an On-Floor DPM can request that the appropriate Exchange committee authorize it to operate as an Off-Floor DPM in one or more equity option classes traded on the Hybrid Trading System. The appropriate Exchange committee will consider the factors specified in Rule 8.83(b) in determining whether to permit an On-Floor DPM to operate as an Off-Floor DPM. In the event a DPM is approved to operate as an Off-Floor DPM, Rule 8.83 provides that the Off-Floor DPM can have a DPM Designee trade in open outcry in the option classes allocated to the Off-Floor DPM, but the Off-Floor DPM shall not receive a participation entitlement under Rule 8.87 with respect to orders represented in open outcry. CBOE also proposes to amend Rule 6.45A(a)(C) and Rule 6.74 to make clear that the DPM participation entitlement is only applicable to an On-Floor DPM.

As provided in new Interpretation .01 to Rule 8.83, if an Off-Floor DPM wishes to operate as an On-Floor DPM, the Off-

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Floor DPM can request that the appropriate Exchange Committee authorize it to do so. In making a determination pursuant to this Interpretation, the appropriate Exchange committee would evaluate whether the change is in the best interests of the Exchange, and the committee may consider any information that it believes will be of assistance to it. Factors to be considered may include, but are not limited to, any one or more of the following: performance, operational capacity of the Exchange or the DPM, efficiency, number and experience of personnel of the DPM who will be performing functions related to the trading of the applicable securities, number of securities involved, number of Market-Makers affected, and trading volume of the securities.

In connection with this rule change, CBOE proposes to amend certain DPM obligations contained in Rule 8.85. In particular, CBOE proposes to amend the obligation contained in subparagraph (a)(iv) which currently provides that the DPM must assure that the number of DPM Designees and support personnel continuously present at the trading station throughout every business day is not less than the minimum required by the appropriate Exchange committee. CBOE proposes to amend subparagraph (a)(iv) to state that an Off-Floor DPM similarly shall assure that the number of DPM Designees and support personnel continuously overseeing the DPM's activities is not less than the minimum required by the appropriate Exchange committee. Additionally, an Off-Floor DPM shall provide members with telephone access to a DPM Designee at all times during market hours for purposes of resolving problems involving trading on the Exchange.

CBOE also proposes to amend the provision in subparagraph (a)(v) of Rule 8.85 that states a DPM shall trade in all securities allocated to the DPM only in the capacity of a DPM and not in any other capacity. CBOE proposes to allow, as part of an existing pilot program applicable to e-DPMs,[3] an Off-Floor DPM to have not more than one Market-Maker affiliated with the Off-Floor DPM trade on CBOE's trading floor in any specific option class allocated to the Off-Floor DPM, provided such Market-Maker is trading on a separate membership.[4] The affiliated Market-Maker would also have to comply with the ''Guidelines for Exemptive Relief Under Rule 8.91(e) for Members Affiliated with DPMs'', set forth in Rule 8.91. (Absent the pilot program, an Off-Floor DPM may not allow any Market-Makers affiliated with the Off-Floor DPM to trade on CBOE's trading floor in any class allocated to the Off-Floor DPM.) If the Off-Floor DPM has an affiliated Marker-Maker trade on CBOE's trading floor in any specific option class allocated to the Off-Floor DPM pursuant to the pilot program, Rule 8.85(a)(v) provides that the Off-Floor DPM cannot also have a DPM Designee trading in open outcry in the option classes allocated to the Off-Floor DPM.

Finally, CBOE proposes to amend Interpretation .02 of Rule 3.8 to allow an Off-Floor DPM to appoint one individual to be the nominee for all memberships utilized by the organization in an Off-Floor DPM capacity. Interpretation .02 of Rule 3.8 currently provides that a member organization can appoint one individual to be the nominee for all memberships utilized by the organization in an RMM capacity or an e-DPM capacity. This is an exception to the general requirement of Rule 3.8(a)(ii) which provides that ''if a member organization is the owner or lessee of more than one membership, the organization must designate a different individual to be the nominee for each of the memberships.''

2. Statutory Basis

CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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 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) 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 such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2006–94 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–2006–94. 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

[3] *See* CBOE Rule 8.93(vii). The Pilot Program is scheduled to expire on March 14, 2007.

[4] CBOE proposes to make a corresponding change to the ''Guidelines for Exemptive Relief Under Rule 8.91(e) for Members Affiliated with DPMs.'' *See* Guidelines, Paragraph (b)(viii).

[5] 15 U.S.C. 78(f)(b).

[6] 15 U.S.C. 78(f)(b)(5).

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 CBOE. 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–2006–94 and should be submitted on or before March 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2849 Filed 2–16–07; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55279; File No. SR–ISE–2007–02]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Position and Exercise Limits on the KBW Bank Index

February 12, 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 8, 2007, the International Securities Exchange, LLC (''ISE'' 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 ISE. On February 5, 2007, the ISE filed Amendment No. 1 to the proposed rule change. The ISE filed the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[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).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to increase the position and exercise limits for options on the KBW Bank Index. The text of the proposed rule change is available at the ISE, the Commission's Public Reference Room, and *http://www.iseoptions.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 ISE 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 ISE 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 recently listed for trading options on the KBW Bank Index (''BKX'') pursuant to the Exchange's generic listing standards found in its Rule 2002(b). Under ISE Rule 2005, a narrow-based index option cannot have position and exercise limits that exceed 31,500 contracts.[5] The Exchange notes that the Philadelphia Stock Exchange (''Phlx'') also currently lists options on BKX. However, pursuant to a Rule 19b–4 filing, the position and exercise limit for options on BKX traded by Phlx is currently 44,000 contracts.[6] Accordingly, the Exchange proposes to increase the position and exercise limit for options on BKX traded at ISE to 44,000 contracts also. The Exchange believes it is important for a product traded at multiple exchanges to have a uniform position and exercise limit in order to eliminate any confusion among investors and other market participants.

2. Statutory Basis

The basis under the Act for this proposed rule change is found in Section 6(b)(5),[7] in that the adoption of uniform position and exercise limits for BKX will serve 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.

[5] ISE Rule 2007 generally states that exercise limits for an index option shall be equivalent to the position limit prescribed to that index option.

[6] *See* Securities Exchange Act Release No. 49312 (February 24, 2004), 69 FR 9672 (March 1, 2004) (SR–Phlx–2004–13).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

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.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement. The Commission has determined to waive this requirement.

[10] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on February 5, 2007, the date on which the ISE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

the date of filing.[11] However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The ISE has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change will make the ISE's position and exercise limits for options on BKX consistent with the Phlx's position and exercise limits for such options.[13] Further, the Commission notes that the increased position and exercise limits for Phlx were previously noticed for comment and no comments were received. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

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–ISE–2007–02 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–ISE–2007–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2007–02 and should be submitted on or before March 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2842 Filed 2–16–07; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *Id.*

[13] *See supra* note 6.

[14] 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. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55274; File No. SR–NASD–2007–012]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Implement Certain Approved NASD Rule Changes Upon the Operation of the Nasdaq Stock Market LLC for Non-Nasdaq Exchange-Listed Securities

February 12, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 9, 2007, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. The NASD filed the proposed rules change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD has filed a proposed rule change to (1) Provide notice that the amendments to the NASD Rule 4700 Series that were approved pursuant to SR–NASD–2006–104[5] will not be implemented; (2) implement certain amendments that were approved pursuant to SR–NASD–2006–104 upon the operation of the Nasdaq Stock Market LLC (the ''Nasdaq Exchange'') as a national securities exchange for non-Nasdaq exchange-listed securities; and (3) propose additional changes that were not approved pursuant to SR–NASD–2006–104, specifically the deletion of the Rule 4700 Series and Rule 5150. All other rule changes that were approved pursuant to SR–NASD–2006–104, and were not implemented pursuant to SR–NASD–2006–135,[6] will be implemented upon the operation of NASD's Alternative Display Facility (''ADF'') for non-Nasdaq exchange-listed securities, as approved by the Commission on September 28, 2006.[7] The text of the proposed amendments is available at the NASD, from the Commission's Public Reference Room, and on the NASD's Web site (*http://www.nasd.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 NASD 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. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving SR–NASD–2006–104).

[6] *See* Securities Exchange Act Release No. 54984 (December 20, 2006), 71 FR 78245 (December 28, 2006) (notice of filing and immediate effectiveness of SR–NASD–2006–135).

[7] *See* Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (order approving SR–NASD–2006–091).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 30, 2006, the Commission approved SR–NASD–2005–087, which, among other things, proposed an implementation strategy for the operation of the Nasdaq Exchange as a national securities exchange for Nasdaq-listed securities during a transitional period and also proposed rules for reporting trades in Nasdaq-listed securities effected otherwise than on an exchange to the NASD/Nasdaq Trade Reporting Facility (the ''NASD/Nasdaq TRF'').[8] On November 21, 2006, the Commission approved SR–NASD–2006–104, which, among other things, proposed amendments necessary to reflect the complete separation of The Nasdaq Stock Market Inc. (''Nasdaq'') from the NASD upon the operation of the Nasdaq Exchange as a national securities exchange for non-Nasdaq exchange-listed securities and also proposed to expand the scope of the NASD/Nasdaq TRF rules to include reporting of over-the-counter trades in non-Nasdaq exchange-listed securities.[9]

As originally approved, the rule changes in SR–NASD–2006–104 were to become effective on the date that the Nasdaq Exchange commences operation as a national securities exchange for non-Nasdaq exchange-listed securities. However, as described in SR–NASD–2006–135, for a transitional period, Nasdaq has continued to operate the SuperIntermarket (SiM) trading platform on NASD's behalf via the Transitional System and Regulatory Services Agreement.[10] As contemplated in SR–NASD–2006–135, the NASD has determined to continue to use Nasdaq as a vendor to operate SiM, even upon the Nasdaq Exchange's operation as an exchange for non-Nasdaq exchange-listed securities, which is currently scheduled for February 12, 2007.[11] As such, the current rules relating to SiM will remain in place and the approved rule changes to the Rule 4700 Series in SR–NASD–2006–104 will not be implemented.

In addition, the following rule changes that were approved pursuant to SR–NASD–2006–104 will be implemented on the date upon which the Nasdaq Exchange operates as a national securities exchange for non-Nasdaq exchange-listed securities: (1) Deletion of the Rule 4900 Series and the 4950 Series; and (2) adoption of new Rules 5120 (Other Trading Practices) and 5130 (Obligation to Provide Information) relating to trading otherwise than on an exchange. All other rule changes that are part of SR–NASD–2006–104, and were not implemented pursuant to SR–NASD–2006–135 (*i.e.*, amendments to the Rule 0100 Series; amendments to the Rule 4000 Series and Rule 6100 Series relating to the NASD/Nasdaq TRF; deletion of Rule 4400; amendments to Rule 11890, Interpretive Material (IM) 11890–1 and IM–11890–2; and the deletion of IM–11890–3), will be implemented upon the operation of the ADF for non-Nasdaq exchange-listed securities, which will be the Regulation NMS Trading Phase Date (currently anticipated to be March 5, 2007).[12]

In this proposed rule change, NASD is proposing two additional rule changes that were not approved as part of SR–NASD–2006–104. First, NASD is proposing to delete the Rule 4700 Series in its entirety upon the operation of the ADF for non-Nasdaq exchange-listed securities.[13] Second, NASD is proposing to delete Rule 5150 upon the operation of the ADF for non-Nasdaq exchange-listed securities. Rule 5150 requires an NASD member that is registered as a market maker with the Nasdaq Exchange in a non-Nasdaq exchange-listed security to comply with the provisions of NASD Rule 5262 relating to trade-throughs with respect to that security for trades reported to NASD. Rule 5150 was approved by the Commission on September 19, 2006 and will become effective on the date that the Nasdaq Exchange operates as a national securities exchange for non-Nasdaq exchange-listed securities.[14] Upon the operation of the ADF for non-Nasdaq exchange-listed securities, the Rule 5200 Series, including Rule 5262, will be deleted pursuant to NASD–2006–091. Thus, NASD is proposing to delete Rule 5150 on that same date.

NASD has filed the proposed rule change for immediate effectiveness. NASD proposes to implement the proposed rule change as described herein.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[15] which requires, among other things, that NASD 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. NASD believes that the proposed rule change will provide an effective mechanism and regulatory framework for quoting and trading activities otherwise than on an exchange in non-Nasdaq exchange-listed securities upon the operation of the Nasdaq Exchange as a national securities exchange for non-Nasdaq exchange-listed securities and the operation of the ADF for non-Nasdaq exchange-listed securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or

[8] *See* Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving SR–NASD–2005–087).

[9] *See* Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving SR–NASD–2006–104).

[10] *See* Securities Exchange Act Release No. 54984 (December 20, 2006), 71 FR 78245 (December 28, 2006) (notice of filing and immediate effectiveness of SR–NASD–2006–135). In that filing, amendments to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries and the By-Laws of NASD, NASD Regulation and NASD Dispute Resolution, and the deletion of the Nasdaq By-Laws, which were previously approved in SR–NASD–2006–104, were implemented on December 20, 2006 to reflect Nasdaq's complete separation from NASD, and, on that same date, dissolution of NASD's controlling share in Nasdaq.

[11] *See* Securities Exchange Act Release No. 54984 (December 20, 2006), 71 FR 78245 (December 28, 2006) (notice of filing and immediate effectiveness of SR–NASD–2006–135), *infra* note 13.

[12] Pursuant to SR–NASD–2006–091, among other changes, the following will be deleted from the NASD Manual on the Trading Phase Date: the Rule 5200 Series, the Rule 6300 Series and the Rule 6400 Series.

[13] Thus, in the period between commencement of operation of the Nasdaq Exchange for non-Nasdaq exchange-listed securities and the operation of the ADF for non-Nasdaq exchange-listed securities, the Rule 4700 Series will remain in the NASD Manual as it exists today. Upon the operation of the ADF for non-Nasdaq exchange-listed securities, the Rule 4700 Series will be deleted in its entirety.

[14] *See* Securities Exchange Act Release No. 54471 (September 19, 2006), 71 FR 56202 (September 26, 2006) (order approving SR–NASD–2006–081).

[15] 15 U.S.C. 78o–3(b)(6).

such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act,[16] and Rule 19b–4(f)(6) thereunder.[17] 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.

A proposed rule change filed under Rule 19b–4(f)(6)[18] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The NASD has asked the Commission to waive the 30-day pre-operative delay. The Commission believes that such waiver is consistent with the protection of investors and the public interest because it would allow the NASD to update and clarify its rules.[20] The Commission notes that the proposed rule change will facilitate the implementation of NASD rules that were subject to notice and comment and approved by the Commission on November 21, 2006. For this reason, the Commission designates the proposed rule change to be operative on the date that the Nasdaq Exchange begins operations as a national securities exchange for non-Nasdaq exchange-listed securities.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2007–012 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–2007–012. 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–2007–012 and should be submitted on or before March 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2839 Filed 2–16–07; 8:45 am]

BILLING CODE 8010–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] *Id.*

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55283; File No. SR–NASD–2007–010]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASD Rule 7010 To Modify Pricing for NASD Members Using ITS/CAES System and Inet Facility

February 12, 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 29, 2007, the National Association of Securities Dealers, Inc. (''NASD'') 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 substantially by NASD. NASD submitted the proposed rule change under 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.[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

NASD proposes to amend NASD Rule 7010 to modify the pricing for its members using the ITS/CAES System and the Inet facility (the ''Nasdaq Facilities''), which are currently operated by The Nasdaq Stock Market, Inc. and its subsidiaries (''Nasdaq'') as facilities of NASD. The text of the proposed rule change is available on the NASD's Web site at *http://www.nasd.com*, at NASD 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, NASD 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

[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] NASD stipulated the implementation date to be February 1, 2007.

may be examined at the places specified in Item IV below. NASD 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

This proposed rule change modifies the pricing schedule for the systems for trading non-Nasdaq exchange-listed securities that are currently operated as NASD facilities by Nasdaq. The fees apply to the Nasdaq Facilities, but as is currently the case with respect to fees for these systems, the fee schedule reflects the volume of a member's use of ITS/CAES, Inet, and the Nasdaq Market Center (a facility of The NASDAQ Stock Market LLC (the ''Nasdaq Exchange'')) in determining applicable fees.[6] The changes made by this proposed rule change relate to order execution fees for ITS/CAES and Inet, fees for routing to venues other than the New York Stock Exchange (the ''NYSE''), and fees for routing orders in exchange-traded funds to the NYSE; fees to route other orders to the NYSE are unchanged.

