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Presidential Documents

Title 3—

The President

Order of November 17, 2006

Regarding the Proposed Merger of Alcatel and Lucnet Technologies, Inc.

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 721 of the Defense Production Act of 1950 (section 721), 50 U.S.C. App. 2170,

Section 1. *Findings.*

I hereby make the following findings:

(1) there is credible evidence that leads me to believe that Alcatel, a *societe anonyme* organized under the laws of France, through exercising control of Lucent Technologies, Inc. (Lucent), a corporation organized under the laws of the State of Delaware, might take action that threatens to impair the national security of the United States; and

(2) provisions of law, other than section 721 and the International Emergency Economic Powers Act (50 U.S.C. 1701*et seq.*), do not in my judgment provide adequate and appropriate authority for me to protect the national security in this matter.

Sec 2. *Actions Ordered and Authorized.*

On the basis of the findings set forth in section 1 of this order and pursuant to my authority under applicable law, including section 721, I hereby order that:

(1) any merger of Lucent and Alcatel that does not meet the following conditions within the timeframes specified is prohibited:

(a) Lucent, Alcatel, and Alcatel USA Inc., a wholly-owned subsidiary of Alcatel, execute, on or before the closing date of the transaction, a National Security Agreement (NSA) with the Departments of Defense (DOD), Justice, Commerce, and Homeland Security, that is materially identical to the draft NSA negotiated with those agencies as of November 6, 2006;

(b) Lucent and Alcatel execute, by a date to be determined by the Secretary of Defense, a Special Security Agreement (SSA) with the DOD that is materially identical to the draft SSA negotiated with the DOD as of November 6, 2006; and

(c) the Secure Subsidiary, which is defined in the draft SSA and which will be a subsidiary of Lucent, execute the two documents described in (a) and (b) above, by a date to be determined by the Secretary of Defense;

(2) the Attorney General is authorized to take any steps necessary to enforce this order.

Sec 3. *Reservation.*

I hereby reserve my authority until such time as the NSA and SSA are executed as required by this order, or, if the NSA and SSA are not so executed, until such time as the prohibition of the merger required by this order has been fully enforced, to issue further orders with respect to the parties as shall in my judgment be necessary to protect the national security.

Sec 4. *Publication.*

This order shall be published in the **Federal Register**.

THE WHITE HOUSE,
November 17, 2006.

[FR Doc. 06–9381
Filed 11–21–06; 8:45 am]
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Rules and Regulations

Federal Register

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Wednesday, November 22, 2006

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.

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PEACE CORPS

2 CFR Part 3700

22 CFR Part 310

RIN 04420–AA19

Peace Corps Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

AGENCY: Peace Corps.

ACTION: Direct final rule.

SUMMARY: The Peace Corps is establishing a new Part 3700 in 2 CFR that adopts the Office of Management and Budget's (OMB's) guidance in 2 CFR Part 180, as supplemented by this new part, as Peace Corps policies and procedures for nonprocurement debarment and suspension. The Peace Corps is also removing 22 CFR Part 310, the part containing the Peace Corps implementation of the government-wide common rule on nonprocurement debarment and suspension. 2 CFR Part 3700 would serve the same purpose as the common rule in a simpler way. These changes constitute an administrative simplification that would make no substantive change in Peace Corps policy or procedures for nonprocurement debarment and suspension.

DATES: This final rule is effective on January 8, 2007 without further action, unless adverse comment is received by Peace Corps by December 22, 2006. If adverse comment is received, Peace Corps will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments by e-mail to *nmiller@peacecorps.gov.* Include RIN 0420–AA19 in the subject line of the message. You may also submit comments by mail to Nancy G. Miller, Office of the General Counsel, Peace Corps, Suite 8200, 1111 20th Street, NW., Washington, DC 20526. Contact Nancy G. Miller for copies of comments.

FOR FURTHER INFORMATION CONTACT: Nancy G. Miller, Associate General Counsel, 202–692–2150, *nmiller@peacecorps.gov.*

SUPPLEMENTARY INFORMATION:

Background

Peace Corps' current regulation on nonprocurement suspension and debarment is found in 22 CFR Part 310. This regulation is Peace Corps' promulgation of the government-wide ''common rule'' on this subject issued November 26, 2003 (68 FR 66586).

On August 31, 2005, the Office of Management and Budget (OMB) issued interim final guidance for government-wide nonprocurement suspension and debarment (70 FR 51863). This guidance, located in 2 CFR Part 180, is substantively the same as the common rule, but is published in a form that each agency can adopt, thus eliminating the need for each agency to publish its separate version of the same rule. It also facilitates the ability to update government-wide requirements without each agency having to re-promulgate its own rules.

The Peace Corps is therefore establishing new 2 CFR Part 3700, which adopts as its regulation the OMB guidance set forth in 2 CFR Part 180 as supplemented with the few required agency-specific provisions. Current 22 CFR Part 310 is being removed.

No substantive change in Peace Corps' nonprocurement suspension and debarment regulation is intended by these actions.

Executive Order 12866

OMB has determined this rule to be not significant.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects

2 CFR Part 3700

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

22 CFR Part 310

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance.

■ Accordingly, under the authority of 22 U.S.C. 2503(b), Peace Corps amends the Code of Federal Regulations, Title 2, Subtitle B, and Title 22, Chapter III, as follows:

Title 2—Grants and Agreements

■ 1. Add Chapter 37, consisting of Part 3700, to Subtitle B to read as follows:

Chapter 37—Peace Corps

PART 3700—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

3700.10 What does this part do?
3700.20 Does this part apply to me?
3700.30 What policies and procedures must I follow?
3700.137 Who in the Peace Corps may grant an exception to let an excluded person participate in a covered transaction?
3700.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?
3700.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?
3700.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 22 U.S.C. 2503(b).

§ 3700.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in Subparts A through I of 2 CFR part 180, as supplemented by this part, as the Peace Corps policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Peace Corps to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

§ 3700.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through I of 2 CFR part (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see Subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970);

(b) Respondent in a Peace Corps suspension or debarment action;

(c) Peace Corps debarment or suspension official; or

(d) Peace Corps grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 3700.30 What policies and procedures must I follow?

The Peace Corps policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in Subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., § 3700.220). For any section of OMB guidance in Subparts A through I of 2 CFR 180 that has no corresponding section in this part, Peace Corps policies and procedures are those in the OMB guidance.

§ 3700.137 Who in the Peace Corps may grant an exception to let an excluded person participate in a covered transaction?

The Director of the Peace Corps has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

§ 3700.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the Appendix to 2 CFR part 180), Peace Corps does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

§ 3700.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with Subpart C of the OMB guidance in 2 CFR part 180.

§ 3700.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you as an agency official must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Title 22—Foreign Relations

Chapter III—Peace Corps

■ 2. Remove Part 310.

Dated: November 6, 2006.

Suzanne B. Glasow,

Acting General Counsel.

[FR Doc. 06–9369 Filed 11–21–06; 8:45 am]

BILLING CODE 6015–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0149]

Karnal Bunt; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Karnal bunt regulations to remove certain areas or fields in Maricopa and Pinal Counties, AZ, and Archer, Baylor, Knox, McCulloch, San Saba, Throckmorton, and Young Counties, TX, from the list of regulated areas based on our determination that those fields or areas meet our criteria for release from regulation. This action is necessary to relieve restrictions that are no longer necessary.

DATES: This interim rule became effective November 16, 2006. We will consider all comments that we receive on or before January 22, 2007.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0149 to submit or view public comments and to view supporting and related materials available electronically.

Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0149, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0149.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be

sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal S. Malik, National Karnal Bunt Coordinator, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–3769.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the fungus *Tilletia indica* (Mitra) Mundkur and is spread primarily through the planting of infected seed followed by very specific environmental conditions matched during specific stage of wheat growth. Some countries in the international wheat market regulate Karnal bunt as a fungal disease requiring quarantine; therefore, without measures taken by the Animal and Plant Health Inspection Service, United States Department of Agriculture, to prevent its spread, the presence of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets.

Upon detection of Karnal bunt in Arizona in March of 1996, Federal quarantine and emergency actions were imposed to prevent the interstate spread of the disease to other wheat producing areas in the United States. The quarantine continues in effect, although it has since been modified, both in terms of its physical boundaries and in terms of its restrictions on the production and movement of regulated articles from regulated areas. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–16 (referred to below as the regulations).

Under the regulations in § 301.89–3(f), a field known to have been infected with Karnal bunt, as well as any noninfected acreage surrounding the field, will be released from regulation if:

- The field has been permanently removed from crop production; or
- The field is tilled at least once per year for a total of 5 years (the years need not be consecutive). After tilling, the field may be planted with a crop or left fallow. If the field is planted with a host crop, the harvested grain must test negative through the absence of bunted kernels, for Karnal bunt.

The regulations in § 301.89–3(g) describe the boundaries of the regulated areas in Arizona, California, and Texas. In this interim rule, we are amending § 301.89–3(g) by removing certain areas or fields in Maricopa and Pinal Counties, AZ, and in Archer, Baylor, Knox, McCulloch, San Saba, Throckmorton and Young Counties, TX, from the list of regulated areas, based on our determination that these fields or areas are eligible for release from regulation under the criteria in § 301.89–3(f). This action relieves restrictions on fields within those areas that are no longer necessary. With this action, there are no longer any regulated areas in Archer, McCulloch, and San Saba Counties, TX, and the size of the regulated areas in each of the four remaining regulated Texas counties and in two of the three regulated Arizona counties is reduced.

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule releases certain areas and fields from regulation and thereby relieves restrictions on regulated articles moved interstate from those areas and fields. The areas and fields have met the criteria for release from regulation described in 7 CFR 301.89–3(f). Landowners and businesses located within the areas will be able to resume normal operations, including unrestricted movement of articles listed in § 301.89–2.

As detailed in table 1, this interim rule removes approximately 8,796 acres from regulation in Arizona and 497,593 acres from regulation in Texas.

TABLE 1.—LOCATION, NUMBER OF FIELDS, AND ACREAGE OF AREAS RELEASED FROM REGULATION BY THIS RULE

State and county	Total acreage released
Maricopa County, AZ	3,831
Pinal County, AZ	4,965
Arizona total	8,796
Archer County, TX	41,984
Baylor County, TX	89,137
Knox County, TX	117
McCulloch County, TX	30,145
San Saba County, TX	215,530
Throckmorton County, TX	38,155
Young County, TX	82,525
Texas total	497,593

The entities most likely to be affected by this rule are wheat producers whose fields are being removed from the list of regulated areas. Producers affected by this interim rule are likely to be small in size, based on the Small Business Administration (SBA) standard for wheat farmers of total annual sales of not more than $750,000. Wheat farming is classified as North American Industry Classification System code 111140 (under crop production). According to USDA's Economic Research Service (ERS), in 2002, 98.5 percent of all farms (228,926 total), including wheat farms, in Texas had sales less than $500,000, and 91.2 percent of all farms (7,294 total), including wheat farms, in Arizona had sales less than $500,000.[1] Therefore, it is safe to assume that most wheat farms in both Arizona and Texas are considered small entities based on SBA standards.

Deregulation will benefit producers located within those areas because they will be allowed to move regulated articles without restrictions. Regulated articles can only be moved from regulated areas to non-regulated areas under conditions listed in § 301.89–5, including negative testing of harvested grain for bunted kernels or through cleaning and disinfection procedures. Producers in the released areas will no longer have to meet these conditions.

It is also possible that producers in the released areas will receive higher prices or have a broader sales base for their wheat because of buyers' perceptions. Prices for wheat from regulated areas may be lower because of the belief that wheat produced in a regulated area is inferior or of lower quality than wheat from an unregulated area, even though it has tested negative

[1] ERS. Farm Economy. Farm Income. State Fact sheets.

for Karnal bunt. The elimination of restrictions may increase marketing opportunities for producers among buyers who perceive the wheat is now of higher quality.

However, even with unrestricted movement of grain and seed and a possible higher received price for wheat, the benefit for each producer is still likely to be small. The testing of grain for Karnal bunt is already performed free of charge for producers in all regulated areas. Therefore, removing the testing requirements through deregulation does not amount to a cost savings for the producer, just the removal of an inconvenience.

Additionally, deregulating the areas will not affect the total market for wheat. Table 2 presents the percentage of total U.S. wheat production for the past 10 years contributed by each county and State containing areas released from regulation by this rule. Given that such small percentages of wheat are coming from the listed counties, benefits associated with removing the restrictions on the movement of regulated articles are expected to be minimal. The listed counties are small contributors in the total U.S. wheat market; for example, in 2004, Pinal County, AZ, was the largest contributor of the listed counties, yet it contributed only one-tenth of 1 percent to the total wheat market. Deregulation of these areas will not influence the price of wheat.

TABLE 2.—WHEAT PRODUCTION IN DEREGULATED COUNTIES, AS PERCENTAGE SHARES OF U.S. PRODUCTION, 1995–2005

Year	U.S. total bushels Produced	Maricopa (percent)	Pinal (percent)	Archer (percent)	Baylor (percent)	Knox (percent)	McCulloch (percent)	San Saba (percent)	Throckmorton (percent)	Young (percent)
1995	2,182,708,000	0.12	0.15	0.04	0.08	0.06	0.04	0.02	1.48	0.07
1996	2,277,388,000	0.20	0.21	0.04	0.09	0.10	0.02	0.00	2.05	0.06
1997	2,481,466,000	1.05	0.09	0.05	0.10	0.07	0.04	0.02	0.50	0.06
1998	2,547,321,000	0.18	0.17	0.07	0.12	0.13	0.03	0.03	0.69	0.11
1999	2,295,560,000	0.06	0.07	0.03	0.07	0.10	0.03	0.02	1.52	0.04
2000	2,228,160,000	0.07	0.08	0.04	0.06	0.08	0.00	0.01	0.23	0.01
2001	1,947,453,000	0.10	0.09	0.02	0.09	0.15	0.06	0.03	1.04	0.04
2002	1,605,878,000	N/A	N/A	0.00	0.06	0.15	0.05	0.01	1.06	0.02
2003	2,344,760,000	0.07	0.14	0.02	0.05	0.12	0.02	0.01	0.80	0.02
2004	2,158,245,000	0.07	0.10	0.04	0.06	0.18	0.07	0.02	1.14	0.05
2005	2,104,690,000	N/A	N/A	0.03	0.04	0.13	0.05	0.01	1.10	0.02

Source: USDA, NASS. Data not available for Maricopa and Pinal Counties, AZ, for 2002 and 2005.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.89–3, paragraph (g) is amended as follows:

■ a. Under the heading ''Arizona,'' in the entry for Maricopa County, by revising paragraphs (1) and (2) to read as set forth below.

■ b. Under the heading ''Arizona,'' in the entry for Pinal County, by revising paragraphs (1) and (3) to read as set forth below.

■ c. Under the heading ''Texas,'' by removing the entries for Archer County, McCulloch County, and San Saba County, and by revising the entries for Baylor County, Knox County, Throckmorton County, and Young County to read as set forth below.

§ 301.89–3 Regulated areas.