Currently, members with an average daily volume in all securities during the month of (i) More than 30 million shares of liquidity provided, and (ii) more than 50 million shares of liquidity accessed and/or routed; or members with an average daily volume through the Nasdaq Facilities in all securities during the month of (i) More than 20 million shares of liquidity provided, and (ii) more than 60 million shares of liquidity accessed and/or routed, pay a fee of $0.0027 per share executed when their orders access liquidity on ITS/CAES or Inet or are routed. Members with lower volumes pay a fee of $0.0028 or $0.003, depending on their volumes. The proposed rule change raises the volume thresholds needed to qualify for the $0.0027 fee, such that it will be available to market participants that (i) Add more than 35 million shares of liquidity per day during the month and route or remove more than 55 million shares of liquidity per day during the month, or (ii) add more than 25 million shares of liquidity per day during the month and route or remove more than 65 million share of liquidity per day during the month.

Currently, members adding more than 30 million shares of liquidity per day during the month receive a liquidity provider credit of $0.0025 per share executed; members providing less liquidity receive a credit of $0.002. The proposed rule change raises the threshold needed to qualify for the $0.0025 rebate to 35 million shares per day. However, the proposed rule change also introduces an intermediate credit of $0.0022 per share executed for members that provide more than 20 million shares of liquidity during the month.

The fees reflected in this proposed rule change were announced by Nasdaq on November 30, 2006,[7] as part of a market-wide evolution in the pricing structure for non-Nasdaq listed securities and an effort by Nasdaq to adopt consistent pricing for all types of securities. Previously, the fees charged by Nasdaq and other venues for non-Nasdaq securities had been characterized by low execution and routing fees and no credits for liquidity providers. During the fall of 2006, however, other markets began to adopt higher execution fees, coupled with liquidity provider credits, thereby moving toward a structure that had long been in effect for Nasdaq-listed securities. As of January 2, 2007, NASD likewise introduced fees for the ITS/CAES and Inet that reflected this evolving pricing structure.[8] However, the fees filed for January were intended as a one-month transition away from the previous structure, and therefore included lower thresholds to qualify for favorable pricing. In addition, the new higher thresholds proposed by this proposed rule change reflect the growing volumes of orders for NYSE-listed securities that are executed or routed through Inet and ITS/CAES, and are intended to encourage further usage.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with Section 15A of the Act,[9] in general, and furthers the objectives of Section 15A(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD 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

NASD 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[11] and subparagraph (f)(2) of Rule 19b-4 thereunder,[12] because it establishes or changes a due, fee, or other charge imposed by the NASD. 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

[6] The consideration of volumes through the Nasdaq Exchange is a function of the phased transition of Nasdaq from an operator of NASD facilities to a separate national securities exchange. As such, NASD fee schedules will be amended to remove all references to Nasdaq at or shortly after the time when the Nasdaq Exchange begins to trade non-Nasdaq exchange-listed securities, which is currently expected to occur on February 12, 2007. The Nasdaq Exchange has submitted a comparable filing to establish the same fees for Nasdaq-listed securities, which likewise considers trading volumes through ITS/CAES and Inet. *See SR–NASDAQ–2007–003.*

When the Nasdaq Exchange begins to trade non-Nasdaq securities, Inet will no longer be operated as an NASD facility for trading non-Nasdaq securities. Accordingly, for the month of February, the volumes used to determine fees for ITS/CAES and Inet will also consider volumes in non-Nasdaq securities through the Nasdaq Market Center. For this reason, a reference to ''Nasdaq-listed securities'' is being deleted from the explanatory text of Rule 7010(i)(1). This change is necessary to ensure that members using Inet and ITS/CAES prior to the anticipated transition on February 12, 2007 pay fees for that period that reflect a full month's worth of their trading activity.

[7] *See* Nasdaq Head Trader Alert #2006–199 (November 30, 2006), available at *http://www.nasdaqtrader.com/trader/news/2006/headtraderalerts/hta2006–199.stm.*

[8] *See* Securities Exchange Act Release No. 55129 (January 18, 2007), 72 FR 03894 (January 26, 2007).

[9] 15 U.S.C. 78o-3.

[10] 15 U.S.C. 78o-3(b)(5).

[11] 15 U.S.C. 78s(b)(3)(a)(ii).

[12] 17 CFR 240.19b-4(f)(2).

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2007–010 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–2007–010. 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 offices 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–2007–010 and should be submitted on or before March 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2841 Filed 2–16–07; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55280; File No. SR–NASD–2007–003]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees and Credits for the NASD/BSE Trade Reporting Facility

February 12, 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 16, 2007, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. NASD filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it 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

NASD proposes to adopt a new NASD Rule 7000D Series relating to fees and credits for the Trade Reporting Facility (''NASD/BSE TRF'') established by NASD and the Boston Stock Exchange (''BSE''). The text of the proposed rule change is available at *www.nasd.com,* NASD, 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, NASD 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. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[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).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 13, 2006, the Commission approved SR–NASD–2006–115,[5] which established rules relating to the new NASD/BSE TRF. The NASD/BSE TRF will provide NASD members with another mechanism for reporting to NASD locked-in transactions in exchange-listed securities effected otherwise than on an exchange. It is anticipated that the NASD/BSE TRF will commence operation in February 2007 upon successful completion of system testing and certification. The instant proposed rule change would adopt a new NASD Rule 7000D Series relating to fees and credits applicable to the NASD/BSE TRF.

NASD is proposing that under new Rule 7002D there will be no transaction fee for reporting locked-in trades to the NASD/BSE TRF in securities listed on the New York Stock Exchange (''Tape A''), the American Stock Exchange (''Tape B''), and the Nasdaq Exchange (''Tape C''). Although NASD is not required to file a proposed rule change where no fees are to be assessed, for members' convenience and to avoid potential confusion with the fee structures of other NASD facilities, NASD is proposing Rule 7002D to clarify that there will be no charge for use of the NASD/BSE TRF to report locked-in transactions in exchange-listed securities effected otherwise than on an exchange. The text of proposed Rule 7002D is identical to the text of current Rule 7002C relating to the NASD/NSX TRF.

In addition, NASD is proposing a transaction credit program under new Rule 7001D that is identical to the existing transaction credit program for the NASD/Nasdaq TRF under Rule 7001B.[6] NASD members reporting trades in Tape A, Tape B and Tape C stocks to the NASD/BSE TRF will receive a 50% pro rata credit on market data revenue earned by the NASD/BSE TRF with respect to those trade reports after deducting the amount, if any, that the Trade Reporting Facility pays to the

[5] *See* Securities Exchange Act Release No. 54932 (December 13, 2006), 71 FR 76409 (December 20, 2006)(order).

[6] *See* Securities Exchange Act Release No. 54353 (August 23, 2006), 71 FR 51255 (August 29, 2006).

NASD also notes that the proposed transaction credit program is substantially equivalent to the existing transaction credit program for the NASD/NSX TRF under Rule 7001C. The only difference between the two programs is that under the NASD/NSX TRF transaction credit program, members receive 50% of gross revenue.

Consolidated Tape Association or the Nasdaq Securities Information Processor for capacity usage. Credits will be paid on a quarterly basis. To the extent that market data revenue is subject to any adjustment, credits may be adjusted accordingly.

Tape A and Tape B revenue is currently distributed to NASD and the exchanges based on number of trades reported, while Tape C revenue is distributed based on an average of the number of trades and number of shares reported. Thus, under the proposed program, the Tape A and Tape B revenue attributable to a member will be based on number of trades reported, while the Tape C revenue attributable to a member would be based on number of trades and number of shares reported. A member will receive 50% of the revenue attributable to it in each of the three tapes.

NASD filed the proposed rule change for immediate effectiveness. NASD proposes to implement the proposed rule change on the first day of operation of the NASD/BSE TRF, which is currently anticipated to be in February 2007.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[7] in general, and with Section 15A(b)(5) of the Act,[8] in particular, which requires, among other things, that NASD rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. NASD believes that the proposed rule change is a reasonable and equitable fee and credit structure in that there will be no fees charged for trade reporting to the NASD/BSE TRF and the proposed transaction credit program is identical to existing credits for the NASD/Nasdaq TRF.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

[7] 15 U.S.C. 7*o*-3.

[8] 15 U.S.C. 8*o*–3(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] 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.

NASD has asked that the Commission waive the 30-day operative delay set forth in Rule 19b–4(f)(6)(iii) under the Act[11] to allow the proposed rule change to be implemented on the first day of operation of the NASD/BSE TRF, which is currently anticipated to be in February 2007. The Commission believes such waiver is consistent with the protection of investors and the public interest, for it will allow the proposed fees and credits to be in place at the time NASD begins operating the NASD/BSE TRF. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2007–003 on the subject line.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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–2007–003. 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–2007–003 and should be submitted on or before March 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2852 Filed 2–16–07; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55267; File No. SR–NSCC–2006–16]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow Retirement and Other Benefit Plans and Programs Offered By Registered Broker/Dealers To Be Processed Through Its Insurance Processing Service

February 9, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 13, 2006, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [2] and Rule 19b–4(f)(4) thereunder [3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend NSCC's Rules related to the Insurance Processing Services (''IPS'') and Insurance Carrier Members in order to allow retirement and other benefit plans and programs offered by registered broker/dealers to be processed on the IPS platform.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to amend NSCC's Rules related to IPS and Insurance Carrier Members in order to allow retirement and other benefit plans and programs offered by registered broker/dealers to be processed on the IPS platform.

Background

NSCC's IPS is a non-guaranteed service, meaning that NSCC does not function as a central counterparty or guarantor with respect to payment obligations arising in connection with IPS transactions. IPS was established in 1997 as the Annuities Processing Service, a centralized communication link that connected participating insurance carriers with broker/dealers and other entities that distributed annuities issued by the participating insurance carrier.[5] The service was later expanded to accommodate processing of life insurance products in addition to annuities, and its name was changed to IPS. Similarly, the name of the participating insurance carriers using IPS was changed from ''Annuities Carrier Members'' to ''Insurance Carrier Members.'' [6]

Currently, IPS provides for the communication of data relating to insurance products (both annuities and life insurance products) and for the settlement of certain payments relating to insurance products, as set forth in NSCC Rule 57, ''Insurance Processing Service.'' Participating insurance carriers that use IPS to communicate with their distributors information regarding their insurance products are called ''Insurance Carrier Members.'' Their distributors are called ''Members'' or ''Mutual Fund/Insurance Services Members'' and use IPS under authority of NSCC Rule 2, ''Members.'' The qualifications of Insurance Carrier Members are set forth in Rule 56 and Addendum Q of NSCC's Rules.

Certain retirement and other benefit plans and programs offered by a broker/dealer are functionally similar to annuities in that the broker/dealer (functioning as an administrator and/or custodian of the program) offers multiple investment options (typically mutual funds or annuities) within the ''wrap'' of the program for sale to plan sponsors through distributing broker/dealer intermediaries. Current IPS functionality that is used for annuities and other insurance products is useful in the context of these programs. Examples of such functionalities included the communication of customer positions and activity among the investment options within the program, information regarding the values of the various investment options included within the program, data concerning program commissions and other compensation due to the distributing broker/dealers, and the payment of such commissions and compensation through NSCC's daily money settlement.

(A) Proposed Amendments to NSCC's Rules

Under the proposed amendments, the IPS is renamed the ''Insurance and Retirement Processing Services'' (and is still referred to as ''IPS'') and the products processed through IPS are renamed ''IPS Eligible Products.'' IPS Eligible Products now include, in addition to insurance products, retirement and other benefit plans and programs.

''Insurance Carrier Member'' is renamed ''Insurance Carrier/Retirement Services Member.'' Formerly, only insurance companies could qualify under this membership category. Pursuant to the proposed rule change, registered broker/dealers will also be eligible to qualify as Insurance Carrier/Retirement Services Members. The membership qualifications applicable to insurance companies in their capacity as Insurance Carrier/Retirement Services Members are unchanged. The membership qualifications applicable to a broker/dealer in its capacity as an Insurance Carrier/Retirement Services Member will be the same as the qualifications currently applicable to a broker/dealer which acts as a Mutual Fund/Insurance Services Member processing transactions on IPS today as a distributor of insurance products issued by an Insurance Carrier Member. These qualifications, such as the requirement that the broker/dealer maintain $50,000 in excess net capital over that required by the Commission or the broker/dealer's designated examining authority (''Excess Net Capital''), are also the same qualifications required of a broker/dealer that participates in NSCC's Mutual Fund Services, whether acting as a Fund Member (analogous to an Insurance Carrier/Retirement Services Member on IPS) or as a Mutual Fund/Insurance Services Member distributing

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] The Commission has modified the text of the summaries prepared by NSCC.

[5] Securities Exchange Act Release No. 39096 (September 19, 1997), 62 FR 50416 (September 25, 1997) [File No. SR–NSCC–96–21].

[6] Securities Exchange Act Release Nos. 40634 (November 4, 1998), 63 FR 63096 (November 10, 1998) [File No. SR–NSCC–98–13] and 41477 (June 4, 1999), 64 FR 31666 (June 11, 1999) [File No. SR–NSCC–99–04].

mutual funds and similar fund products on NSCC's mutual fund processing platform, Fund/Serv.

Rule 1, ''Definitions and Descriptions'' The definition of ''Eligible Insurance Plan'' is deleted and has been replaced by the term ''IPS Eligible Product'' in order to include retirement and other benefit plans and programs as products that may be processed through IPS. The defined term ''Insurance Carrier Member'' is changed to ''Insurance Carrier/Retirement Services Member, as discussed above. Conforming changes are also made throughout NSCC's Rules.[7]

An unrelated technical change is made to defined terms ''TPA'' and ''TPA Member'' to clarify that a TPA Member must be a third party administrator. Although implied, this had not been expressly stated.

Rule 3, ''Lists to be Maintained'' Section 9 of Rule 3 is revised to refer to ''IPS Eligible Products,'' rather than insurance plans, as the subject of transactions processed on IPS.

Rule 50, ''Automated Customer Account Transfer Service'' (''ACATs'') Section 8 of Rule 50 is revised to delete references to an ''Insurance Company'' as the entity which would confirm or reject an ACATs transfer of IPS Eligible Products. ''Insurance Carrier/Retirement Services Member'' is substituted in its place. Similar changes are also made to the description of ACATs for Eligible IPS Products in Section 6 of Rule 57.

Rule 56, ''Insurance Carrier Member'' Rule 56 is revised to include broker/dealers as entities which can become Insurance Carrier/Retirement Services Members.

Rule 57, ''Insurance Processing Service'' Rule 57 is revised to refer to the ''Insurance and Retirement Processing Services'' in place of the ''Insurance Processing Service.'' In addition, an error in Section 2(a) is corrected to state that the service is offered by NSCC.

Addendum Q, ''Standards of Financial and Operational Capability for Insurance Carrier Members'' Addendum Q is revised to reflect that broker/dealers that are Insurance Carrier/Retirement Services Members or are applicants must meet the general qualifications currently applicable to Insurance Carrier Members (other than with respect to financial qualifications that are applicable solely to insurance companies). In addition, Addendum Q is revised to reflect that such broker/dealers must also maintain $50,000 in Excess Net Capital.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the addition of retirement and other benefit plans and programs offered by registered broker/dealers will permit the processing of additional financial products through NSCC and is designed to promote the prompt and accurate clearance and settlement of transactions and to assure the safeguarding of securities and funds in the custody and control of NSCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(4) thereunder[9] because the proposed rule effects a change in an existing service of NSCC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of NSCC and (ii) does not significantly affect the respective rights or obligations of NSCC or those members using the service. At any time within sixty days of the filing of such 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–NSCC–2006–16 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–NSCC–2006–16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. The text of the proposed rule change is available at NSCC, the Commission's Public Reference Room, and *http://www.nscc.com/legal/2006/2006–16.pdf*. 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–NSCC–2006–16 and should be submitted on or before March 13, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2845 Filed 2–16–07; 8:45 am]

BILLING CODE 8011–01–P

[7] References to ''Insurance Carrier Members'' and the ''Insurance Processing Service'' are replaced with the new terms throughout NSCC's Rules; however, due to the extent of their use throughout the Rules, these changes have not been reflected in Exhibit 5 to the proposed rule change.