* * * * *

(g) * * *

ARIZONA

* * * * *

Maricopa County. (1) Beginning at the southeast corner of sec. 8, T. 1 S., R. 2 E.; then west to the southwest corner of sec. 8, T. 1 S., R. 2 E.; then south to the southeast corner of sec. 18, T. 1 S., R. 2 E.; then west to the southwest corner of sec. 14, T. 1 S., R. 1 E.; then north to the northwest corner of sec. 14, T. 1 S., R. 1 E.; then west to the southwest corner of sec. 9, T. 1 S., R. 1 E.; then north to the northwest corner of sec. 9, T. 1 S., R. 1 E.; then west to the southwest corner of sec. 5, T. 1 S., R. 1 E.; then north to the northwest corner of sec. 5, T. 1 S., R. 1 E.; then west to the northeast corner of sec. 6, T. 1 S., R. 1 W.; then south to the southeast corner of sec. 7, T. 1 S., R. 1 W.; then west to the northeast corner of sec. 14, T. 1 S., R. 2 W.; then south to the southeast corner of sec. 14, T. 1 S., R. 2 W.; then west to the northeast corner of sec. 20, T. 1 S., R. 2 W.; then south to the southeast corner of sec. 20, T. 1 S., R. 2 W.; then west to the northeast corner of sec. 29, T. 1 S., R. 3 W.; then south to the southeast corner of sec. 29, T. 1 S., R. 3 W.; then west to the southwest corner of sec. 26, T. 1 S., R. 5 W.; then north to the northwest corner of sec. 14, T. 1 N., R. 5 W.; then east to the southwest corner of sec. 7, T. 1 N., R. 2 W.; then north to the northwest corner of sec. 7, T. 1 N., R. 2 W.; then east to the northeast corner of sec. 7, T. 1 N., R. 2 W.; then north to the northwest corner of sec. 5, T. 1 N., R. 2 W.; then east to the northeast corner of sec. 5, T.

1 N., R. 2 W.; then north to the northwest corner of sec. 33, T. 2 N., R. 2 W.; then east to the northeast corner of sec. 33, T. 2 N., R. 2 W.; then north to the northwest corner of sec. 3, T. 3 N., R. 2 W.; then east to the northeast corner of sec. 1, T. 3 N., R. 1 W.; then south to the northwest corner of sec. 19, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 20, T. 3 N., R. 1 E.; then south to the northeast corner of sec. 29, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 27, T. 3 N., R. 1 E.; then south to the southeast corner of sec. 27, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 35, T. 3 N., R. 1 E.; then south to the southeast corner of sec. 35, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 1, T. 2 N., R. 1 E.; then south to the northeast corner of sec. 1, T. 1 N., R. 1 E.; then east to the northeast corner of sec. 4, T. 1 N., R. 2 E.; then south to the northwest corner of sec. 15, T. 1 N., R. 2 E.; then east to the northeast corner of sec. 15, T. 1 N., R. 2 E.; then south to the southeast corner of sec. 27, T. 1 N., R. 2 E.; then west to the southwest corner of sec. 27, T. 1 N., R. 2 E.; then south to the southeast corner of sec. 33, T. 1 N., R. 2 E.; then west to the southwest corner of sec. 33, T. 1 N., R. 2 E.; then south to the point of beginning.

(2) Beginning at the intersection of the Maricopa/Pinal County line and the southeast corner of sec. 36, T. 2 S., R. 7 E.; then west along the Maricopa/Pinal County line to the southwest corner of sec. 33, T. 2 S.; R. 5 E.; then north to the northwest corner of sec. 33; then west to the southwest corner of sec. 30, T. 2 S., R. 5 E.; then north to the southeast corner of sec. 25, T. 2 S., R. 4 E.; then west to the southwest corner of sec. 25, T. 2 S., R. 4 E.; then north to the southwest corner of sec. 13, T. 2 S., R. 4 E.; then west to the southwest corner of sec. 15, T. 2 S., R. 4 E.; then north to the northwest corner of sec. 3, T. 2 S., R. 4 E.; then east to the southwest corner of sec. 35, T. 1 S., R. 4 E.; then north to the northwest corner of sec. 35, T. 1 S., R. 4 E.; then east to the northeast corner of sec. 33, T. 1 S., R. 5 E.; then north to the northwest corner of sec. 27, T. 1 S., R. 5. E.; then east to the northeast corner of sec. 27, T. 1 S., R. 5 E.; then north to the northwest corner of sec. 23, T. 1 S., R. 5 E.; then east to the northeast corner of sec. 19, T. 1 S., R. 6 E.; then north to the northwest corner of sec. 8, T. 1 S., R. 6 E.; then east to the southwest corner of sec. 3, T. 1 S., R. 6 E.; then north to the northwest corner of sec. 3, T. 1 S., R. 6 E.; then east to the northeast corner of sec. 2, T. 1 S., R. 6. E.; then south to the southeast corner of sec. 2, T. 1 S., R. 6 E.; then east to the northeast corner of sec. 7, T. 1 S., R. 7 E.; then south to the northwest corner of sec. 5, T. 2 S., R. 7. E.; then east to the northeast corner of sec. 3, T. 2 S., R. 7 E.; then north to the northwest corner of sec. 35, T. 1 S., R. 7 E.; then east to the northeast corner of sec. 36, T. 1 S., R. 7 E. and the Maricopa/Pinal County line; then south along the Maricopa/Pinal County line to the point of beginning.

* * * * *

Pinal County. (1) Beginning at the intersection of the Maricopa/Pinal County line and the northwest corner of sec. 31, T. 1 S., R. 8 E.; then east to the northeast corner of sec. 32, T. 1 S., R. 8 E.; then south to the northwest corner of sec. 4, T. 2 S., R. 8 E.; then east to the northeast corner of sec. 4, T. 2 S., R. 8 E.; then south to the southeast corner of sec. 4, T. 3 S., R. 8 E.; then west to the northeast corner of sec. 8, T. 3 S., R. 8 E.; then south to the southeast corner of sec. 8, T. 3 S., R. 8 E.; then west to the southwest corner of sec. 12, T 3 S., R. 7 E.; then north to the southeast corner of sec. 2, T. 3 S., R. 7 E.; then west to the northeast corner of sec. 9, T. 3 S., R. 6 E.; then south to the southeast corner of sec. 28, T. 3 S., R. 6 E.; then west to the southwest corner of sec. 28, T. 3 S., R. 6 E.; then south to the southeast corner of sec. 32, T. 3 S., R. 6 E.; then west to the southwest corner of sec. 35, T. 3 S., R. 5 E.; then north to the northwest corner of sec. 35, T. 3 S., R. 5 E.; then west to the southwest corner of sec. 27, T. 3 S., R. 5 E.; then north to the northwest corner of sec. 10, T. 3 S., R. 5 E.; then west to the southwest corner of sec. 4, T. 3 S., R. 5 E.; then north to the northwest corner of sec. 4, T. 3 S., R. 5 E. and the intersection of the Maricopa/Pinal County line; then east along the Maricopa/Pinal County line to the northwest corner of sec. 6, T. 3 S., R. 8 E.; then north along the Maricopa/Pinal County line to the point of beginning.

* * * * *

(3) The following individual fields in Pinal County are regulated areas: 309021804 and 309050104.

* * * * *

TEXAS

Baylor County. (1) Beginning at the Knox/Baylor County line and the line of latitude 33.6752° N.; then east along the line of latitude 33.6752° N. to the line of longitude −99.3833° W.; then south along the line of longitude −99.3833° W. to the line of latitude 33.5802° N.; then west along the line of latitude 33.5802° N. to the line of longitude −99.3846° W.; then south along the line of longitude −99.3846° W. to the line of latitude 33.5305° N.; then west along the line of latitude 33.5305° N. to the Knox/Baylor County line; then north along the Knox/Baylor County line to the point of beginning.

(2) Beginning at the Baylor/Throckmorton County line and the line of longitude −99.1270° W.; then north along the line of longitude −99.1270° W. to the line of latitude 33.4447° N.; then east along the line of latitude 33.4447° N. to the line of longitude −99.0191° W.; then south along the line of longitude −99.0191° W. to the Baylor/Throckmorton County line; then west along the Baylor/Throckmorton County line to the point of beginning.

Knox County. Beginning at the Knox/Baylor County line and the line of latitude 33.5305° N.; then west along the line of latitude 33.5305° N. to the line of longitude −99.4960° W.; then north along the line of longitude −99.4960° W. to the line of latitude 33.5802° N.; then west along the line of latitude 33.5802° N. to the line of longitude −99.4971° W.; then north along the line of longitude −99.4971° W. to the line of latitude 33.6752° N.; then east along the line of latitude 33.6752° N. to the Knox/Baylor County line; then south along the Knox/Baylor County line to the point of beginning.

Throckmorton County. (1) Beginning at the Baylor/Throckmorton County line and the line of longitude −99.1270° W.; then east along the Baylor/Throckmorton County line to the line of longitude −99.0191° W.; then south along the line of longitude −99.0191° W. to the line of latitude 33.3535° N.; then west along the line of latitude 33.3535° N to the line of longitude −99.1270° W.; then north along the line of longitude −99.1270° W. to the point of beginning.

(2) Beginning at the Throckmorton/Young County line and the line of latitude 33.3003° N.; then south along the Throckmorton/Young County line to the line of latitude 33.1809° N.; then west along the line of latitude 33.1809° N. to the line of longitude −98.9890° W; then north along the line of longitude −98.9890° W. to the line of latitude 33.2055° N.; then west along the line of latitude 33.2055° N. to the line of longitude −99.0043° W.; then north along the line of longitude −99.0043° W. to the line of latitude 33.3003° N.; then east to the point of beginning.

Young County. Beginning at the Throckmorton/Young County line and the line of latitude 33.3003° N.; then east along the line of latitude 33.3003° N. to the line of longitude −98.8886° W.; then south along the line of longitude −98.8886° W. to the line of

latitude 33.2880° N.; then east along the line of latitude 33.2880° N. to the line of longitude −98.8356° W.; then south along the line of longitude −98.8356° W. to the line of latitude 33.1946° N.; then west along the line of latitude 33.1946° N. to the line of longitude −98.8762° W.; then south along the line of longitude −98.8762° W. to the line of latitude 33.1809° N.; then west along the line of latitude 33.1809° N. to the Throckmorton/Young County line; then north along the Throckmorton/Young County line to the point of beginning.

Done in Washington, DC, this 16th day of November 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–19769 Filed 11–21–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319 and 354

[Docket No. APHIS–2006–0096]

Agricultural Inspection and AQI User Fees Along the U.S./Canada Border; Delay of Effective Date

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; delay of effective date.

SUMMARY: We recently published an interim rule amending the foreign quarantine and user fee regulations by removing the exemptions from inspection for imported fruits and vegetables grown in Canada and the exemptions from user fees for commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international air passengers entering the United States from Canada. That interim rule had an effective date of November 24, 2006. We are delaying the effective date of the removal of the user fee exemption for international air passengers until January 1, 2007, and the effective date for the remaining provisions of the rule, including the removal of the exemption from user fees for commercial vessels, commercial trucks, commercial railroad cars, and commercial aircraft entering the United States from Canada, until March 1, 2007. We are making these changes to allow additional time for affected entities to make necessary preparations to comply with the inspection and collection procedures that we will be instituting as a result of the interim rule.

DATES: The effective date for the interim rule amending 7 CFR parts 319 and 354, published at 71 FR 50320, August 25, 2006, is delayed until March 1, 2007, except for the rule's amendments to paragraphs (f)(2) and (f)(3) of 7 CFR 354.3, which are delayed until January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Alan S. Green, Executive Director, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737; (301) 734–8261.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests. Similarly, the regulations in 9 CFR subchapter D prohibit or restrict the importation of certain animals and animal products into the United States to prevent the introduction of pests or diseases of livestock. The regulations in 7 CFR part 354 provide rates and requirements for overtime services relating to imports and exports and for user fees.

On August 25, 2006, we published an interim rule in the **Federal Register** (71 FR 50320–50328) amending the regulations in 7 CFR parts 319 and 354 by removing the exemptions from inspection for imported fruits and vegetables grown in Canada and the exemptions from user fees for commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international air passengers entering the United States from Canada. As a result of this action, all agricultural products imported from Canada were to be subject to inspection, and commercial conveyances, as well as airline passengers arriving on flights from Canada, were to be subject to inspection and user fees. The interim rule had an effective date of November 24, 2006.

Delay in Effective Date

We recently received comments from industry representatives and the Government of Canada expressing concern about the possible impact of the rule on affected entities and questioning whether the November 2006 effective date allowed adequate time for those entities to prepare to comply with the new inspection and collection procedures that we would be instituting in order to enforce the interim rule. A delay of the effective date was requested. After evaluating the comments, we have elected to delay the effective date of the interim rule. We are delaying the effective date of the removal of the user fee exemption for international air passengers until January 1, 2007, and the effective date for the remaining provisions of the rule, including the removal of the exemption from user fees for commercial vessels, commercial trucks, commercial railroad cars, and commercial aircraft entering the United States from Canada, until March 1, 2007.

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 16th day of November 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–19787 Filed 11–21–06; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 740

RIN 3133–AD18

Revisions to the Official Sign Indicating Insured Status

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is revising the official sign indicating a credit union's share accounts are insured by the NCUA to reflect recent share insurance increases and by including a statement that NCUA-insured share accounts are backed by the full faith and credit of the United States Government. This rule is required to comply with the Federal Deposit Insurance Reform Act of 2005 (Reform Act) and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Conforming Amendments Act).

DATES: This final rule is effective immediately upon publication but there are delayed compliance dates. A credit union must replace the old version of the official sign with the revised official sign displayed below at required locations such as each station or window where the credit union normally receives insured funds or deposits in its principal place of business and all of its branches and on its internet page where it accepts deposits or opens accounts by May 22, 2007. A credit union must replace the old version of the official sign with the revised official sign on each document where it has chosen to include the

official sign, including advertisements, marketing and promotional materials, disclosures, and others by November 23, 2007.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, at the above address, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The Reform Act and Conforming Amendments Act, respectively Public Law 109–171 and Public Law 109–173, amended the share insurance provisions of the Federal Credit Union Act in a number of ways, including increasing share insurance coverage for certain accounts. 12 U.S.C. 1781–1790d. In March 2006, NCUA issued an interim final rule to implement many of those statutory amendments. 71 FR 14631 (March 23, 2006). Additionally, the Conforming Amendments Act also requires that NCUA's official sign, relating to the insurance of share accounts, state that share accounts insured by NCUA, through the National Credit Union Share Insurance Fund, are backed by the full faith and credit of the United States government. Section 740.4 of NCUA's regulations establishes the content and physical appearance of the official sign and dictates where insured credit unions must display the sign. In June 2006, NCUA issued a proposed rule to amend § 740.4 to comply with statutory requirements and § 740.4 and § 740.5 to reflect recent share insurance increases. 71 FR 36719 (June 28, 2006).

The Conforming Amendments Act also imposes a penalty on an insured credit union that violates any statutory or regulatory provision related to the official sign. Specifically, an insured credit union is subject to a penalty of up to $100 a day for every day it is in violation of statutory or regulatory requirements. The proposal reflected this statutory provision in § 740.4.

B. Initial Supply of New Signs and Compliance Dates

In the proposed rule, NCUA stated it would provide all insured credit unions with an initial supply of the revised official sign with a blue background and white lettering at no cost to credit unions and would make a downloadable graphic available on the agency Web site for credit unions to use on their Web sites. NCUA intends to ship the signs immediately following Board approval of this final rule, and credit unions should receive their signs around the time of the official publication of this rule.