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(4).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55268; File No. SR–NYSE–2007–03]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Regarding CurrencyShares SM Japanese Yen Trust

February 9, 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 January 9, 2007, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. On January 26, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On February 1, 2007, the Exchange filed Amendment No. 2 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and is granting accelerated approval to the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to list and trade the following under Rules 1300A *et seq.* (''Currency Trust Shares'' or ''Shares''): CurrencyShares SM Japanese Yen Trust (''Trust''). The Trust issues Shares that represent units of fractional undivided beneficial interest in and ownership of the Trust.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original filing in its entirety.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Trust issues Japanese Yen Shares, referred to herein as ''Shares''. Rydex Specialized Products LLC is the sponsor of the Trust (''Sponsor''), The Bank of New York is the trustee of the Trust (''Trustee''), JPMorgan Chase Bank, N.A., London Branch, is the depository for the Trust (''Depository''), and Rydex Distributors, Inc. is the distributor for the Trust (''Distributor''). The Sponsor, Trustee, Depository and Distributor are not affiliated with the Exchange or one another, with the exception that the Sponsor and Distributor are affiliated. The Exchange currently lists and trades Shares of the Euro Currency Trust; CurrencyShares SM Australian Dollar Trust; CurrencyShares SM British Pound Sterling Trust; CurrencyShares SM Canadian Dollar Trust; CurrencyShares SM Mexican Peso Trust; CurrencyShares SM Swedish Krona Trust; and CurrencyShares SM Swiss Franc Trust (''CurrencyShares Trusts''), all of which have the same Sponsor, Trustee, Depository and Distributor as the Trust.[4]

According to the Trust's Registration Statement,[5] the investment objective of the Trust is for the Shares issued by the Trust to reflect the price of the Japanese Yen. The Shares are intended to provide institutional and retail investors with a simple, cost-effective means of hedging their exposure to Japanese Yen and otherwise implement investment strategies that involve foreign currency (*e.g.*, diversify more generally against the risk that the U.S. Dollar (''USD'') will depreciate).

Overview of the Foreign Exchange Industry [6]

According to the Registration Statement, the foreign exchange market is the largest and most liquid financial market in the world. The Exchange states that, as of April 2004, the foreign exchange market experienced average daily turnover of approximately $1.88 trillion, which was a 57% increase (at current exchange rates) from 2001 daily averages. The foreign exchange market is predominantly an over-the-counter market, with no fixed location and it operates 24 hours a day, seven days a week. London, New York and Tokyo are the principal geographic centers of the worldwide foreign exchange market, with approximately 58% of all foreign exchange business executed in the U.K., U.S., and Japan. Other smaller markets include Singapore, Zurich and Frankfurt.[7]

The Exchange states that there are three major kinds of transactions in the traditional foreign exchange markets: spot transactions, outright forwards and foreign exchange swaps. ''Spot'' trades are foreign exchange transactions that settle typically within two business days with the counterparty to the trade. Spot transactions account for approximately 35% of reported daily volume in the traditional foreign exchange markets. ''Forward'' trades, which are transactions that settle on a date beyond spot, account for 12% of the reported daily volume, ''Swap'' transactions, in which two parties exchange two currencies on one or more specified dates over an agreed period and exchange them again when the period ends, account for the remaining 53% of volume. There also are transactions in currency options, which trade both over-the-counter and, in the U.S., on the Philadelphia Stock Exchange (''Phlx''). Currency futures are transactions in which an institution buys or sells a standardized amount of foreign currency on an organized exchange for delivery on one of several specified dates. Currency futures are traded on a number of regulated markets, including the International Monetary Market division of the Chicago Mercantile Exchange (''CME''), the Singapore Exchange Derivatives Trading Limited (''SGX,'' formerly the Singapore International Monetary Exchange or SIMEX), and the London International Financial Futures Exchange (''LIFFE''). Over 85% of currency derivative products (swaps, options and futures) are traded over-the-counter.[8]

[4] *See* Securities Exchange Act Release Nos. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR–NYSE–2005–65); and 54020 (June 20, 2006), 71 FR 36579, (June 27, 2006) (SR–NYSE–2006–35).

[5] The Sponsor, on behalf of the Trust, filed a Form S–1 for the Trust on November 21, 2006 (the ''Registration Statement''). *See* Registration No. 333–138881.

[6] Except as otherwise specifically noted, the information provided in this Form 19b–4 filing relating to the Shares, foreign currency markets, movements in foreign currency pricing, and related information is based entirely on information included in the Registration Statement.

[7] For April 2004, the daily average foreign exchange turnover of the U.S. dollar against the Japanese Yen was approximately $296 billion. *See* Bank for International Settlements, Triennial Central Bank Survey, March 2005, Statistical Annex Tables, Table E–2. In April 2004, the daily average foreign exchange turnover in USD of the Japanese Yen against all other currencies was approximately $359 billion. *See* Statistical Annex Tables, Table E–1.

[8] *See* Bank for International Settlements, Triennial Central Bank Survey of Foreign Exchange

Continued

Futures on Japanese Yen are traded on the CME (both exchange pit trading and GLOBEX trading). Standardized options on the Japanese Yen trade on Phlx. Phlx also offers more customized options on certain currency pairs.[9]

According to the Exchange, participants in the foreign exchange market have various reasons for participating. Multinational corporations and importers need foreign currency to acquire materials or goods from abroad. Banks and multinational corporations sometimes require specific wholesale funding for their commercial loan or other foreign investment portfolios. Some participants hedge open currency exposure through off-balance-sheet products.

The Exchange further represents that the primary market participants in foreign exchange are banks (including government-controlled central banks), investment banks, money managers, multinational corporations and institutional investors. The most significant participants are the major international commercial banks that act both as brokers and as dealers. In their dealer role, these banks maintain long or short positions in a currency and seek to profit from changes in exchange rates. In their broker role, the banks handle buy and sell orders from commercial customers, such as multinational corporations. The banks earn commissions when acting as agent. They profit from the spread between the rates at which they buy and sell currency for customers when they act as principal.

Typically, banks engage in transactions ranging from $5 million to $50 million in amount. Although banks will engage in smaller transactions, the fees that they charge have made the foreign currency markets relatively inaccessible to individual investors. Some banks allow individual investors to engage in spot trades without paying traditional commissions on the trades. Such trading is often not profitable for individual investors, however, because the banks charge the investor the spread between the bid and the ask price maintained by the bank on all purchases and sales. The overall effect of this fee structure depends on the spread maintained by the bank and the frequency with which the investor trades. Generally this fee structure is particularly disadvantageous to active traders.

The Trust's assets will consist only of Japanese Yen on demand deposit in two Japanese Yen-denominated accounts at JPMorgan Chase Bank, N.A., London Branch; an interest-bearing primary deposit account and a non-interest bearing secondary account. The Trust will not hold any derivative products. Each Share represents a proportional interest, based on the total number of Shares outstanding, in the Japanese Yen owned by the Trust, plus accrued and unpaid interest less accrued but unpaid expenses (both asset-based and non-asset based) of the Trust. The Sponsor expects that the price of a Share will fluctuate in response to fluctuations in the price of the Japanese Yen and that the price of a Share will reflect accumulated interest as well as the estimated accrued but unpaid expenses of the Trust.

Because the Shares will be traded on the NYSE, investors will be able to access the Japanese Yen foreign currency market through a traditional brokerage account which will provide investors with an efficient means of implementing investment tactics and strategies that involve Japanese Yen.

Foreign Currency Regulation

Most trading in the global over-the-counter (OTC) foreign currency markets is conducted by regulated financial institutions such as banks and broker-dealers. In addition, in the United States, the Foreign Exchange Committee of the New York Federal Reserve Bank has issued Guidelines for Foreign Exchange Trading, and central-bank sponsored committees in Japan and Singapore have published similar best practice guidelines. In the United Kingdom, the Bank of England has published the Non-Investment Products Code, which covers foreign currency trading. The Financial Markets Association, whose members include major international banking organizations, has also established best practices guidelines called the Model Code.

Participants in the U.S. OTC market for foreign currencies are generally regulated by their oversight regulators. For example, participating banks are regulated by the banking authorities. In addition, in the U.S., the SEC regulates trading of options on foreign currencies on the Phlx and the Commodity Futures Trading Commission (''CFTC'') regulates trading of futures, and options on futures on foreign currencies on regulated futures exchanges.[10]

The Exchange states that the Phlx and CME have authority to perform surveillance on their members' trading activities, review positions held by members and large-scale customers, and monitor the price movements of options and/or futures markets by comparing them with cash and other derivative markets' prices.

Foreign Exchange Markets [11]

The Exchange represents that the average daily turnover of the USD in the foreign exchange market is approximately $1.57 trillion, which makes it the most-traded currency in the world, accounting for approximately 89% of global foreign exchange transactions.

The Japanese Yen is the official currency of Japan and the currency of the Bank of Japan, the central bank of Japan. The average daily turnover in the foreign exchange markets is approximately $1.9 trillion. Japanese Yen was on one side of 20% of all currency transactions. The USD/Japanese Yen pair has an average daily turnover of approximately $296 billion, which makes it the second most traded currency pair, accounting for approximately 17% of global foreign exchange transactions. From the beginning of 2002 to the end of 2005, the Noon Buying Rate for Japanese Yen as reported by the Federal Reserve Bank of New York ranged from 102.50 on January 14, 2005 to 134.71 on February 8, 2002. As of November 20, 2006, the Noon Buying Rate for the Japanese Yen was 118.16.

The Sponsor

The Sponsor of the Trust is Rydex Specialized Products LLC, a Delaware limited liability company that is wholly-owned by PADCO Advisors II, Inc., a Maryland corporation, a privately-held company owned by Rydex Holdings, Inc., a Maryland Corporation, which is

and Derivatives Market Activity in April 2004, September 2004 (Tables 2 and 6).

[9] For the period January through October, 2006, Japanese Yen and E-mini Japanese Yen futures contract volume on the CME was 15,687,056 and 7,629 contracts, respectively. For the same period, Japanese Yen options volume on the Phlx was 3,228 contracts.

[10] The CFTC is an independent government agency with the mandate to regulate commodity futures and options markets in the United States under the Commodity Exchange Act. In addition to its oversight of regulated futures exchanges, the CFTC has jurisdiction over certain foreign currency futures, and options on futures transactions occurring other than on a regulated exchange and involving retail customers. Both the SEC and CFTC have established rules designed to prevent market manipulation, abusive trading practices and fraud, as do the exchanges on which the foreign currency products trade.

[11] The primary source of the statistical information in this section is the Bank of International Settlements Survey, note 7, supra. Other information came from the websites of the central banks for the applicable countries and other sources the Sponsor believes to be reliable.

controlled by two irrevocable trusts. The Sponsor and its affiliates collectively do business as ''Rydex Investments.''

The Sponsor is responsible for establishing the Trust and for the registration of the Shares. The Sponsor generally oversees the performance of the Trustee and the Trust's principal service providers, but does not exercise day-to-day oversight over the Trustee or such service providers. The Sponsor regularly communicates with the Trustee to monitor the overall performance of the Trust. The Sponsor, with assistance and support from Rydex affiliates who also do business as ''Rydex Investments,'' the Trustee and outside professionals, are responsible for preparing and filing periodic reports on behalf of the Trust with the SEC.[12] The Sponsor will designate the auditors of the Trust and may from time to time employ legal counsel for the Trust.

The Distributor is assisting the Sponsor in developing a marketing plan for the Trust, preparing marketing materials on the Shares, executing the marketing plan for the Trust and providing strategic and tactical research on the global foreign exchange markets. The Sponsor will not enter into an agreement with the Distributor covering these services, because the Distributor is an affiliate and will not be paid any compensation by the Sponsor for performing these services.

The Sponsor with the Distributor's assistance maintains a public Web site on behalf of the Trust, *www.currencyshares.com,* which contains information about the Trust and the Shares, and oversees certain Shareholder services, such as a call center and prospectus delivery.

The Sponsor may direct the Trustee in the conduct of its affairs, but only as provided in the Depositary Trust Agreement. For example, the Sponsor may direct the Trustee to sell Japanese Yen to pay certain extraordinary expenses, to suspend a redemption order, postpone a redemption settlement date, or to terminate the Trust if certain criteria are met. The Sponsor anticipates that, if the market capitalization of the Trust is less than $300 million for five consecutive trading days beginning after the first anniversary of the Trust's inception, then the Sponsor will, in accordance with the Depositary Trust Agreement, direct the Trustee to terminate and liquidate the Trust.

The Sponsor's fee accrues daily at an annual nominal rate of 0.40% of the Japanese Yen in the Trust (including all unpaid interest but excluding unpaid fees, each as accrued through the immediately preceding day) and is paid monthly.

The Trustee

The Bank of New York, the Trustee, is generally responsible for the day-to-day administration of the Trust, including keeping the Trust's operational records. The Trustee's principal responsibilities include selling Japanese Yen held by the Trust if needed to pay the Trust's expenses, calculating the Net Asset Value (''NAV'') of the Trust and the NAV per Share, receiving and processing orders from Authorized Participants to create and redeem Baskets (as discussed below) and coordinating the processing of such orders with the Depository and DTC. The Trustee will earn a monthly fee that will be paid by the Sponsor.

The Trustee intends to regularly communicate with the Sponsor to monitor the over-all performance of the Trust. The Trustee, along with the Sponsor, consults with the Trust's legal, accounting and other professional service providers as needed. The Trustee assists and supports the Sponsor with the preparation of all periodic reports required to be filed with the SEC on behalf of the Trust.

Affiliates of the Trustee may from time to time act as Authorized Participants, purchase or sell foreign currency, or Shares for their own account.

The Depository

JPMorgan Chase Bank, N.A., London Branch (the ''Bank'') is the Depository. The Depository accepts Japanese Yen deposited with it as a banker by Authorized Participants in connection with the creation of Baskets. The Depository facilitates the transfer of Japanese Yen into and out of the Trust through the primary and secondary deposit accounts maintained with it as a banker by the Trust.

The Depository will pay interest on the primary deposit account. Interest on the primary deposit account accrues daily at an initial annual nominal rate of the Bank of Japan Overnight Call Rate minus 27 basis points, and is paid monthly. Each month the Depository will deposit into the secondary deposit account accrued but unpaid interest.

The Depository will not be paid a fee for its services to the Trust. The Depository may earn a ''spread'' or ''margin'' over the rate of interest it pays to the Trust on the Japanese Yen deposit balances.

The Depository is not a trustee for the Trust or the Shareholders. The Depository and its affiliates may from time to time act as Authorized Participants or purchase or sell Japanese Yen or Shares for their own account, as agent for their customers and for accounts over which they exercise investment discretion.

The Distributor

Rydex Distributors, Inc. is the Distributor. The Distributor is a registered broker-dealer with the SEC and is a member of NASD.

The Distributor is assisting the Sponsor in developing a marketing plan for the Trust on an ongoing basis, preparing marketing materials regarding the Shares, including the content on the Trust's Web site, *www.currencyshares.com,* executing the marketing plan for the Trust, and providing strategic and tactical research on the global foreign exchange market. The Distributor and the Sponsor are affiliates of one another. There is no written agreement between them, and no compensation is paid by the Sponsor to the Distributor in connection with services performed by the Distributor for the Trust.

Description of the Trust

According to the Registration Statement for the Trust, the Trust will be formed under the laws of the State of New York as of the date the Sponsor and the Trustee sign the Depositary Trust Agreement and the Initial Purchaser makes the initial deposit for the issuance of three Baskets. A Basket is a block of 50,000 Shares. The Trust holds Japanese Yen[13] and is expected

[12] The Sponsor has obtained a no-action letter from the SEC Division of Corporation Finance with respect to the Euro Currency Trust pursuant to which the Sponsor's principal executive officer and principal financial officer will provide any certifications that are required from a ''registrant's'' principal executive officer and principal financial officer. *See* No-Action Letter from Charles Kwon, Special Counsel, Division of Corporation Finance, Commission, dated March 22, 2006. The Sponsor will be requesting the same type of no-action ruling for the Trust.

[13] The Exchange notes that, in addition to the CurrencyShares Trusts (*See* note 4, *supra*), the Commission has previously permitted the listing of securities products for which the underlying was a commodity or otherwise was not a security trading on a regulated market. *See, e.g.*, Securities Exchange Act Release Nos. 54013 (June 16, 2006), 71 FR 36372 (June 26, 2006) (approving listing of iShares® GSCI Commodity Indexed Trust); 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (approving listing and trading on NYSE of StreetTRACKS® Gold Shares); 19133 (October 14, 1982), 47 FR 46946 (October 21, 1982) (SR–Phlx–81–4) (approving the listing of standardized options on foreign currencies); 36505 (November 22, 1995), 60 FR 61277 (November 29, 1995) (SR–Phlx–95–42) (approving the listing of dollar-denominated delivery foreign currency options on the Japanese Yen); and 36165 (August 29, 1995), 60 FR 46653 (September 7, 1995) (SR–NYSE–94–41) (approving listing standards for,

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from time to time to issue Baskets in exchange for deposits of Japanese Yen and to distribute Japanese Yen in connection with redemptions of Baskets. The investment objective of the Trust is for the Shares to reflect the price USD of Japanese Yen. The Shares represent units of fractional undivided beneficial interest in, and ownership of, the Trust. The Trust is not managed like a business corporation or an active investment vehicle. Japanese Yen held by the Trust will only be sold: (1) If needed to pay Trust expenses, (2) in the event the Trust terminates and liquidates its assets or (3) as otherwise required by law or regulation. The sale of Japanese Yen by the Trust is a taxable event to Shareholders.

According to the Registration Statement, the Trust is not registered as an investment company under the Investment Company Act and is not required to register under such Act.

The Trust's assets will consist only of Japanese Yen on demand deposit in two Japanese Yen-denominated accounts at JPMorgan Chase Bank, N.A., London Branch; an interest-bearing primary deposit account and a non-interest bearing secondary account. The Trust will not hold any derivative products. Each Share represents a proportional interest, based on the total number of Shares outstanding, in Japanese Yen owned by the Trust, plus accrued but unpaid interest, less the estimated accrued but unpaid expenses (both asset-based and non-asset based) of the Trust. The Sponsor expects that the price of a Share will fluctuate in response to fluctuations in the price of Japanese Yen and that the price of a Share will reflect accumulated interest as well as the estimated accrued but unpaid expenses of the Trust.

Investors may obtain, 24 hours a day, foreign exchange pricing information based on the spot price of Japanese Yen from various financial information service providers. Current spot prices are also generally available with bid/ask spreads from foreign exchange dealers. In addition, the Trust's Web site will provide ongoing pricing information for Japanese Yen spot prices and the Shares. Market prices for the Shares are available from a variety of sources, including brokerage firms, financial information Web sites and other information service providers. One such Web site is hosted by Bloomberg, *http://www.bloomberg.com/markets/currencies/asiapac_currencies.html*, and it regularly reports current foreign exchange pricing information. The NAV of the Trust is published by the Sponsor on each day that the NYSE is open for regular trading and will be posted on the Trust's Web site.

The Trust will terminate upon the occurrence of any of the termination events listed in the Depositary Trust Agreement and will otherwise terminate on February 1, 2047.

The Sponsor, on behalf of the Trust, will rely on relief previously granted by the Division of Market Regulation [14] from certain trading requirements of the Act.[15] The Sponsor also intends to request guidance from the Commission on the application of the certification rules for quarterly and annual reports adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. In addition, the Trust will not be subject to the Exchange's corporate governance requirements, including the Exchange's audit committee requirements.[16]

Trust's Expenses

The Trust's only ordinary recurring expense is expected to be the Sponsor's fee. The Sponsor is obligated under the Depositary Trust Agreement to pay the following administrative and marketing expenses for the Trust: the Trustee's monthly fee, the Distributor's fee, NYSE listing fees, SEC registration fees, printing and mailing costs, audit fees and expenses and up to $100,000 per annum in legal fees and expenses. The Sponsor is also obligated to pay the costs of the Trust's organization and the costs of the initial sale of the Shares, including the applicable SEC registration fees.

The Sponsor's fee accrues daily at an annual nominal rate of 0.40% of the Japanese Yen in the Trust. Each month, the Trust will first withdraw Japanese Yen the Trust has earned as interest to pay the Sponsor's fee and any other Trust expenses that have been incurred. If that interest is not sufficient to fully pay the Sponsor's fee and Trust expenses, then the Trustee will withdraw Japanese Yen from the primary deposit account as needed. If the Trust incurs expenses in USD (which is not anticipated), Japanese Yen will be converted to USD at the prevailing market rate at the time of conversion to pay expenses.

In certain exceptional cases the following expenses may be charged to the Trust in addition to the Sponsor's fee: (1) Expenses and costs of any extraordinary services performed by the Trustee or the Sponsor on behalf of the Trust or action taken by the Trustee or the Sponsor to protect the Trust or interests of Shareholders; (2) indemnification of the Sponsor; (3) taxes and other governmental charges; and (4) expenses of the Trust other than those the Sponsor is obligated to pay pursuant to the Depositary Trust Agreement, including legal fees and expenses over $100,000. If these additional expenses are incurred, the Trust will be required to pay these expenses by withdrawing deposited Japanese Yen and the amount of Japanese Yen represented by a Share will decline at such time. Accordingly, the Shareholders will effectively bear the cost of these other expenses, if incurred.

In order to pay the Trust's expenses, the Trustee will first withdraw Japanese Yen the Trust has earned as interest. In the event the Sponsor's fee and any other Trust expenses exceed the interest earned, additional Japanese Yen will be withdrawn from the primary deposit account as required to cover the expenses. For expenses not payable in Japanese Yen, the Trustee will direct that Japanese Yen be converted to USD as necessary for the Trustee to pay the Trust's expenses. The Trustee will direct that the smallest amount of Japanese Yen required to purchase amounts of U.S. Dollars sufficient to pay Trust expenses and the costs of currency conversion be withdrawn from the Trust.

Liquidity

The amount of the discount or premium in the trading price relative to the NAV per Share may be influenced

among other things, currency and currency index warrants).

[14] *See* letter from Racquel L. Russell, Branch Chief, SEC Division of Market Regulation, to George T. Simon, Foley & Lardner, dated June 21, 2006 (''June 21, 2006 letter'') (granting relief from certain rules under the Act for the CurrencyShares Trusts); letter from James A. Brigagliano, Assistant Director, SEC Division of Market Regulation to Michael Schmidtberger, Sidley, Austin, Brown & Wood, dated January 19, 2006 (''January 19, 2006 Letter'') (granting relief from certain rules under the Act for the DB Commodity Index Tracking Master Fund). The Sponsor is relying on the June 21, 2006 Letter regarding Rule 10a–1, Rule 200(g) of Regulation SHO, and Rules 101 and 102 of Regulation M under the Act, and is relying on the January 19, 2006 Letter regarding Section 11(d)(1) of the Act and Rule 11d1–2 thereunder.

[15] *See infra* note 30.

[16] *See* Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (SR–NYSE–2002–33, SR–NASD–2002–77, *et al.*) (specifically noting that the corporate governance standards will not apply to, among others, passive business organizations in the form of trusts). *See also* Securities Exchange Act Release No. 47654 (April 25, 2003), 68 FR 18787 (April 16, 2003) (noting in Section II(F)(3)(c) that ''SROs may exclude from Exchange Act Rule 10A–3's requirements issuers that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.'')

by non-concurrent trading hours between the major foreign currency markets and the NYSE. The period of greatest liquidity in the Japanese Yen market is typically that time of the day when trading in the European time zones or Japan overlaps with trading in the United States, which is when OTC market trading in London, New York, and other centers coincides with futures and options trading on those currencies. While the Shares will trade on the NYSE until 4:15 p.m. (New York time), liquidity in the OTC market for the Japanese Yen will be slightly reduced after the close of the London foreign currency markets and before the opening of the Tokyo foreign currency market. Because of the potential for arbitrage inherent in the structure of the Trust, the Sponsor believes that the Shares will not trade at a material discount or premium to the value of underlying currency held by the Trust. The arbitrage process, which in general provides investors the opportunity to profit from differences in prices of assets, increases the efficiency of the markets, serves to prevent potentially manipulative efforts and can be expected to operate efficiently in the case of the Shares and Japanese Yen. If the price of the Shares deviates enough from the price of Japanese Yen to create a material discount or premium, an arbitrage opportunity is created. If the Shares are inexpensive compared to Japanese Yen, an Authorized Participant, either on its own behalf or acting as agent for investors, arbitrageurs or traders, may buy the Shares at a discount, immediately redeem them in exchange for Japanese Yen and sell Japanese Yen in the cash market at a profit. If the Shares are expensive compared to Japanese Yen that underlies them, an Authorized Participant may sell the Shares short, buy enough Japanese Yen to create the number of Shares sold short, acquire the Shares through the creation process and deliver the Shares to close out the short position.[17] In both instances the arbitrageur serves efficiently to correct price discrepancies between the Shares and Japanese Yen.

[17] The Exchange notes that the Trust, which will only hold Japanese Yen as an asset in the normal course of its operations, differs from index-based exchange-traded funds, which may involve a trust holding hundreds or even thousands of underlying component securities, necessarily involving in the arbitrage process movements in a large number of security positions. *See, e.g.*, Securities Exchange Act Release No. 46306 (August 2, 2002), 67 FR 51916 (August 9, 2002) (SR–NYSE–2002–28) (approving the UTP trading of Vanguard Total Market VIPERs based on the Wilshire 5000 Total Market Index).

Description of the Shares

According to the Registration Statement, the Shares are not a traditional investment. They are dissimilar from the ''shares'' of a corporation operating a business enterprise, with management and a board of directors. Trust Shareholders do not have rights normally associated with owning shares of a business corporation, including, for example, the right to bring ''oppression'' or ''derivative'' actions. Shareholders have only those rights explicitly set forth in the Depositary Trust Agreement. All Shares are of the same class with equal rights and privileges. Each Share is transferable, is fully paid and non-assessable and entitles the holder to vote on the limited matters upon which Shareholders may vote under the Depositary Trust Agreement. The Shares do not entitle their holders to any conversion or pre-emptive rights or, except as provided in the Registration Statement, any redemption or distribution rights.

Distributions

Each month the Depository will deposit into the secondary deposit account accrued but unpaid interest and the Trustee will withdraw Japanese Yen from the secondary deposit account to pay the accrued Sponsor's fee for the previous month plus other Trust expenses, if any. In the event the Sponsor's fee and any other Trust expenses exceed the interest earned on the primary deposit account, additional Japanese Yen will be withdrawn from the primary deposit account as required to cover the expenses. In the event that the interest deposited exceeds the sum of the Sponsor's fee for the prior month plus other Trust expenses, if any, then the Trustee will direct that the excess be converted into U.S. Dollars at a prevailing market rate and the Trustee will distribute the U.S. Dollars as promptly as practicable to Shareholders on a pro rata basis (in accordance with the number of Shares that they own).

Fees and Expenses

Under the Deposit Account Agreement, the Depository is entitled to invoice the Trustee or debit the secondary deposit account for out-of-pocket expenses. The Trust has also agreed to reimburse the Depository for any taxes, levies, imposts, deductions, charges, stamp, transaction and other duties and withholdings in connection with the Deposit Accounts, except for such items imposed on the overall net income of the Depository. Except for the reimbursable expenses just described, the Depository will not be paid a fee for its services to the Trust. The Depository may earn a ''spread'' or ''margin'' on the Japanese Yen deposit balances it holds.

Voting and Approvals

Shareholders have no voting rights under the Depositary Trust Agreement, except in limited circumstances. If the holders of at least 25% of the Shares outstanding for the Trust determine that the Trustee is in material breach of its obligations under the Depositary Trust Agreement, they may provide written notice to the Trustee (or require the Sponsor to do so) specifying the default and requiring the Trustee to cure such default. If the Trustee fails to cure such breach within 30 days after receipt of the notice, the Sponsor, acting on behalf of the Registered Owners, may remove the Trustee for the Trust. The holders of at least 66⅔% of the Shares outstanding may vote to remove the Trustee. The Trustee must terminate the Trust at the request of the holders of at least 75% of the outstanding Shares.

Book-Entry Form

The Sponsor and the Trustee will apply to DTC for acceptance of the Shares in its book-entry settlement system. If the Shares are eligible for book-entry settlement, all Shares will be evidenced by global certificates issued by the Trustee to DTC and registered in the name of Cede & Co., as nominee for DTC. The global certificates will evidence all of the Shares outstanding at any time. In order to transfer Shares through DTC, Shareholders must be DTC Participants. The Shares will be transferable only through the book-entry system of DTC. A Shareholder that is not a DTC Participant will be able to transfer its Shares through DTC by instructing the DTC Participant holding its Shares. Transfers will be made in accordance with standard securities industry practice.

Issuance of the Shares

The Trust creates and redeems Shares in Baskets on a continuous basis. A Basket is a block of 50,000 Shares. The creation and redemption of Baskets requires the delivery to the Trust or the distribution by the Trust of the amount of Japanese Yen represented by the Baskets being created or redeemed. This amount is based on the combined NAV per Share of the number of Shares included in the Baskets being created or redeemed, determined on the day the order to create or redeem Baskets is accepted by the Trustee.

Authorized Participants are the only persons that may place orders to create and redeem Baskets. An Authorized

Participant is a DTC Participant that is a registered broker-dealer or other securities market participant such as a bank or other financial institution that is not required to register as a broker-dealer to engage in securities transactions and has entered into a Participant Agreement with the Trustee. Only Authorized Participants may place orders to create or redeem Baskets. Before initiating a creation or redemption order, an Authorized Participant must have entered into a Participant Agreement with the Sponsor and the Trustee. The Participant Agreement provides the procedures for the creation and redemption of Baskets and for the delivery of foreign currency required for creations and redemptions. The Participant Agreements may be amended by the Trustee, the Sponsor and the relevant Authorized Participant. Authorized Participants pay a transaction fee of $500 to the Trustee for each order that they place to create or redeem one or more Baskets. Authorized Participants who make deposits with the Trust in exchange for Baskets receive no fees, commissions or other form of compensation or inducement of any kind from either the Sponsor or the Trust. No Authorized Participant has any obligation or responsibility to the Sponsor or the Trust to effect any sale or resale of Shares.

Certain Authorized Participants are expected to have the facility to participate directly in the global foreign exchange market. In some cases, an Authorized Participant may acquire foreign currency from, or sell foreign currency to, an affiliated foreign exchange trading desk, which may profit in these instances. The Sponsor believes that the size and operation of the foreign exchange market make it unlikely that an Authorized Participant's direct activities in the foreign exchange and securities markets will impact the price of Japanese Yen or the price of Shares. Each Authorized Participant will be registered as a broker-dealer under the Act and will be regulated by the National Association of Securities Dealers, Inc., or else will be exempt from being (or otherwise will not be required to be) so registered or regulated, and will be qualified to act as a broker or dealer in the states or other jurisdictions where the nature of its business so requires. Certain Authorized Participants may be regulated under federal and state banking laws and regulations. Each Authorized Participant will have its own set of rules and procedures, internal controls and information barriers as it determines to be appropriate in light of its own regulatory regime.

Authorized Participants may act for their own accounts or as agents for broker-dealers, depositaries and other securities or foreign currency market participants that wish to create or redeem Baskets. An order for one or more Baskets may be placed by an Authorized Participant on behalf of multiple clients.