NCUA did not suggest a compliance date for replacing the official sign at teller windows, on Web sites, or on advertisements. Rather, NCUA asked for comments on whether 60 days after receiving the signs from NCUA would be a reasonable period for credit unions to come into compliance. As discussed in detail in the summary of comments section below, NCUA is setting two separate compliance dates for credit unions to incorporate the revised official sign. A credit union will have up to six months from the effective date of this rule to replace old signs with revised signs at each station or window where the credit union normally receives insured funds or deposits in its principal place of business and all of its branches and on its internet page where it accepts deposits or opens accounts. Credit unions will have up to one year from the effective date of the rule to exhaust or otherwise dispose of their existing supplies of other materials on which the official sign appears and replace them with materials containing the revised official sign.

C. Summary of Comments

NCUA received a total of eighty-one comments regarding the proposed rule from eight credit union trade associations, thirty-five federal credit unions, thirty-six state credit unions and two individuals who did not identify the credit unions with which they are associated.

The vast majority of commenters focused on the compliance date of the rule. Most commenters indicated the rule creates two separate tasks credit unions need to perform to comply and that each should have its own compliance date. For example, about half the commenters believed 60 days is a reasonable time period to replace the old sign with the revised sign at each station or window where the credit union normally receives insured funds or deposits in its principal place of business and all of its branches and on its Internet page where it accepts deposits or opens accounts. A few of these commenters also noted additional time would be preferable. Seventeen commenters stated more than 60 days is necessary to comply and a number of them suggested six months and one suggested a year. NCUA does not wish to overburden any credit union in this regard. Accordingly, NCUA will allow up to six months for credit unions to comply with this aspect of the rule.

Also, commenters explained that, in addition to placing the official sign where required by regulation, such as at teller windows and on Web pages, credit unions also voluntarily use the official sign on a vast array of materials they provide to members. Commenters noted these materials include marketing and promotional materials, disclosures, envelopes, statement paper, lobby flyers and posters, membership agreements, and other documents.

Seventy-seven commenters agreed that credit unions need a longer compliance period to deal with revising these materials. The great majority of these commenters expressed two main themes about revising the materials. They noted it could take a long time to redesign and reprint them and the expense of doing so could be high and cause budgetary problems, especially for smaller credit unions. They explained credit unions usually purchase these kinds of materials in bulk to lower their costs. As a result, credit unions may have large inventories that could last for a year for which they have already paid. They suggested NCUA permit credit unions to exhaust their existing supplies of materials before being required to replace them with materials containing the revised official sign. Some suggested specific time frames, ranging from six months to a number of years and others left it more open-ended, suggesting whenever the existing inventory is exhausted. Many also noted that members would not be adversely affected by an extended compliance period. NCUA acknowledges the commenters' concerns. Accordingly, NCUA will permit credit unions one year from the effective date to comply with this aspect of the final rule.

Nine commenters suggested adding additional language to the sign to specifically reference the $250,000 coverage for certain retirement accounts. Three commenters suggested adding the word ''are'' to the sign between the words ''savings'' and ''federally'' for readability. Nine commenters expressed concern and disapproval for the statutorily mandated penalty of up to $100 per day for not complying with official sign requirements. The familiar design and limited language of the sign is intended to instill confidence in members that their funds are insured by the NCUA and backed by the full faith and credit of the United States Government. NCUA believes that adding too much additional information to a small sign detracts from that simple and easily understood message, lessens the legibility of the sign in certain media, and could actually confuse members into thinking they have more insurance coverage than they do. NCUA believes the redesigned sign strikes a balance between providing accurate and sufficient information with the logistical need for the sign to be brief. Finally, the redesigned sign parallels the language on the Federal Deposit Insurance

Corporation's newly redesigned sign and reflects cooperation between Federal agencies. The $100 per day penalty for not complying with Part 740 is statutory and beyond NCUA's ability to change. NCUA believes it has accommodated commenters' concerns about the penalty, however, by setting compliance dates far enough in the future to allow credit unions ample time to comply.

D. Technical Clarification

NCUA is amending § 740.4(b)(2) to ensure its policy that a credit union may use the color scheme of its choice regarding the official sign is clearly reflected. 68 FR 23381, 23382 (May 2, 2003). The current regulation contains language that could be read to prohibit a credit union from using signs in colors other than those provided to it by NCUA at each station or window where the credit union normally receives insured funds or deposits in its principal place of business and all of its branches and on its Internet page where it accepts deposits or opens accounts. That language is removed to make clear a credit union may use signs in different colors in those locations. Additionally, NCUA reiterates that a credit union also may alter the official sign's font sizes to ensure it is legible and visually prominent on a Web page. 68 FR 23381 (May 2, 2003). Credit unions may do the same on other documents where they have chosen to include the official sign in connection with the official advertising statement or for other purposes not required by Part 740. A credit union may not alter the font size of the official sign as provided by NCUA for placement at each station or window where the credit union normally receives insured funds or deposits in its principal place of business and all of its branches. Also, the depiction of the sign published in the proposal inadvertently omitted an interior border surrounding the language of the sign. The depiction below includes that border but does not make any substantive changes.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions (those under ten million dollars in assets). This rule clarifies that share accounts insured by NCUA are backed by the full faith and credit of the United States Government. It establishes reasonable compliance dates and is structured to minimize any regulatory burden to ensure it will not have a significant economic impact on a substantial number of small credit unions. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that this rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

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

The NCUA has determined that this rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of SBREFA. As required by SBREFA, NCUA will file the appropriate reports with Congress and the General Accounting Office so this rule may be reviewed.

List of Subjects in 12 CFR Part 740

Advertisements, Credit unions.

By the National Credit Union Administration Board on November 16, 2006.

Mary F. Rupp,

Secretary of the Board.

■ For the reasons discussed above, NCUA is amending 12 CFR part 740 as follows:

PART 740—ACCURACY OF ADVERTISING AND NOTICE OF INSURED STATUS

■ 1. The authority citation for part 740 continues to read as follows:

Authority: 12 U.S.C. 1766, 1781, 1789.

■ 2. Section 740.4 is amended by revising the figure in paragraph (b) introductory text, by revising paragraph (b)(2) and by adding new paragraph (f) to read as follows:

§ 740.4 Requirements for the official sign.

* * * * *

(b) * * *

Your savings federally insured to at least $100,000
and backed by the full faith and credit of the United States Government

NCUA

National Credit Union Administration, a U.S. Government Agency

(1) * * *

(2) An insured credit union may purchase signs from commercial suppliers or develop its own in any color scheme so long as they are legible and otherwise comply with this part. A credit union may alter the font size of the official sign to make it legible on its Internet page and on documents it provides to its members including advertisements, but it may not do so on signs to be placed at each station or window where the credit union normally receives insured funds or deposits in its principal place of business and all of its branches.

* * * * *

(f) An insured credit union that fails to comply with Section 205(a) of the Federal Credit Union Act regarding the official sign, 12 U.S.C. 1785(a), or any requirement in this part is subject to a penalty of up to $100 per day.

■ 3. Section 740.5(c)(11) is amended by removing ''of $100,000'' and adding in its place ''insurance amount''.

[FR Doc. E6–19682 Filed 11–21–06; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 745 and 747

Share Insurance Appeals; Clarification of Enforcement Authority of the NCUA Board

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: NCUA is amending its rules to implement amendments to the Federal Credit Union Act (FCU Act) made by the Financial Services Regulatory Relief Act of 2006 (Reg Relief Act). This interim final rule clarifies: that an appeal from a final NCUA Board decision regarding share insurance coverage shall be to the appropriate Federal District Court; that the NCUA Board may terminate the insured status of any insured credit union for violation of any condition imposed by the Board in connection with any action on any application, notice, or other request by the credit union or an institution-affiliated party; and that Orders of Suspension, Prohibition and Removal issued by the NCUA Board remain effective against institution-affiliated parties regardless of whether they remain institution-affiliated parties at the time the Order is considered or issued.