Creation and Redemption

In order to create a Basket, the Authorized Participant deposits the applicable Basket Amount with the Depository and orders Shares from the Trustee.[18] The Trustee directs DTC to credit Shares to the Authorized Participant. The Authorized Participant will then be able to sell Shares to Purchasers on the NYSE or any other market in which the Shares may trade.

On any business day, an Authorized Participant may place an order with the Trustee to create one or more Baskets. The creation or redemption of Shares can occur only in a Basket of 50,000 Shares or multiples thereof. For purposes of processing both purchase and redemption orders, a ''business day'' means any day other than a day when the NYSE is closed for regular trading. Purchase orders placed by 4:00 p.m. (New York time) on a business day will have that date as the purchase order date. By placing a purchase order, an Authorized Participant agrees to deposit Japanese Yen with the Trust. Before the delivery of Baskets for a purchase order, the Authorized Participant must also have wired to the Trustee the non-refundable transaction fee due for the purchase order.

The total deposit required to create each Basket, called the Basket Amount, is an amount of Japanese Yen bearing the same proportion to the number of Baskets to be created as the total assets of the Trust (net of estimated accrued but unpaid expenses) bears to the total number of Baskets outstanding on the date that the order to purchase is properly received. The amount of the required deposit is determined by dividing the number of units of Japanese Yen held by the Trust (net of estimated accrued but unpaid expenses) by the number of Baskets outstanding. All questions as to the composition of a Basket Amount are finally determined by the Trustee. The Trustee's determination of the Basket Amount shall be final and binding on all persons interested in the Trust.

An Authorized Participant who places a purchase order is responsible for delivering the Basket Amount to the Trust's primary deposit account with the Depository as directed in the Authorized Participant's Participant Agreement. Authorized Participants will use the SWIFT system to make timely deposits through their bank correspondents in London. Upon receipt of a Japanese Yen deposit from an Authorized Participant, the Trustee will direct DTC to credit the number of Baskets ordered to the Authorized Participant's DTC account. The expense and risk of delivery, ownership and safekeeping of Japanese Yen until such currency has been received by the Depository shall be borne solely by the Authorized Participant.

In order to redeem Shares, an Authorized Participant must send the Trustee a Redemption Order specifying the number of Baskets that the Authorized Participant wishes to redeem. The Trustee then instructs the Depository to send the Authorized Participant the Japanese Yen and directs DTC to cancel the Authorized Participant's Shares that were redeemed.

The procedures by which an Authorized Participant can redeem one or more Baskets mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place an order with the Trustee to redeem one or more Baskets. Redemption orders must be placed by 4 p.m. (New York time) on a business day. A redemption order so received will have that day as the order redemption date and will normally be effective on the date it is received in satisfactory form by the Trustee. The redemption procedures allow Authorized Participants to redeem Baskets and do not entitle an individual Shareholder to redeem any Shares in an amount less than a Basket or to redeem Baskets other than through an Authorized Participant.

By placing a redemption order, an Authorized Participant agrees to deliver the Baskets to be redeemed through DTC's book-entry system to the Depository as directed in the Authorized Participant's Participant Agreement. Before the delivery of the redemption distribution for a

[18] The Trustee shall determine the Basket Amount ''as promptly as practicable'' after the Federal Reserve Bank of New York announces the Noon Buying Rate on each day that the NYSE is open for regular trading. Ordinarily, this will occur by 2 p.m. (New York time). The Basket Amount will be published on the Trust's Web site every day the NYSE is open for regular trading. The Registration Statement, the Participant Agreement and the Trust Agreement do not state a precise time each day for publication of the Basket Amount. It will be published simultaneously with the NAV. The Sponsor for the Trust has represented to the Exchange that the NAV and the Basket Amount for the Trust will be available to all market participants at the same time.

redemption order, the Authorized Participant must also have wired to the Trustee the non-refundable transaction fee due for the redemption order.

Determination of Redemption Distribution

The redemption distribution from the Trust is a wire transfer, to an account of the redeeming Authorized Participant identified by the Authorized Participant, in the amount of Japanese Yen held by the Trust evidenced by the Shares being redeemed, giving effect to all estimated accrued but unpaid interest and expenses. Redemption distributions are subject to the deduction of any applicable tax or other governmental charges that may be due.[19] All questions as to the amount of a redemption distribution are finally determined by the Trustee. The Trustee's determination of the amount shall be final and binding on all persons interested in the Trust.

Delivery of Redemption Distribution

The redemption distribution due from the Trust is delivered to the Authorized Participant as directed in the Authorized Participant's Participant Agreement.

The Depository wires the redemption amount from the Deposit Account to an account of the redeeming Authorized Participant identified by the Authorized Participant. The Authorized Participant and the Trust are each at risk in respect of Japanese Yen credited to their respective accounts in the event of the Depository's insolvency.

The Trustee will reject a redemption order if the order is not in proper form as described in the Participant Agreement or if the fulfillment of the order, in the opinion of its counsel, might be unlawful.

Valuation of Japanese Yen, Definition of Net Asset Value and Adjusted Net Asset Value

The Trustee will calculate, and the Sponsor will publish, the Trust's NAV each business day. To calculate the NAV, the Trustee will add to the amount of Japanese Yen in the Trust at the end of the preceding day accrued but unpaid interest, Japanese Yen receivable under pending purchase orders and the value of other Trust assets, and will subtract the accrued but unpaid Sponsor's fee, Japanese Yen payable under pending redemption orders and other Trust expenses and liabilities, if any.

The result is the NAV of the Trust for that business day. The Trustee shall also divide the NAV of the Trust by the number of Shares outstanding for the date of the evaluation then being made, which figure is the ''NAV per Share.'' The NAV will be expressed in USD based on the Noon Buying Rate as determined by the Federal Reserve Bank of New York. If, on a particular evaluation day, the Noon Buying Rate has not been determined and announced by 2 p.m. (New York time), then the most recent Federal Reserve Bank of New York determination of the Noon Buying Rate shall be used to determine the NAV of the Trust unless the Trustee, in consultation with the Sponsor, determines that such price is inappropriate to use as the basis for such valuation. In the event that the Trustee and the Sponsor determine that the most recent Federal Reserve Bank of New York determination of the Noon Buying Rate is not an appropriate basis for valuation of the Trust's Japanese Yen, they shall determine an alternative basis for such evaluation to be employed by the Trustee. Such an alternative basis may include reference to other exchange traded securities that reflect the value of the Japanese Yen relative to the USD. The use of any alternative basis to determine NAV would be disclosed on the Trust's Web site. The Trustee also determines the NAV per Share, which equals the NAV of the Trust divided by the number of outstanding Shares. The Sponsor will publish the NAV and NAV per Share on each day that the NYSE is open for regular trading on the Trust's Web site, *www.currencyshares.com.*

Clearance and Settlement

The Sponsor and the Trustee will apply to DTC for acceptance of the Shares in its book-entry settlement system. If the Shares are eligible for book-entry settlement, all Shares will be evidenced by one or more global certificates that the Trustee will issue to DTC. The Shares will be available only in book-entry form. Shareholders may hold their Shares through DTC, if they are DTC Participants, or through Authorized Participants or Indirect Participants.

If the Shares are eligible for book-entry settlement, individual certificates will not be issued for the Shares. Instead, global certificates will be signed by the Trustee and the Sponsor on behalf of the Trust, registered in the name of Cede & Co., as nominee for DTC, and deposited with the Trustee on behalf of DTC. The representations, undertakings and agreements made on the part of the Trust in the global certificates will be made and intended for the purpose of binding only the Trust and not the Trustee or the Sponsor individually.

Upon the settlement date of any creation, transfer or redemption of Shares, DTC will credit or debit, on its book-entry registration and transfer system, the amount of the Shares so created, transferred or redeemed to the accounts of the appropriate DTC Participants. The Trustee and the Authorized Participants will designate the accounts to be credited and charged in the case of creation or redemption of Shares.

Beneficial ownership of the Shares is limited to DTC Participants, Indirect Participants and persons holding interests through DTC Participants and Indirect Participants. Ownership of beneficial interests in the Shares will be shown on, and the transfer of ownership will be effected only through, records maintained by DTC (with respect to DTC Participants), the records of DTC Participants (with respect to Indirect Participants) and the records of Indirect Participants (with respect to Shareholders that are not DTC Participants or Indirect Participants). A Shareholder is expected to receive from or through the DTC Participant maintaining the account through which the Shareholder purchased its Shares a written confirmation relating to the purchase.

DTC may discontinue providing its service with respect to Baskets or the Shares (or both) by giving notice to the Trustee and the Sponsor. Under such circumstances, the Trustee and the Sponsor would either find a replacement for DTC to perform its functions at a comparable cost or, if a replacement is unavailable, terminate the Trust.

Risk Factors To Investing in the Shares

An investment in the Shares carries certain risks. The following risk factors are taken from and discussed in more detail in the Registration Statement:

- The value of the Shares relates directly to the value of the Japanese Yen held by the Trust. Fluctuations in the price of Japanese Yen could materially and adversely affect the value of the Shares.
- The Japanese Yen/USD exchange rate, like foreign exchange rates in general, can be volatile and difficult to predict. This volatility could materially

[19] Authorized Participants are responsible for any transfer tax, sales or use tax, recording tax, value added tax or similar tax or governmental charge applicable to the creation or redemption of Baskets, regardless of whether or not such tax or charge is imposed directly on the Authorized Participant, and agree to indemnify the Sponsor, the Trustee and the Trust if they are required by law to pay any such tax, together with any applicable penalties, additions to tax or interest thereon.

and adversely affect the performance of the Shares.

• If interest earned by the Trust does not exceed expenses, the Trustee will withdraw Japanese Yen from the Trust to pay these excess expenses which will reduce the amount of Japanese Yen represented by each Share on an ongoing basis.

• If the Trust incurs expenses in USD, the Trust would be required to sell Japanese Yen to pay these expenses. The sale of the Trust's Japanese Yen to pay expenses in USD at a time of low Japanese Yen prices could adversely affect the value of the Shares.

• Purchasing activity in the Japanese Yen market associated with the purchase of Baskets from the Trust may cause a temporary increase in the price of Japanese Yen. This increase may adversely affect an investment in the Shares.

• The Deposit Accounts are not entitled to payment at any office of JP Morgan Chase Bank, N.A. located in the United States.

• Shareholders will not have the protections associated with ownership of a demand deposit account insured in the United States by the Federal Deposit Insurance Corporation or the protection provided under English law.

Japanese Yen deposited in the Deposit Accounts by an Authorized Participant will be commingled with Japanese Yen deposited by other Authorized Participants and will be held by the Depository in either the primary deposit account or the secondary deposit account of the Trust. Japanese Yen held in the Deposit Accounts will not be segregated from the Depository's other assets. If the Depository becomes insolvent, then its assets might not be adequate to satisfy a claim by the Trust or any Authorized Participant. In addition, in the event of the insolvency of the Depository or the U.S. bank of which it is a branch, there may be a delay and costs incurred in recovering the Japanese Yen held in the Deposit Accounts.

• The Shares are a new securities product. Their value could decrease if unanticipated operational or trading problems were to arise.

• Shareholders will not have the protections associated with ownership of shares in an investment company registered under the Investment Company Act of 1940.

• Shareholders will not have the rights enjoyed by investors in certain other financial instruments.

• The Shares may trade at a price that is at, above, or below the NAV per Share.

• The interest rate earned by the Trust, although competitive, may not be the best rate available. If the Sponsor determines that the interest rate is inadequate, then its sole recourse will be to remove the Depositary and terminate the Deposit Accounts.

• The Depository owes no fiduciary duties to the Trust or the Shareholders, is not required to act in their best interest and could resign or be removed by the Sponsor with respect to the Trust, triggering early termination of the Trust.

• Shareholders may incur significant fees upon the termination of the Trust.

• Redemption orders are subject to rejection by the Trustee under certain circumstances.

• Substantial sales of Japanese Yen by the official sector could adversely affect an investment in the Shares.

• Shareholders that are not Authorized Participants may only purchase or sell their Shares in secondary trading markets.

• The liability of the Sponsor and the Trustee under the Depositary Trust Agreement is limited; and, except as set forth in the Depositary Trust Agreement, they are not obligated to prosecute any action, suit or other proceeding in respect to any Trust property.

• The Depositary Trust Agreement may be amended to the detriment of Shareholders without their consent.

• The License Agreement with the Bank of New York may be terminated by the Bank of New York in the event of a material breach by the Sponsor. Termination of the License Agreement might lead to early termination and liquidation of the Trust.

Availability of Information Regarding Foreign Currency Prices

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a foreign currency over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Shares, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of foreign currency price and market information available on public Web sites and through professional and subscription services. As is the case with equity securities generally and exchange-traded funds specifically, in most instances, real-time information is only available for a fee, and information available free of charge is subject to delay (typically, 15 to 20 minutes).

Investors may obtain on a 24-hour basis foreign currency pricing information based on the foreign currency spot price of each applicable foreign currency from various financial information service providers. Complete real-time data for foreign currency futures and options prices traded on the CME and Phlx are also available by subscription from information service providers. The CME and Phlx also provide delayed futures and options information on current and past trading sessions and market news free of charge on their respective Web sites.

There are a variety of other public Web sites available at no charge that provide information on the Japanese Yen and other foreign currencies underlying CurrencyShares, which service providers include Bloomberg, (*http://www.bloomberg.com/markets/currencies/fxc.html*), CBS Market Watch (*www.marketwatch.com/tools/stockresearch/globalmarkets*), Yahoo! Finance (*www.finance.yahoo.com/currency*), moneycentral.com, cnnfn.com and reuters.com, which provide spot price or currency conversion information about the Japanese Yen and other currencies. Many of these sites offer price quotations drawn from other published sources, and as the information is supplied free of charge, it generally is subject to time delays. In addition, major market data vendors regularly report current currency exchange pricing for a fee for the Japanese Yen and other currencies.[20] Like bond securities traded in the OTC market with respect to which pricing information is available directly from bond dealers, current foreign currency spot prices are also generally available with bid/ask spreads from foreign currency dealers.[21]

In addition, the Trust's Web site will provide the following information: (1) The spot price for Japanese Yen,[22]

[20] There may be incremental differences in the Japanese Yen spot price among the various information service sources. While the Exchange believes the differences in the Japanese Yen spot price may be relevant to those entities engaging in arbitrage or in the active daily trading of Japanese Yen or derivatives thereon, the Exchange believes such differences are likely of less concern to individual investors intending to hold the Shares as part of a long-term investment strategy.

[21] *See, e.g.*, Securities Exchange Act Release No. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) (SR–Amex–2001–35) (noting that quote and trade information regarding debt securities is widely available to market participants from a variety of sources, including broker-dealers, information service providers, newspapers and Web sites).

[22] The Trust's website's foreign currency spot price will be provided by FactSet Research Systems (*www.factset.com*). The NYSE will provide a link to the Trust's website. FactSet Research Systems is not affiliated with the Trust, Trustee, Sponsor, Depository, Distributor or the Exchange. In the event that the Trust's website should cease to provide this foreign currency spot price information

including the bid and offer and the midpoint between the bid and offer for the Japanese Yen spot price, updated every 5 to 10 seconds,[23] which is an essentially real-time basis; (2) an intraday indicative value (''IIV'') per share for the Shares calculated by multiplying the indicative spot price of the Japanese Yen by the quantity of Japanese Yen backing each Share, updated at least every 15 seconds; [24] (3) a delayed indicative value (subject to a 20 minute delay), which is used for calculating premium/discount information; (4) premium/discount information, calculated on a 20 minute delayed basis; (5) the NAV of the Trust as calculated each business day by the Trustee; (6) accrued interest per Share; (7) the daily Federal Reserve Bank of New York Noon Buying Rate; (8) the Basket Amount for the Japanese Yen; and (9) the last sale price of the Shares as traded in the U.S. market, subject to a 20-minute delay, as it is provided free of charge.[25] The Exchange will provide on its own public Web site (*www.nyse.com*) a link to the Trust's Web site.

Other Characteristics of the Shares

Set forth below is a table that shows the initial number of currency units per Share, the number of Shares per Basket and the number of currency units per Basket:

Trust name	Currency units per share	Shares per basket	Currency units per basket
CurrencyShares Japanese Yen Trust	10,000	50,000	500,000,000

For the Trust, a minimum of three Baskets, representing 150,000 Shares, will be outstanding at the commencement of trading on the Exchange.

Trading in Shares on the Exchange will be effected normally until 4:15 p.m. each business day. The minimum trading increment for Shares on the Exchange will be $0.01.

Listing Fees

The Exchange original listing fee applicable to the listing of the Trust will be $5,000. The annual continued listing fee for the Trust will be $2,000.

Continued Listing Criteria

Under the applicable continued listing criteria, the Exchange will commence delisting proceedings with respect to Shares of the Trust as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Shares, there are fewer than 50 record and/or beneficial holders of the Shares for 30 or more consecutive trading days; (2) the value of the Japanese Yen is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, the Trust, the Trustee, or the Exchange or the Exchange stops providing a hyperlink on the Exchange's Web site to any such unaffiliated foreign currency value; (3) the IIV is no longer made available on at least a 15-second delayed basis; or (4) such other event shall occur or condition exist that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. In addition, the Exchange will remove Shares from listing and trading upon termination of the Trust.

Exchange Trading Rules and Policies

The Shares are considered ''securities'' pursuant to NYSE Rule 3 and are subject to all applicable trading rules. Trading in the Shares will be subject to all provisions of Rules 1300A *et seq.*[26] The Exchange does not currently exempt Currency Trust Shares from the Exchange's ''Market-on-Close/Limit-on-Close/Pre-Opening Price Indications'' Policy, although the Exchange may do so by means of a rule change in the future if, after having experience with the trading of the Shares, the Exchange believes such an exemption is appropriate.

The Exchange has adopted Rule 1301A (''Currency Trust Shares: Securities Accounts and Orders of Specialists'') to ensure that specialists handling Currency Trust Shares provide the Exchange with all necessary information relating to their trading in the applicable non-U.S. currency, options, futures contracts and options thereon or any other derivative on such currency.[27] As a general matter, the Exchange has regulatory jurisdiction over its member organizations and any person or entity controlling a member organization. The Exchange also has regulatory jurisdiction over a subsidiary or affiliate of a member organization that is in the securities business. A member organization subsidiary or affiliate that does business only in commodities would not be subject to NYSE jurisdiction, but the Exchange could obtain certain information regarding the activities of such subsidiary or affiliate through reciprocal agreements with regulatory organizations that are members or affiliates of the Intermarket Surveillance Group (''ISG'') of which such subsidiary or affiliate is a member.

Surveillance

The Exchange's surveillance procedures will be comparable to those used for Investment Company Units, and streetTRACKS® Gold Shares and the currently-traded CurrencyShares Trusts and will incorporate and rely upon existing NYSE surveillance procedures governing equities. The

from an unaffiliated source and the intraday indicative value of the Shares, the NYSE will commence delisting proceedings for the Shares.

[23] The midpoint will be calculated by the Sponsor. The midpoint is used for purposes of calculating the premium or discount of the Shares. For example, assuming a Japanese Yen spot bid of $.0086 and an offer of $.0087, the mid point would be calculated as follows: (Japanese Yen spot bid plus ((spot offer minus spot bid) divided by 2)) or ($.0086 + ($.0087 − $.0086/2)) = $.00865.

[24] The intraday indicative value of the Shares is analogous to the intraday optimized portfolio value (sometimes referred to as the IOPV), indicative portfolio value and the intraday indicative value (sometimes referred to as the IIV) associated with the trading of exchange-traded funds. *See, e.g.,* Securities Exchange Act Release No. 46686 (October 18, 2002), 67 FR 65388 (October 24, 2002) (SR–NYSE–2002–51) for a discussion of indicative portfolio value in the context of an exchange-traded fund.

[25] The last sale price of the Shares in the secondary market is available on a real-time basis for a fee from regular data vendors.

[26] In particular, Rule 1300A provides that Rule 105(m) is deemed to prohibit an equity specialist, his member organization, other member, allied member or approved person in such member organization or officer or employee thereof from acting as a market maker or functioning in any capacity involving market-making responsibilities in the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency, except as otherwise provided therein.

[27] Rule 1301A also states that, in connection with trading the applicable non-U.S. currency, options, futures or options on futures or any other derivatives on such currency (including Currency Trust Shares), the specialist shall not use any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in the applicable non-U.S. currency, options, futures or options on futures, or any other derivatives on such currency. For purposes of Rule 1301A, ''person associated with a member'' shall have the same meaning ascribed to it in section 3(a)(21) of the Act.

Exchange believes that these procedures are adequate to monitor Exchange trading of the Shares, to detect violations of Exchange rules, consequently deterring manipulation.

The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Shares, foreign currency options and foreign currency futures, including Japanese Yen options and futures, through NYSE members, in connection with such members' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG. Specifically, the NYSE can obtain such information from the Phlx in connection with Japanese Yen options trading on the Phlx and from the CME in connection with Japanese Yen futures trading on those exchanges.[28]

The Exchange's surveillance procedures will be comparable to those used for investment company units currently trading on the Exchange and will incorporate and rely upon existing NYSE surveillance procedures governing equities.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include (1) the extent to which trading is not occurring in Japanese Yen or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares is subject to trading halts caused by extraordinary market volatility pursuant to Exchange's ''circuit breaker'' rule.[29] If the value of Japanese Yen updated at least every 15 seconds from a source not affiliated with the Sponsor, Trust or the Exchange; or (2) the IIV per Share updated every 15 seconds is not being disseminated, the Exchange may halt trading during the day in which the interruption to such dissemination occurs. If the interruption to the dissemination of the value of the Japanese Yen or the IIV persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

Due Diligence

Before a member, member organization, allied member or employee thereof recommends a transaction in the Shares, such person must exercise due diligence to learn the essential facts relative to the customer pursuant to Exchange Rule 405, and must determine that the recommendation complies with all other applicable Exchange and Federal rules and regulations. A person making such recommendation should have a reasonable basis for believing, at the time of making the recommendation, that the customer has sufficient knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks and any special characteristics of the recommended transaction, and is financially able to bear the risks of the recommended transaction.

Information Memo

The Exchange will distribute an Information Memo to its members in connection with the trading in the Shares. The Memo will discuss the special characteristics and risks of trading this type of security. Specifically, the Memo, among other things, will discuss what the Shares are, that Shares are not individually redeemable but are redeemable only in Baskets of 50,000 shares or multiples thereof, how a Basket is created and redeemed, applicable Exchange rules, the indicative price of Japanese Yen and IIV, dissemination information, trading information and the applicability of suitability rules.[30] The Information Memo will also state that the number of units Japanese Yen required to create a Basket or to be delivered upon redemption of a Basket may gradually decrease over time in the event that the Trust is required to withdraw or sell units of foreign currency to pay the Trust's expenses. The Memo also will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Memo also will reference the fact that there is no regulated source of last sale information regarding foreign currency, and that the Commission has no jurisdiction over the trading of foreign currency. Finally, the Memo also will note to members language in the Registration Statement regarding prospectus delivery requirements for the Shares.

2. Statutory Basis

The basis under the Act for this proposed rule change, as amended, is the requirement under section 6(b)(5) of the Act[31] that an Exchange have rules that are 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–03 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.

[28] Phlx is a member of ISG. CME is an affiliate member of ISG.

[29] NYSE Rule 80B.

[30] The Information Memo will discuss exemptive relief granted by the Commission from certain rules under the Act. *See* note 14, *supra.*

[31] 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR–NYSE–2007–03. 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 will also be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR–NYSE–2007–03 and should be submitted by March 13, 2007.

IV. Commission Findings and Order Granting Accelerated Approval of a Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act [32] and the rules and regulations thereunder applicable to a national securities exchange.[33] In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,[34] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

A. Surveillance

The Commission finds that the proposed rule change provides the NYSE with the tools necessary to monitor trading in the Shares and is designed to prevent fraudulent and manipulative acts and practices. Information sharing agreements with markets trading securities underlying a derivative, or primary markets trading derivatives on the same underlying instruments, are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products.[35] Although an information sharing agreement is not possible with the OTC foreign exchange market, the Commission believes that the Exchange's comprehensive surveillance sharing agreements with the Phlx and CME, by virtue of their memberships in the ISG, together with NYSE Rules 1301A and 1300A(b), will allow the NYSE to monitor for fraudulent and manipulative trading practices.[36]

NYSE Rule 1301A requires that the specialist handling the Shares provide the Exchange with information relating to its trading in options, futures or options on futures on the Japanese Yen, or any other derivatives based on the Japanese Yen. These reporting and recordkeeping requirements will assist the Exchange in identifying situations potentially susceptible to manipulation. NYSE Rule 1301A(c) also prohibits the specialist in the Shares from using any material, nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in the Japanese Yen, or options, futures or options on futures on the Japanese Yen, or any other derivatives based on the Japanese Yen (including the Shares). In addition, NYSE Rule 1300A(b) prohibits the specialist in the Shares from being affiliated with a market maker in the Japanese Yen, or options, futures or options on futures on the Japanese Yen, or any other derivative based on the Japanese Yen, unless information barriers are in place that satisfy the requirements in NYSE Rule 98.

The Exchange also represents that it can obtain, through its ISG membership, information from CME regarding the trading of the Japanese Yen futures, and options on those futures, that trade on CME, and from Phlx regarding the trading of options on the Japanese Yen that trade on Phlx. In addition, the Exchange represents that it is able to obtain information regarding trading in the Shares, and options and futures on the Japanese Yen, through its members, in connection with such members' proprietary or customer trades that they effect on any relevant market.

B. Dissemination of Information

The Commission believes that sufficient venues for obtaining reliable information exist so that investors in the Shares can monitor the underlying Japanese Yen spot market relative to the NAV of their Shares. As discussed above, the Exchange represents that there is a considerable amount of foreign currency price and market information available 24 hours a day through public Web sites and through professional and subscription services, including Bloomberg and Reuters.[37] The Exchange further represents that major market data vendors regularly report current currency exchange pricing for a fee for the Japanese Yen underlying the Shares. In addition, the Exchange will provide a link to the Trust's Web site on the NYSE's public Web site. The Trust's Web site will provide, among other things, the Japanese Yen spot prices,[38] including the bids and offers and the midpoints between the bids and offers for the Japanese Yen, updated no less than every 5 to 10 seconds, and the daily Federal Reserve Bank of New York Noon Buying Rate.

The Commission also notes that the Trust's Web site will contain: (1) An IIV per Share for the Shares, updated at least every 15 seconds; (2) a delayed indicative value (subject to a 20 minute delay), which is used for calculating premium/discount information; (3) premium/ discount information, calculated on a 20 minute delayed basis; (4) the NAV of the Trust, as calculated

[32] 15 U.S.C. 78f.

[33] 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* U.S.C. 78c(f).

[34] 15 U.S.C. 78f(b)(5).

[35] *See, e.g.*, Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (approving proposal by the NYSE to list and trade trust shares that correspond to a fixed amount of gold).

[36] The Commission notes that it has previously approved the listing and trading of foreign currency options and warrants. *See, e.g.*, Securities Exchange Act Release Nos. 19133 (October 14, 1982), 47 FR 46946 (October 21, 1982) (order approving a Phlx proposal to accommodate the listing and trading of standardized option contracts on five foreign currencies, including the British Pound and Swiss Franc); 22471 (September 26, 1985), 50 FR 40636 (October 4, 1985) (order approving a proposed rule change by the Chicago Board Options Exchange, Inc. (''CBOE'') to trade standardized option contracts on six foreign currencies, including the British Pound, Canadian Dollar, and Swiss Franc); 23945 (December 30, 1986), 52 FR 633 (January 7, 1987) (order approving a proposal by the CBOE to trade standardized options on the Australian Dollar); and 35806 (June 5, 1995), 60 FR 30911 (June 12, 1995) (order approving a Phlx proposal to trade currency warrants based on the value of the U.S. dollar in relation to the Mexican Peso).

[37] The Exchange notes that, in most instances, real-time information is available for a fee, and information available free of charge is subject to delay (typically, 15 to 20 minutes).

[38] As noted above, the spot price for the Japanese Yen published on the Trusts' Web site will be provided by FactSet Research Systems, which is not affiliated with the Trust, the Trustee, the Sponsor, the Depository, the Distributor or the Exchange.

each business day by the Trustee;[39] (5) accrued interest per Share; (6) the Basket Amount for the Japanese Yen; and (7) the last sale price of the Shares as traded in the U.S. market, subject to a 20-minute delay, as it is provided free of charge.[40] Further, the Exchange represents that real-time information for prices for futures and options on the Japanese Yen traded on CME and Phlx are available from information service providers, and that CME and Phlx provide delayed futures and options information free of charge on their respective Web sites. The Commission believes that the wide availability of such information, as described above, will facilitate transparency with respect to the Shares and diminish the risk of manipulation or unfair informational advantage.

C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Shares are consistent with the Act. Shares will trade as equity securities subject to NYSE rules including, among others, rules governing trading halts, responsibilities of the specialist, account opening, and customer suitability requirements. In addition, the Shares will be subject to NYSE listing and delisting rules and procedures governing the trading of ICUs on the NYSE. The Commission believes that listing and delisting criteria for the Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares. Finally, the Commission believes that the Information Memo the Exchange will distribute will inform members and member organizations about the terms, characteristics, and risks in trading the Shares, including their prospectus delivery obligations.

D. Acceleration

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission has previously granted approval to a NYSE proposal to adopt NYSE Rules 1300A and 1301A that govern the trading of Currency Trust Shares, and a proposal to list and trade Euro Shares pursuant to such rules.[41] The Shares proposed to be listed and traded in this proposed rule change, are substantially similar in structure and operation to the Euro Shares, will be listed and traded pursuant to the same rules, and do not raise any new issues. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[42] to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[43] that the proposed rule change (SR–NYSE–2007–03), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[44]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2844 Filed 2–16–07; 8:45 am]

BILLING CODE 8011–01–P

[39] According to the Exchange, the Sponsor has represented to the Exchange that the NAV for the Trust will be available to all market participants at the same time. The Exchange further represents that therefore, no market participant will have a time advantage in using such data.

[40] As noted above, the last sale price of the Shares in the secondary market will be disseminated over the Consolidated Tape.

[41] *See* Securities Exchange Act Release No. 52843, (November 28, 2005), 70 FR 72486 (December 5, 2005), (SR–NYSE–2005–65) (order granting accelerated approval, after a 15-day comment period, to a NYSE proposal to list and trade Euro Shares, which represent units of fractional undivided beneficial interest in and ownership of the Euro Currency Trust).

[42] 15 U.S.C. 78s(b)(2).

[43] 15 U.S.C. 78s(b)(2).

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55281; File No. SR–NYSE–2007–07]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Extension of the Crossing Session III and IV Pilot

February 12, 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 26, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder, which renders it effective upon filing with the Commission.[4] 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 NYSE proposes to extend until February 1, 2008 the following pilot programs (''Pilots''): Crossing Session III, for the execution of guaranteed price coupled orders by member organizations to fill the balance of customer orders at a price that was guaranteed to a customer prior to the close of the Exchange's 9:30 a.m. to 4:00 p.m. trading session; and Crossing Session IV, whereby an unfilled balance of an order may be filled at a price such that the entire order is filled at no worse price than the Volume Weighted Average Price (''VWAP'') for the subject security. The text of the proposed rule change is available at the NYSE, the Commission's Public Reference Room, and *http://www.nyse.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 NYSE 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 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 SR–NYSE–2002–40,[5] the Commission approved an order establishing two new crossing sessions (Crossing Sessions III and IV) in the Exchange's Off-Hours Trading Facility (''OHTF'') as a pilot program (''Pilot''), expiring on December 1, 2004. Subsequently, the Commission published two notices of filing and immediate effectiveness of a proposed rule change extending the Pilot until

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 48857 (December 1, 2003), 68 FR 68440 (December 8, 2003).

February 1, 2006[6] and until February 1, 2007.[7]

This proposal extends the Pilot until February 1, 2008.[8] Crossing Sessions III and IV are described below.