DATES: This interim final rule is effective November 22, 2006. Comments must be received by NCUA on or before January 22, 2007.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- NCUA Web site: *http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Interim Final Rule—Parts 745 and 747'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT: John K. Ianno, Senior Trial Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Insurance Appeals

The Reg Relief Act amended section 207(d) of the FCU Act, which addresses the resolutions of disputes relating to any claim for insurance coverage. 12 U.S.C. 1787(d). This interim rule amends the provision in NCUA's regulations, 12 CFR 745.203(c), that sets forth the appropriate venue for seeking judicial review of a final determination by the Board relating to a claim for insurance coverage.

The current regulation provides for judicial review by the United States Court of Appeals for the District of Columbia or the court of appeals for the Federal circuit where the credit union's principal place of business is located. The interim rule revises the regulation to reflect the statutory change that a final agency determination by the Board on a claim for insurance coverage is reviewable by the United States district court for the Federal judicial district where the principle place of business of the credit union is located.

B. Expansion of Enforcement Authority

The Reg Relief Act amended three provisions of Section 206 of the FCU Act, 12 U.S.C. 1786, to broaden the NCUA Board's authority to take enforcement actions for violations of conditions imposed in any action on any application, notice, or other request by a credit union or an institution-affiliated party. Such violations can serve as a basis for cease and desist orders, removal and prohibition orders, and civil money penalties. Previously such enforcement actions could only be taken upon a violation of conditions imposed in ''the granting of any application or other request by the credit union''. The amendments to Sections 747.1 and 202 of NCUA's Regulations conform the language of the regulation to that of the FCU Act as amended.

C. Clarification of Suspension, Prohibition and Removal Authority

The Reg Relief Act amended Section 206(i)(1) of the FCU Act, 12 U.S.C. 1786(i)(1) to clarify the NCUA Board's authority to issue Orders against institution-affiliated parties regardless of whether they remain institution-affiliated parties of a credit union when the Order is considered or issued. The new statutory language makes clear that the NCUA Board has the authority to issue the Order even if the subject is no longer affiliated with the institution. The amendments to Sections 747.303 and 304 of NCUA's Regulations conform the language of the regulation to that of the FCU Act as amended.

D. Interim Final Rule

The NCUA Board is issuing this rule as an interim final rule because there is a strong public interest in assuring that NCUA's Rules and Regulations conform to statutory authority. This rule does this by making regulatory changes consistent with the statutory amendments in the Reg Relief Act. NCUA also finds these reasons are good cause to dispense with the 30-day delayed effective date requirement under section 553(d)(3) of the Administrative Procedure Act (APA). Accordingly, the Board finds that, pursuant to 5 U.S.C. 553(b)(3), notice and public procedures are unnecessary and contrary to the public interest; and, pursuant to 5 U.S.C. 553(d)(3), the rule will be effective upon publication in the **Federal Register.** Although the rule is being issued as an interim final rule and is effective upon publication, the Board encourages interested parties to submit comments.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This rule clarifies NCUA's enforcement authority and identifies the appropriate venue for appeals of final share insurance determinations. It does not impose any additional regulatory burden. The interim final amendments will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the interim final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. 44 U.S.C. 3501 *et seq.*; 5 CFR part 1320.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The interim final rule will not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

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

The NCUA has determined that this interim final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (SBREFA), provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. NCUA has requested a SBREFA determination from the Office of Management and Budget, which is pending. As required by SBREFA, NCUA will file the appropriate reports with Congress and the General Accounting Office so that the interim rule may be reviewed.

List of Subjects

12 CFR Part 745

Credit Unions, Share Insurance.

12 CFR Part 747

Administrative practice and procedure, Bank deposit insurance, Claims, Credit unions, Equal access to justice, Investigations, Lawyers, Penalties.

By the National Credit Union Administration Board on November 16, 2006.

Mary F. Rupp,

Secretary of the Board.

■ Accordingly, NCUA amends 12 CFR part 745 and 747 as follows:

PART 745—SHARE INSURANCE AND APPENDIX

■ 1. The authority citation for part 745 is revised to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; Title V, Pub. L. 109–351;120 Stat. 1966.

§ 745.203 [Amended]

■ 2. Section 745.203(c) is amended by removing ''Court of Appeals for the District of Columbia or the court of appeals for the Federal judicial circuit,'' and adding in its place ''district court for the Federal judicial district.''

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

■ 3. The authority citation for part 747 is revised to read as follows:

Authority: 12 U.S.C. 1766, 1782, 1784, 1785, 1786, 1787, 1790a, 1790d; 42 U.S.C. 4012a; Pub. L. 101–410; Pub. L. 104–134; Pub. L. 109–351; 120 Stat. 1966.

§ 747.1 [Amended]

■ 4. Section 747.1(c)(3) is amended by removing ''the grant of an application or request,'' and adding in its place ''any action on any application, notice, or other request by the credit union or institution-affiliated party,''.

§ 747.202 [Amended]

■ 5. Section 747.202(c) is amended by removing ''any application or request of the credit union,'' and adding in its place ''any action on any application, notice, or other request by the credit union or institution-affiliated party,''.

■ 6. Section 747.303 is revised to read as follows:

§ 747.303 Notice of suspension or prohibition.

Whenever an institution-affiliated party of an insured credit union is charged in any state, Federal or territorial information or indictment or complaint with the commission of or participation in a crime involving dishonesty or breach of trust, which crime is punishable by imprisonment for a term exceeding one year under state or Federal law, the NCUA Board may, if continued service or participation by the concerned party may pose a threat to the interests of any

credit union's members or may threaten to impair public confidence in any credit union, by written notice served upon such party, suspend him or her from office, or prohibit him or her from further participation in any manner in the affairs of any credit union, or both. A copy of the notice of suspension or prohibition shall also be served upon the credit union of which the subject of the order is, or most recently was, an institution-affiliated party.

■ 7. Section 747.304 is revised to read as follows:

§ 747.304 Removal or permanent prohibition.

(a) In the event that a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against the institution-affiliated party, and at such time as the judgment, if any, is not subject to further appellate review, the NCUA Board may, if continued service or participation by such party may pose a threat to the interests of any credit union's members or may threaten to impair public confidence in any credit union, issue and serve upon the individual an order removing him or her from office or prohibiting him or her from further participation in any manner in the conduct of the affairs of any credit union except with the consent of the NCUA Board. A copy of such order will also be served upon the credit union of which the subject of the order is, or most recently was, an institution-affiliated party.

(b) The NCUA Board may issue such order with respect to an individual who is an institution-affiliated party at a credit union at the time of the offense without regard to whether such individual is an institution-affiliated party at any credit union at the time the order is considered or issued by the Board or whether the credit union at which the individual was an institution-affiliated party at the time of the offense remains in existence at the time the order is considered or issued by the board.

(c) A finding of not guilty or other disposition of the charge will not preclude the Board from thereafter instituting proceedings, pursuant to the provisions of section 206(g) of the Act (12 U.S.C. 1786(g)) and subpart A of this part, to remove such director, committee member, officer, or other person from office or to prohibit his or her further participation in the affairs of the credit union.

[FR Doc. E6–19703 Filed 11–21–06; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–381–AD; Amendment 39–14832; AD 2006–24–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200, A330–300, A340–200, and A340–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes. This AD requires repetitive inspections for discrepancies of the grease and gear teeth of the radial variable differential transducer of the nose wheel steering gearbox; or repetitive inspections for damage of the chrome on the bearing surface of the nose landing gear (NLG) main fitting barrel; as applicable. And, for airplanes with any discrepancy or damage, this AD requires an additional inspection or corrective actions. This AD also adds a terminating action. The actions specified by this AD are intended to prevent incorrect operation or jamming of the nose wheel steering, which could cause reduced controllability of the airplane on the ground. This action is intended to address the identified unsafe condition.