Background

The purpose of the original proposed rule change was to add two additional ''Crossing Sessions'' (Crossing Sessions III and IV) to the Exchange's OHTF. Before the proposed rule change, the OHTF consisted of Crossing Sessions I and II. Crossing Session I permits the execution, at the Exchange's closing price, of single-stock, single-sided closing price orders and crosses of single-stock, and closing price buy and sell orders. Crossing Session II permits the execution of crosses of multiple-stock (''basket'') aggregate priced buy and sell orders. For Crossing Session II, trade reporting is accomplished by reporting to the Consolidated Tape the total number of shares and the total market value of the aggregate-price trades. There is no indication of the individual component stocks involved in the aggregate-price transactions.

Crossing Session III

The Exchange is proposing to extend until February 1, 2008, the Pilot in Crossing Session III. Crossing Session III is described in Exchange Rule 907. This Pilot would continue to allow for the execution on the NYSE of ''guaranteed price coupled orders'' whereby member organizations could fill the unfilled balance of a customer order at a price which was guaranteed to the customer prior to the close of the Exchange's 9:30 a.m. to 4:00 p.m. trading session.

The Granting of ''Upstairs Stops''

In serving their institutional customers, member firms may offer them a guarantee that a large size order will receive no worse than a particular price. Such a practice is usually referred to as an ''upstairs stop'' meaning that the firm guarantees that its customer's order will be executed at no worse price than the agreed-upon, guaranteed price, with the member firm trading for its own account, if necessary, to effectuate the guarantee.

Typically, a member firm will seek to execute as much of the order as possible during the trading day at or below the ''stop'' price (in the case of a buy order) or at or above the ''stop'' price (in the case of a sell order). Any portion of the order not filled during the trading day will be completed after hours, with the firm either buying from, or selling to, its customer at a price which ensures that the entire order is executed at a price which is no worse than the ''stop'' price.

Member firms typically execute the unfilled balance of the order, after the U.S. Consolidated Tape is closed, in the London over-the-counter market, where trades are not reported in real time. The purpose of this is simply to minimize the possibility that other market participants may ascertain the firm's, or the customer's inventory position, and possibly trade in the subject security to the detriment of the firm that granted the ''upstairs stop.'' It is more transparent to print the trade in the NYSE primary market during U.S. Consolidated Tape hours.

Crossing Session IV

The Exchange is also proposing to extend the Pilot in Crossing Session IV (which is also described in NYSE Rule 907), until February 1, 2008. Crossing Session IV is a facility whereby member organizations may fill the unfilled balance of a customer's order at a price such that the overall order is filled at a price that is no worse than the VWAP for the subject security on that trading day. The member organization would be required to document its VWAP agreement with the customer and the basis upon which the VWAP price would be determined.

Operation of Crossing Sessions

As described in NYSE Information-Memos 04–30 and 05–57 and NYSE Rule 907, Crossing Sessions III and IV would continue to operate as follows:

(i) The original order as to which an ''upstairs stop'' or ''VWAP'' has been granted may be of any size;

(ii) The customer must have received a ''stop'' (guaranteed price) or VWAP for the entire order;

(iii) The member firm must record all details of the order, including the price it has guaranteed its customer or that the entire order will be filled at no worse than the VWAP;

(iv) An order or the unfilled balance of an order that would be executed in Crossing Session III or Crossing Session IV may be of any size;

(v) The customer's order must be executed in Crossing Session III or Crossing Session IV at a price that ensures that the entire order is executed at a price that is no worse than the guaranteed price or the VWAP;

(vi) Orders may be entered in Crossing Session III or Crossing Session IV between 4 p.m. and 6:30 p.m., and must be identified as either a Crossing Session III or Crossing Session IV order;

(vii) Member firms will receive an immediate report of execution upon entering an order into Crossing Session III or Crossing Session IV; (viii) Orders may be entered into Crossing Session III for execution at prices outside the trading range in the subject security during the 9:30 a.m. to 4 p.m. trading session;

(ix) Orders may not be entered into Crossing Session III or Crossing Session IV in a security that is subject to a trading halt at the close of the regular 9:30 a.m. to 4 p.m. trading session; and

(x) At 6:30 p.m., the Exchange will print trades reported through Crossing Session III as guaranteed price coupled orders or in Crossing Session IV as VWAP executions.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[9] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

[6] *See* Securities Exchange Act Release No. 51091 (January 28, 2005), 70 FR 6484 (February 7, 2005) (SR–NYSE–2005–01).

[7] *See* Securities Exchange Act Release No. 53275 (February 13, 2006), 71 FR 8626 (February 17, 2006) (SR-NYSE–2006–02).

[8] The NYSE confirmed that the Pilots will continue to function in the same manner that they operated prior to the one-year extension. Telephone conversation between Jean Walsh, Principal Rule Counsel, Office of General Counsel, NYSE, and Tim Fox, Special Counsel, Division of Market Regulation, Commission and Johnna B. Dumler, Attorney, Division, Commission on February 8, 2007.

[9] 15 U.S.C. 78f(b)(5).

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[10] and Rule 19b–4(f)(6) thereunder.[11] 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.

NYSE has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes such waivers are consistent with the protection of investors and the public interest because they would allow the Pilots to operate without interruption.[12] For this reason, the Commission designates the proposal to be operative upon filing with the Commission.

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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–07. 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 will also be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–07 and should be submitted on or before March 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

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[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55282; File No. SR–Phlx–2007–03]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Eliminating the Telephone System Line Extension Charge

February 12, 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 11, 2007, 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 substantially prepared by the Phlx. The Phlx 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 Phlx, pursuant to Section 19(b)(1) of the Act[5] and Rule 19b–4 thereunder,[6] proposes to eliminate from Appendix A of the Exchange's fee schedule the telephone system line extension charge of $22.50 per month per extension. Any member, participant, and member or participant organization may, however, keep their telephone system line extensions without being charged. The Exchange proposes to make effective beginning January 2007 the elimination of the telephone system line extension charge.[7]

The text of the proposed rule change is available at the Phlx, the Commission's Public Reference Room, and *http://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

Currently, the Exchange assesses a fee of $22.50 per month per extension for telephone system line extensions on the options and foreign currency trading floors. The Exchange recently eliminated this fee for members and member organizations on the equity trading floor in connection with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] 15 U.S.C. 78s(b)(1).

[6] 17 CFR 240.19b–4.

[7] The monthly telephone system line extension charge for the month of January is not scheduled to be billed until the beginning of February 2007. The Exchange generally issues its invoices at the beginning of the subsequent month, with such invoices covering billing for the preceding month. Therefore, the monthly telephone system line extension charge for the month of January will be deleted from the January 2007 invoice, which is currently scheduled to be issued at the beginning of February 2007. Telephone conversation between Cynthia Hoekstra, Vice President, Phlx, and Molly M. Kim, Special Counsel, Division of Market Regulation, Commission, on February 7, 2007.

implementation of the Exchange's new equity system.[8] The Exchange proposes at this time to also eliminate this fee for members, participants, and member or participant organizations on the options and foreign currency trading floors. Any member, participant, and member or participant organization may, however, keep their telephone system line extensions without being charged. The purpose of this proposal is to simplify the Exchange's fee schedule and billing process. The Exchange proposes to eliminate the telephone system line extension charge for the billing period beginning January 2007.[9]

2. Statutory Basis

The Exchange believes that its proposal to amend Appendix A of its fee schedule by deleting the telephone system line extension charge for its members, participants, and member or participant organizations is consistent with Section 6(b) of the Act [10] in general and furthers the objectives of Section 6(b)(4) of the Act [11] 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 [12] and paragraph (f)(2) of Rule 19b–4 thereunder, because it establishes or changes a due, fee, or other charge.[13] 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–2007–03 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–2007–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2007–03 and should be submitted on or before March 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

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BILLING CODE 8010–01–P

[8] *See* Securities Exchange Act Release No. 54941 (December 14, 2006), 71 FR 77079 (December 22, 2006) (SR–Phlx–2006–70).

[9] *See* note 5 *supra.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55273; File No. SR–Phlx–2007–11]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Trading Phase Date of Regulation NMS

February 12, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 6, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Phlx. 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 clarify the operation of XLE, the Exchange's new equity trading system, and various Phlx Rules in light of the Commission's extension of the Trading Phase Date of Regulation NMS from February 5, 2007 until March 5, 2007.[5] There is no change to Phlx 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, the Phlx included statements concerning the purpose of and basis for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007).

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 effect on XLE and various Phlx Rules of the Commission's extension of the Trading Phase Date of Regulation NMS from February 5, 2007 until March 5, 2007.[6] The Trading Phase Date is significant to the Exchange because that is the ''[f]inal date for full operation of Regulation NMS-compliant trading systems [by exchanges] that intend to qualify their quotations for trade-through protection under Rule 611 [during the roll-out of Regulation NMS].'' [7] The Phlx intends to qualify its quotations for trade-through protection under Rule 611 during the roll-out of Regulation NMS and therefore intends to operate a Regulation NMS-compliant trading system no later than the Trading Phase Date.[8]

A number of Phlx Rules or portions of Rules adopted by Phlx in connection with XLE were approved with delayed effectiveness by the Commission until the Trading Phase Date that was in effect at that time, which was February 5, 2007.[9] With this proposed rule change, the Exchange clarifies that the effectiveness of these rules or portions of rules is tied to the Trading Phase Date, currently March 5, 2007, not to February 5, 2007. The Phlx Rules that are affected by this clarification include, but are not necessarily limited to the following: Phlx Rule 1(cc), Definition of Protected Bid, Offer or Quotation; Phlx Rule 185(b)(2)(C), regarding Intermarket Sweep Orders (''ISOs''); [10] Phlx Rule 185(c)(2)(D), regarding IOC Cross Orders marked by the XLE Participant entering the order as meeting the requirements of an intermarket sweep order in Regulation NMS Rule 600(b)(30); [11] Phlx Rule 185(c)(3), regarding IOC Cross Orders marked Benchmark or Qualified Contingent Trade; [12] Phlx Rule 185(h), regarding the ''self-help'' exemption to Rule 611; and Phlx Rule 186, Locking or Crossing Quotations in NMS Stocks. The Exchange also clarifies that the use of the term ''Trading Phase Date'' in Phlx Rule 185A means the Trading Phase Date, currently March 5, 2007, not February 5, 2007.

Finally, the XLE Approval Order noted that the certain features of XLE would be rolled out in three phases. Phases 1 and 2, concerning two-sided orders and ''Do Not Route'' orders, are completed. Phase 3, routing functionally, is currently being rolled out and is scheduled to be completed before March 5, 2007.

2. Statutory Basis

The Exchange believes that its 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 clarifying the effect on Phlx Rules of the recent extension of the Trading Phase Date of Regulation NMS from February 5, 2007 until March 5, 2007.

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 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 effect on Phlx Rules of the recent extension of the Trading Phase Date of Regulation NMS from February 5, 2007 until March 5, 2007.[20] Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the

[6] *Id.*

[7] *Id.* at 4203.

[8] *See* Phlx Rule 160.

[9] *See* Securities Exchange Act Release No. 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) (''XLE Approval Order'').

[10] Phlx notes, however, ISOs and IOC Cross Orders marked by the XLE Participant entering the order as meeting the requirements of an intermarket sweep order in Regulation NMS Rule 600(b)(30) currently have a limited effectiveness pursuant to Phlx Rule 185A(b). *See* Securities Exchange Act Release Nos. 54788 (November 20, 2006), 71 FR 68877 (November 28, 2006) (SR–Phlx–2006–77) and 54760 (November 15, 2006), 71 FR 67687 (November 22, 2006) (SR–Phlx–2006–76).

[11] *See supra* note 10.

[12] Phlx notes, however, IOC Cross Orders marked Benchmark or Qualified Contingent Trade for Nasdaq securities currently are effective pursuant to Phlx Rule 185A(c) and (d). *See* Securities Exchange Act Release No. 55044 (January 5, 2007), 72 FR 1361 (January 11, 2007) (SR–Phlx–2006–92). In addition, Phlx may file additional proposed rule change(s) regarding IOC Cross Orders marked Benchmark or Qualified Contingent Trade for non-Nasdaq securities before March 5, 2007.

[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] 17 CFR 240.19b–4(f)(6)(iii).

[20] For the purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2007–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of 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–2007–11 and should be submitted on or before March 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–2843 Filed 2–16–07; 8:45 am]

BILLING CODE 8011–01–P

[21] *See* 15 U.S.C. 78s(b)(3)(C).

[22] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with P.L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed, faxed or e-mailed to the individuals at the addresses and fax numbers listed below:

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

(SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov.*

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Application for Benefits under the Italy-U.S. International Social Security Agreement—0960–0445—20 CFR 404.1925.* The United States and Italy entered into an agreement on November 1, 1978. Article 19.2 of that agreement provides that an applicant for benefits can file his application with either country. Article 4.3 of the Protocol to the Agreement provides that the country that receives the application will forward agreed upon forms and applications to the other country. Form SSA–2528 is the form agreed upon that is completed by individuals who file an application for U.S. benefits directly with one of the Italian Social Security Agencies. The information collected on Form SSA–2528 is required by SSA in order to determine entitlement to benefits. The respondents are applicants for old-age, survivors or disability benefits, who reside in Italy.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 200.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 67 hours.

2. *Social Security Benefits Applications—20 CFR Subpart D, 404.310–404.311 and 20 CFR Subpart F, 404.601–401.603—0960–0618.* One of the requirements for obtaining Social Security benefits is the filing of an application so that a determination may be made on the applicant's eligibility for monthly benefits. In addition to the traditional paper application, SSA has developed various options for the public to add convenience and operational efficiency to the application process. The total estimated number of respondents to all application collections formats is 3,843,369 with a cumulative total of 995,457 burden hours. The respondents are applicants for retirement insurance benefits (RIB), disability insurance benefits (DIB), and/or spouses' benefits.

Type of Request: Extension of an OMB-approved information collection.

Internet Social Security Benefits Application (ISBA)

ISBA, which is available through SSA's Internet site, is one method that an individual can choose to file an application for benefits. Individuals can use ISBA to apply for retirement insurance benefits RIB, DIB and spouse's insurance benefits based on age. SSA gathers only information relevant to the individual applicant's circumstances and will use the

information collected by ISBA to entitle individuals to RIB, DIB, and/or spouses' benefits. The respondents are applicants for RIB, DIB, and/or spouses benefits.

Number of Respondents: 169,000.

Frequency of Response: 1.

Average Burden Per Response: 21.4 minutes.

Estimated Annual Burden: 60,277 hours.

Paper Application Forms

Application for Retirement Insurance Benefits (SSA–1)

The SSA–1 is used by SSA to determine an individual's entitlement to retirement insurance benefits. In order to receive Social Security retirement insurance benefits, an individual must file an application with the SSA. The SSA–1 is one application that the Commissioner of Social Security prescribes to meet this requirement. The information that SSA collects will be used to determine entitlement to retirement benefits. The respondents are individuals who choose to apply for Social Security retirement insurance.

Approximately 1,460,692 respondents complete the SSA–1 annually. Of this total 97% (1,416,871) are completed through SSA's Modernized Claims System (MCS) and 50% of the MCS respondents will use Signature Proxy (708,435.5). The breakdown is displayed on the following chart.

Collection method	Number of respondents	Estimated completion time	Burden hours
MCS	708,436	10.5 minutes	123,976
MCS/Signature Proxy	708,435	9.5 minutes	112,169
Paper	43,821	10.5 minutes	7,669
Totals	1,460,692		243,814

Application for Wife's or Husband's Insurance Benefits (SSA–2)

SSA uses the information collected on Form SSA–2 to determine if an applicant (including a divorced applicant) can be entitled to benefits as the spouse of the worker and the amount of the spouse's benefits. The respondents are applicants for wife's or husband's benefits, including those who are divorced. Approximately 700,000 respondents complete the SSA–2 annually. Of this total 95% (665,000) are completed through MCS and 50% of the MCS respondents will use Signature Proxy (332,500). The breakdown is displayed on the following chart:

Collection method	Number of respondents	Estimated completion time	Burden hours
MCS	332,500	15 minutes	83,125
MCS/Signature Proxy	332,500	14 minutes	77,583
Paper	35,000	15 minutes	8,750
Totals	700,000		169,458

Application for Disability Insurance Benefits (SSA–16)

Form SSA–16–F6 obtains the information necessary to determine whether the provisions of the Act have been satisfied with respect to an applicant for disability benefits, and detects whether the applicant has dependents who would qualify for benefits on his or her earnings record. The information collected on form SSA–16 helps to determine eligibility for Social Security disability benefits. The respondents are applicants for Social Security disability benefits.

Approximately 1,513,677 respondents complete the SSA–16 annually. Of this total 97% (1,468,267) are completed through SSA's Modernized Claims System (MCS) and 50% of the MCS respondents will use Signature Proxy (734,133.5). The breakdown is displayed on the following chart:

Collection method	Number of respondents	Estimated completion time	Burden hours
MCS	734,134	20 minutes	244,711
MCS/Signature Proxy	734,133	19 minutes	232,476
Paper	45,410	20 minutes	15,137
Totals	1,513,677		492,324

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Pain Report Child—20 CFR 416.912 and 416.1512—0960–0540.* The information collected by form SSA–3371–BK will be used to obtain the types of information specified in SSA's regulations, and to provide disability interviewers (and applicants/claimants in self-help situations) with a convenient means of recording the information. This information is used by the State disability determination services (DDS) adjudicators and administrative law judges to assess the effects of symptoms on functionality for determining disability under the Social Security Act. The respondents are applicants for Supplemental Security Income (SSI) benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 250,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 62,500 hours.

2. *Request for Hearing by Administrative Law Judge—20 CFR 404.929, 404.933, 416.1429, 404.1433, 405.722, 418.1350—0960–0269.* SSA uses form HA–501 to document when applicants for Social Security benefits have their claims denied and want to request an administrative hearing to appeal SSA's decision. The scope of this form is now being expanded to include people who wish to appeal the decision that has been made regarding their obligation to pay a new Income-Related Monthly Adjustment Amount (IRMAA) for Medicare Part B, as per the requirements of the Medicare Modernization Act of 2003. Although this information will be collected by SSA, the actual hearings will take place before administrative law judges (ALJ) who are employed by the Department of Health and Human Services (HHS). The current respondents include applicants for various Social Security benefits programs who want to request a hearing where they can appeal their denial; the new additional respondents are Medicare Part B recipients whom SSA has determined will have to pay the new Medicare Part B IRMAA and who wish to appeal this decision at a hearing before an HHS ALJ.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 669,469.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 111,578 hours.

3. *Request to Resolve Questionable Quarters of Coverage (QC); Request for QC History Based on Relationship—0960–0575.* Form SSA–512 is used by states to request clarification from SSA on questionable QC information. The Personal Responsibility and Work Opportunity Reconciliation Act states that aliens admitted for lawful residence that have worked and earned 40 qualifying QCs for Social Security purposes can generally receive state benefits. Form SSA–513 is used by states to request QC information for an alien's spouse or child in cases where the alien does not sign a consent form giving permission to access his/her Social Security records. QCs can also be allocated to a spouse and/or to a child under age 18, if needed, to obtain 40 qualifying QCs for the alien. The respondents are state agencies that require QC information in order to determine eligibility for benefits.

Type of Request: Extension of an OMB-approved information collection.

Collections	Number of respondents	Frequency of response	Average burden per response (minute)	Estimated annual burden (hours)
SSA–512	200,000	1	2	6,667
SSA–513	350,000	1	2	11,667
Totals	550,000			18,334

Dated: February 9, 2007.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E7–2662 Filed 2–16–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5698]

Debarment Involving Henry L. Lavery III and Security Assistance International, Inc.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed an administrative debarment against Henry L. Lavery III and Security Assistance International, Inc. pursuant to a December 12, 2006 Consent Agreement and other authority based upon section 127.7(a) and (b)(2) of the International Traffic in Arms Regulations (ITAR) (22 CFR sections 120 to 130).

EFFECTIVE DATE: December 12, 2006.

FOR FURTHER INFORMATION CONTACT: David Trimble, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 663–2700.

SUPPLEMENTARY INFORMATION: Section 127.7 of the ITAR authorizes the Assistant Secretary of State for Political-Military Affairs to debar any person who has been found pursuant to Section 128 of the ITAR to have committed a violation of the Arms Export Control Act (AECA) or the ITAR of such character as to provide a reasonable basis for the Office of Defense Trade Controls Compliance to believe that the violator cannot be relied upon to comply with the AECA or ITAR in the future. Such debarment prohibits the subject from participating directly or indirectly in the export of defense articles or defense services for which a license or approval is required by the ITAR.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see e.g., sections 120.1(c) and (d), 126.7, 127.1(c), and 127.11(a)). The Department of State will not consider applications for licenses or requests for approvals that involve any debarred person.

Henry L. Lavery III doing business as Security Assistance International, Inc., (SAI) was under a Consent Agreement dated June 3, 1999, as a result of a Proposed Charging Letter alleging numerous ITAR violations between April 1993 and April 1999. Mr. Lavery and his company, SAI, were cited for submitting export applications on behalf of clients containing falsified applicant signatures; failing to maintain records as required under the ITAR; obtaining export licenses for firms whose registrations expired or who were never registered; and brokering without being registered and without authorization. Under the June 3, 1999, Consent Agreement, Mr. Lavery was required to pay a $10,000 penalty, register as a broker, reconstruct export records, cease participating directly or indirectly in exports of defense articles and/or defense services and implement a compliance program outlining SAI's operating procedures and internal controls for adherence to the ITAR. On or about August 1, 2001, Mr. Lavery completed the requirements of the Consent Agreement and his export privileges were reinstated by the Department.

On July 11, 2005, the Office of Defense Trade Controls Compliance conducted a review of SAI's ITAR

compliance program. The review determined that many of the practices, which led to the June 3, 1999, Consent Agreement, had not been corrected. A July 14, 2003 license application for the temporary export of Night Vision equipment was submitted by Mr. Lavery on behalf of an unregistered company; Mr. Lavery was unable to provide complete records and/or was unable to produce records required to be maintained by the ITAR for his current authorized exports; and Mr. Lavery violated a license proviso requiring proof of export be provided to the Department.

On December 12, 2006, as the result of these continuing violations, the Department and Mr. Lavery entered into a new Consent Agreement, which debarred Mr. Lavery and SAI until December 12, 2007. Reinstatement after December 12, 2007 is not automatic but contingent on full compliance with the terms of the December 12, 2006 Consent Agreement and evidence that the underlying problems that gave rise to the violations have been corrected. At the end of the debarment period, Mr. Lavery and SAI may apply for reinstatement. Until licensing privileges are reinstated, Mr. Lavery and SAI will remain debarred.

This notice is provided to make the public aware that the persons listed above are prohibited from participating directly or indirectly in any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR.

Exceptions may be made to this denial policy on a case-by-case basis at the discretion of the Directorate of Defense Trade Controls. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: Whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and law enforcement concerns.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedures Act. Because the exercise of this foreign affairs function is highly discretionary, it is excluded from review under the Administrative Procedures Act.

Dated: January 29, 2007.

Ambassador Stephen Mull,

Acting Assistant Secretary for Political-Military Affairs.

[FR Doc. E7–2831 Filed 2–16–07; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–98–4334, FMCSA–00–7363, FMCSA–02–13411]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 15 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective March 4, 2007. Comments must be received on or before March 22, 2007.

ADDRESSES: You may submit comments identified by DOT Docket Management System (DMS) Docket Numbers FMCSA–98–4334, FMCSA–00–7363, FMCSA–02–13411, using any of the following methods.

- *Web site: http://dmses.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket numbers for this Notice. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@dot.gov,* FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Exemption Decision

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 15 individuals who have requested renewal of their exemptions in a timely manner. FMCSA has evaluated these 15

applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Howard K. Bradley
Kirk G. Braegger
Ambrosio E. Calles
Jose G. Cruz
Everett A. Doty
Donald J. Goretski
Harry P. Henning
Christopher L. Humphries
Ralph J. Miles
William R. New
Thomas C. Rylee
Stanley B. Salkowski, III
Michael G. Thomas
William H. Twardus
Ronald Watt

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 15 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 67 FR 76439; 68 FR 10298; 70 FR 7545; 65 FR 45817; 65 FR 77066; 67 FR 71610). Each of these 15 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by March 22, 2007.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 15 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: February 9, 2007.

Pamela M. Pelcovits,

Office Director, Policy, Plans and Regulations.

[FR Doc. E7–2846 Filed 2–16–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of Applications for Modification of Special Permit.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for special permits to facilitate processing.

DATES: Comments must be received on or before March 7, 2007.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of special permits is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 7, 2007.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits & Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
MODIFICATION SPECIAL PERMITS				
8915–M		Matheson Tri Gas	49 CFR 173.302a(a)(3); 173.301(d); 173.302a(a)(5).	To modify the special permit to authorize the transportation in commerce of additional Division 2.1 materials in DOT Specification 3A, 3AA, 3AX, 3AAX and 3T cylinders.
10885–M		U.S. Department of Energy, Washington, DC.	49 CFR 172.101 Col. 9(b), 172.204(c)(3); 173.27(b)(2); 173.27(f) Table 2; 175.30(a)(1); 173.27(b)(3).	To modify the special permit to authorize the transportation in commerce of additional hazardous materials and to provide relief from segregation by highway.
12274–M	1999–5707	Snow Peak, Inc., Clackamas, OR.	49 CFR 172.301, 173.302a(b)(2), (b)(3) and (b)(4); 180.205(c) and (g) and 180.209(a).	To modify the special permit to authorize larger non-DOT specification nonrefillable inside containers.
12283–M	1999–5767	Interstate Battery of Alaska, Anchorage, AK.	49 CFR 173.159(c)(1); 173.159(c).	To modify the special permit to authorize the round trip transportation in commerce of batteries within the State of Alaska.
12571–M	2000–8315	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 173.304(a)(2); 180.209.	To modify the special permit to authorize markings on the sides of the trailers rather than on each individual tube.
13167–M		ITT Industries Space, Systems, LLC, Rochester, NY.	49 CFR 173.301(f); 173.304.	To modify the special permit to authorize an additonal non-DOT specification packaging.
14392–M		Department of Defense, Ft. Eustis, VA.	49 CFR 172.101 Column (10B); 176.65, 176.83(a)(b)(g), 176.84(c)(2); 176.136; and 176.144(a).	To reissue the special permit of originally issued on an emergency basis for the transportation in commerce of explosives by vessel in an alternative stowage configuration.
14466–M	2007–27095	Northern Air Cargo, Anchorage, AK.	49 CFR 172.101 Column (9B).	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of certain Class I explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available.

[FR Doc. 07–733 Filed 2–16–07; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of Applications for Modification of Special Permit.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (*e.g.,* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for special permits to facilitate processing.

DATES: Comments must be received on or before March 7, 2007.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of special permits is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 7, 2007.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits & Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
8915–M		Matheson Tri Gas	49 CFR 173.302a(a)(3); 173.301(d); 173.302a(a)(5).	To modify the special permit to authorize the transportation in commerce of additional Division 2.1 materials in DOT Specification 3A, 3AA, 3AX, 3AAX and 3T cylinders.
10885–M		U.S. Department of Energy, Washington, DC.	49 CFR 172.101 Col. 9(b); 172.204(c)(3); 173.27(b)(2); 173.27(f) Table 2; 175.30(a)(1); 173.27(b)(3).	To modify the special permit to authorize the transportation in commerce of additional hazardous materials and to provide relief from segregation by highway.
12274–M	1999–5707	Snow Peak, Inc., Clackamas, OR.	49 CFR 172.301, 173.302a(b)(2), (b)(3) and (b)(4); 180.205(c) and (g) and 180.209(a).	To modify the special permit to authorize larger non-DOT specification nonrefillable inside containers.
12283–M	1999–5767	Interstate Battery of Alaska, Anchorage, AK.	49 CFR 173.159(c)(1); 173.159(c).	To modify the special permit to authorize the round trip transportation in commerce of batteries within the State of Alaska.
12571–M	2000–8315	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 173.304(a)(2); 180.209.	To modify the special permit to authorize markings on the sides of the trailers rather than on each individual tube.
13167–M		ITT Industries Space Systems, LLC, Rochester, NY.	49 CFR 173.301(f); 173.304.	To modify the special permit to authorize an additional non-DOT specification packaging.
14392–M		Department of Defense, Ft. Eustis, VA.	49 CFR 172.101 Column 10B; 176.65, 176.83(a)(b)(g), 176.84(c)(2); 176.136; and 176.144(a).	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of explosives by vessel in an alternative stowage configuration.
14466–M	2007–27095	Northern Air Cargo, Anchorage, AK.	49 CFR 172.101 Column (9B).	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available.

[FR Doc. 07–734 Filed 2–16–07; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permit Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ann Mazzullo, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application
M—Modification request
X—Renewal
PM—Party to application with modification request

Issued in Washington, DC, on February 13, 2007.

Delmer F. Billings,

Director, Office of Hazardous Materials Safety, Special Permits & Approvals.

Application No.	Applicant	Reason for delay	Estimated date of completion
	New Special Permit Applications		
14314–N	North American Automotive Hazmat Action Committee	1	07–31–2007
14330–N	Chemical & Metal Industries, Inc., Hudson, CO	4	03–31–2007
14343–N	Valero St. Charles, Norco, LA	4	02–28–2007
14337–N	NKCF Co., Ltd. Jisa-Dong, Kangseo-Gu Busan	4	02–28–2007
14385–N	Kansas City Southern Railway Company, Kansas City, MO	4	02–28–2007
14397–N	UltraCell Corporation, Livermore, CA	1	03–31–2007
14398–N	Lyondell Chemical Company, Houston, TX	4	02–28–2007
10481–M	M–1 Engineering Limited, Bradford, West Yorkshire	4	03–31–2007

Application No.	Applicant	Reason for delay	Estimated date of completion
13598–M	Jadoo, Folsom, CA	4	03–31–2007
11447–M	SAES Pure Gas, Inc., San Louis Obispo, CA	4	02–28–2007

[FR Doc. 07–735 Filed 2–16–07; 8:45 am]

BILLING CODE 4910–60–M

Federal Register

Tuesday,
February 20, 2007

Part II

The President

Memorandum of February 15, 2007—Assignment of Functions Relating to the Transfer of a Ship to the Government of Greece

Federal Register
Vol. 72, No. 33
Tuesday, February 20, 2007

Presidential Documents

Title 3—

The President

Memorandum of February 15, 2007

Assignment of Functions Relating to the Transfer of a Ship to the Government of Greece

Memorandum for the Secretary of Transportation [and] Secretary of State

By the authority vested in me by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, and section 1019 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364) (the ''Act''), I hereby assign to the Secretary of Transportation the functions of the President under section 1019 of the Act. The Secretary of Transportation should consult the Secretary of State as appropriate in the performance of such functions.

The Secretary of Transportation is authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, February 15, 2007.

[FR Doc. 07–786
Filed 2–16–07; 11:24 am]
Billing code 4910–62–M

Federal Register

Tuesday,
February 20, 2007

Part II

The President

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Washington, February 15, 2007.

[FR Doc. 07–786
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Commercial driver's license hazardous materials endorsement; comments due by 2-26-07; published 1-25-07 [FR 07-00019]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 434/P.L. 110–4

To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958 through July 31, 2007, and for other purposes. (Feb. 15, 2007; 121 Stat. 7; 1 page)

H.J. Res. 20/P.L. 110–5

Making further continuing appropriations for the fiscal year 2007, and for other purposes. (Feb. 15, 2007; 121 Stat. 8; 53 pages)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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*1	(869–062–00001–4)	5.00	[4] Jan. 1, 2007
2	(869–060–00002–0)	5.00	Jan. 1, 2006
3 (2005 Compilation and Parts 100 and 102)	(869–060–00003–8)	35.00	[1] Jan. 1, 2006
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17.1–17.95(b)	(869–060–00215–4)	32.00	Oct. 1, 2006
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[*5] No amendments to this volume were promulgated during the period January 1, 2006, through January 1, 2007. The CFR volume issued as of January 6, 2006 should be retained.

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