DATES: Effective December 27, 2006.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 27, 2006.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on August 8, 2006 (71 FR 44937). That action proposed to require repetitive inspections for discrepancies of the grease and gear teeth of the radial variable differential transducer of the nose wheel steering gearbox; or repetitive inspections for damage of the chrome on the bearing surface of the nose landing gear (NLG) main fitting barrel; as applicable. And, for airplanes with any discrepancy or damage, that action proposed to require an additional inspection or corrective actions. That action also proposed to add a terminating action and remove certain airplanes from the applicability.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Request To Change Incorporation of Certain Information

The Modification and Replacement Parts Association (MARPA) states that, typically, airworthiness directives are based on service information originating with the type certificate holder or its suppliers. MARPA adds that manufacturer service documents are privately authored instruments generally having copyright protection against duplication and distribution. MARPA notes that when a service document is incorporated by reference into a public document, such as an airworthiness directive, it loses its private, protected status and becomes a public document. MARPA adds that if a service document is used as a mandatory element of compliance, it should not simply be referenced, but should be incorporated into the regulatory document; by definition, public laws must be public, which means they cannot rely upon private writings. MARPA adds that incorporated-by-reference service documents should be made available to the public by publication in the Docket Management System (DMS), keyed to the action that incorporates them. MARPA notes that the stated purpose of the incorporation-by-reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals; traditionally, ''affected individuals'' means aircraft owners and operators, who are generally provided service information by the manufacturer.

MARPA adds that a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing and repair shops, parts purveyors and distributors, and organizations manufacturing or servicing alternatively certified parts [under part 21 of the Federal Aviation Regulations (14 CFR part 21), § 21.303 (parts manufacturer approval)]. MARPA adds that the concept of brevity is now nearly archaic as documents exist more frequently in electronic format than on paper. Therefore, MARPA asks that the service documents deemed essential to the accomplishment of the supplemental NPRM be incorporated by reference into the regulatory instrument, and published in the DMS.

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

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

Explanation of Changes to the Supplemental NPRM

Paragraph (e)(2) of the supplemental NPRM specifies making repairs using a method approved by either the FAA or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). The European Aviation Safety Agency (EASA), which is the airworthiness authority for the European Union, has assumed responsibility for the airplane models subject to this AD. Therefore, we have revised paragraph (e)(2) of this AD to specify making repairs using a method approved by the FAA, the DGAC (or its delegated agent), or the EASA (or its delegated agent).

Model designations have been added to Table 2 of paragraph (g)(2) of the supplemental NPRM for clarification.

Conclusion

We have carefully reviewed the available data, including the comment received, and we have determined that air safety and the public interest require the adoption of the rule with the change previously described. This change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Radial variable differential transducer inspection, per inspection cycle.	6	$80	None	$480	11	$5,280.
Chrome inspection, per inspection cycle.	13	80	None	$1,040	15	$15,600.
Modification (Service Bulletin A330–32–3164 or A340–32–4204).	15	80	$10,244 to $11,337.	$11,444 to $12,537.	12	$137,328 to $150,444.
Rotating sleeve grease system modification (Service Bulletin A330–32–3192 or A340–32–4227).	15	80	Unknown	From $1,200	23	From $27,600.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Authority for This Rulemaking

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

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

Regulatory Impact

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

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2006–24–03 Airbus: Amendment 39–14832. Docket 2001–NM–381–AD.

Applicability: The following airplanes, certificated in any category, except those modified in production by both Airbus Modifications 51381 and 53073:

Model A330–201, –202, –203, –223, and –243 airplanes
Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes
Model A340–211, –212, and –213 airplanes
Model A340–311, –312, and –313 airplanes

Compliance: Required as indicated, unless accomplished previously.

To prevent incorrect operation or jamming of the nose wheel steering (NWS), which could cause reduced controllability of the airplane on the ground, accomplish the following:

Inspections: Airplanes Without Modification 51381

(a) For airplanes that were not modified in production by Airbus Modification 51381: Do the inspection specified in either paragraph (a)(1) or (a)(2) of this AD, in accordance with the required service bulletin identified in Table 1 of this AD, as applicable. The required compliance time is specified in paragraph (b) of this AD.

(1) Inspect for discrepancies of the grease by sending it to a laboratory for analysis, and do a detailed inspection for discrepancies of the gear teeth of the radial variable differential transducer (RVDT) driving ring and the gears in the RVDT gearboxes. If there are no discrepancies (such as metallic particles in the grease, abnormal wear of the gear teeth, or missing rubber sealant at the mating face between the main fitting and the RVDT gearbox), repeat the inspection as specified in paragraph (c) of this AD. If there is any discrepancy, do the inspection in paragraph (a)(2) of this AD within 3 months after the inspection specified in paragraph (a)(1) of this AD.

(2) Do a detailed inspection for damage of the chrome on the bearing surface of the nose landing gear (NLG) main fitting barrel under the NWS rotating sleeve. If there is no damage (such as flaking, corrosion, or blistering), repeat the inspection as specified in paragraph (c) of this AD. If there is any damage, before further flight, do the corrective action in paragraph (e) of this AD.

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

TABLE 1.—INSPECTION SERVICE BULLETINS

Airplane models	Airbus Service Bulletin	Required revision level	Approved revision level (for actions done before the effective date of the AD)
A330–200 and –300 series airplanes	A330–32–3134.	Revision 04, including Appendix 01, dated April 3, 2006.	Original, dated September 11, 2001. Revision 01, dated November 29, 2001. Revision 02, dated August 8, 2003. Revision 03, dated May 11, 2005.
A340–200 and –300 series airplanes	A340–32–4172.	Revision 04, including Appendix 01, dated April 3, 2006.	Original, dated September 11, 2001. Revision 01, dated November 29, 2001. Revision 02, dated August 8, 2003. Revision 03, dated May 11, 2005.

(b) For airplanes identified in paragraph (a) of this AD: Do the initial inspection specified in paragraph (a) of this AD at the latest of the following times:

(1) Within 60 months after the date that the new NLG was installed on the airplane.

(2) Within 60 months after the last major NLG overhaul accomplished before the effective date of this AD.

(3) Within 700 flight hours after the effective date of this AD.

(c) For airplanes identified in paragraph (a) of this AD: Repeat either inspection specified in paragraph (a)(1) or (a)(2) of this AD at intervals not to exceed the applicable interval specified in paragraph (c)(1) or (c)(2) of this AD, until the requirements of paragraph (g) of this AD are done.

(1) If the most recent inspection was the inspection specified in paragraph (a)(1) of this AD, then the next inspection must be done within 8 months.

(2) If the most recent inspection was the inspection specified in paragraph (a)(2) of this AD, then the next inspection must be done within 18 months.

Repetitive Inspections: Airplanes With Modification 51381

(d) For airplanes modified in production by Airbus Modification 51381: Perform a detailed inspection for damage of the chrome on the bearing surface of the NLG main fitting barrel under the NWS rotating sleeve. Do the inspection at the later of the times specified in paragraphs (d)(1) and (d)(2) of this AD in accordance with the applicable required Airbus service bulletin identified in Table 1 of this AD. Repeat the inspection thereafter at intervals not to exceed 18 months, until the requirements of paragraph (g) of this AD have been done.

(1) Within 60 months after the date that the new NLG was installed on the airplane.

(2) Within 60 months after the last major NLG overhaul accomplished before the effective date of this AD.

Follow-on Investigative and Corrective Actions

(e) For all airplanes: If any damage or discrepancy is found during any inspection required by this AD, do the corrective action before further flight in accordance with the

applicable required Airbus service bulletin identified in Table 1 of this AD, with the following exceptions:

(1) If discrepancies are found during any inspection specified in paragraph (a)(1) of this AD, the inspection in paragraph (a)(2) of this AD is required within 3 months.

(2) Where the service bulletin recommends contacting Messier-Dowty for appropriate action. Repair before further flight in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; the Direction Gonorale de l'Aviation Civile (or its delegated agent); or the European Aviation Safety Agency (or its delegated agent).

Note 2: Airbus Service Bulletins A330–32–3134 and A340–32–4172, both Revision 04, both dated April 3, 2006, refer to Messier-Dowty Special Inspection Service Bulletins D23285–32–037, Revision 2, dated May 23, 2002; and D23285–32–044, dated January 12, 2004; as additional sources of service information for the inspections.

Credit for Prior Accomplishment

(f) Actions done before the effective date of this AD in accordance with an applicable Approved Revision Level of the service bulletin identified in Table 1 of this AD are acceptable for compliance with the corresponding requirements of paragraphs (a), (d), and (e) of this AD.

Modification

(g) For all airplanes: At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, modify the NLG as specified in Table 2 of this AD, as applicable.

(1) For NLGs overhauled before the effective date of this AD: At the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD:

(i) Within 60 months since the NLG was overhauled or 180 months since the NLG was new, whichever occurs first.

(ii) Within 6 months after the effective date of this AD.

(2) For NLGs not overhauled before the effective date of this AD: Within 120 months since the NLG was new, or within 6 months after the effective date of this AD, whichever occurs later.

TABLE 2.—MODIFICATION

For airplanes—	Modify the NLG in accordance with—
For Model A330 airplanes without Airbus Modifications 51381 and 53073 done in production.	Airbus Service Bulletin A330–32–3164, dated June 27, 2003, or Revision 01, dated March 21, 2006; and A330–32–3192, dated December 8, 2005.
For Model A340 airplanes without Airbus Modifications 51381 and 53073 done in production.	Airbus Service Bulletins A340–32–4204, dated June 27, 2003, or Revision 01, dated March 21, 2006; and A340–32–4227, dated December 8, 2005.
For Model A330 airplanes with Airbus Modification 51381 but not Airbus Modification 53073 done in production.	Airbus Service Bulletin A330–32–3192, dated December 8, 2005.
For Model A340 airplanes with Airbus Modification 51381 but not Airbus Modification 53073 done in production.	Airbus Service Bulletin A340–32–4227, dated December 8, 2005.
For Model A330 airplanes with Airbus Modification 53073 but not Airbus Modification 51381 done in production.	Airbus Service Bulletin A330–32–3164, dated June 27, 2003, or Revision 01, dated March 21, 2006.
For Model A340 airplanes with Airbus Modification 53073 but not Airbus Modification 51381 done in production.	Airbus Service Bulletin A340–32–4204, dated June 27, 2003, or Revision 01, dated March 21, 2006.

Terminating Action

(h) Accomplishment of both NLG modifications specified in paragraph (g) of this AD terminates the repetitive inspection requirements of this AD.

Note 3: Airbus Service Bulletins A330–32–3164 and A340–32–4204 refer to Messier-Dowty Service Bulletin D23285–32–042, dated June 19, 2003, as an additional source of service information for the modification.

Note 4: Airbus Service Bulletins A330–32–3192 and A340–32–4227 refer to Messier-Dowty Service Bulletin D23581–32–047, dated December 1, 2005, as an additional source of service information for the modification.

Reporting

(i) Certain service bulletins specify to submit a report to the manufacturer. This AD does not require a report, unless the grease analysis required by paragraph (a)(1) of this AD is done at a lab chosen by the operator, which requires the results to be evaluated by Messier-Dowty.

Alternative Methods of Compliance

(j)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, is authorized to approve alternative methods of compliance for this AD.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Note 5: The subject of this AD is addressed in French airworthiness directives F–2005–209 and F–2005–210, both dated December 21, 2005.

Incorporation by Reference

(k) Unless otherwise specified in this AD, the actions must be done in accordance with the applicable service bulletins identified in Table 3 of this AD. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of this service information, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. To inspect copies of this service information, go to the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision level	Date
A330–32–3134, including Appendix 01	Revision 04	April 3, 2006.
A330–32–3164	Original	June 27, 2003.
A330–32–3164	Revision 01	March 21, 2006.
A330–32–3192	Original	December 8, 2005.
A340–32–4172, including Appendix 01	Revision 04	April 3, 2006.
A340–32–4204	Original	June 27, 2003.
A340–32–4204	Revision 01	March 21, 2006.
A340–32–4227	Original	December 8, 2005.

Effective Date

(l) This amendment becomes effective on December 27, 2006.

Issued in Renton, Washington, on November 8, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–19535 Filed 11–21–06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24877; Directorate Identifier 2005–NM–253–AD; Amendment 39–14831; AD 2006–24–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747SR, and 747SP Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Boeing Model 747 series airplanes. That AD currently requires repetitive inspections to detect cracks at certain stringer fastener locations; and repair, if necessary. For certain airplanes, that AD requires a modification in certain areas where reports indicate that cracking was prevalent. This modification terminates the repetitive inspections only for those areas, and is also an option for other airplanes affected by the existing AD. This new AD requires an additional inspection of areas that may have Alodine-coated rivets installed, and repair if necessary. This AD results from a report of cracking discovered in a skin lap joint that was previously inspected using the eddy current method. We are issuing this AD to prevent rapid decompression of the airplane due to disbonding and subsequent cracking of the skin panels.

DATES: This AD becomes effective December 27, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 27, 2006.

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

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 90–26–10, amendment 39–6836 (55 FR 51401, December 14, 1990). The existing AD applies to certain Boeing Model 747 series airplanes. That NPRM was published in the **Federal Register** on May 25, 2006 (71 FR 30074). That NPRM proposed to continue to require repetitive inspections to detect cracks at certain stringer fastener locations, and repair if necessary. For certain airplanes, that NPRM proposed to continue to require modification in certain areas where reports indicate that cracking was prevalent. This modification terminates the repetitive inspections only for those areas, and is also an option for other airplanes affected by the existing AD. That NPRM also proposed to require an additional inspection of areas that may have Alodine-coated rivets installed, and repair if necessary.

Comments

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

Support for the NPRM

Boeing supports the NPRM.

Request To Recognize Overlapping Inspections

The Air Transport Association, on behalf of one of its members, Northwest Airlines, requests that we recognize that a service bulletin currently in development could result in overlapping inspections and cause duplication of efforts. Northwest Airlines states that it has been advised by Boeing that the service bulletin in development will recommend external detailed inspections and/or external surface high frequency eddy current inspections in a good portion of the region affected by the NPRM. This new service bulletin resulted from a recent report of skin cracking in section 41.

We partially agree with the commenters. We agree that it is important to avoid duplication of effort. However, because the service bulletin that the commenters mention has not been issued, we have not issued an NPRM for the subject of that service bulletin. When the service bulletin is issued, we will review it and any forthcoming proposed rule in an effort to prevent duplication of tasks. We consider that to delay this AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. We have not changed the AD in this regard.

Explanation of Editorial Changes

We have clarified the Summary section of this AD to state that this new AD requires ''an additional inspection'' rather than a one-time inspection at a reduced threshold. The new inspection required by this AD is ''additional'' and, therefore, we are not reducing a threshold in the previous AD.

We have also removed the words, ''at intervals not to exceed 150 flight cycles'' from paragraph (k)(1)(i) of this AD because it duplicates information already in paragraph (k)(1) of this AD, and may cause confusion.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD. There are about 132 airplanes of the affected design in the worldwide fleet. This AD affects about 59 airplanes of U.S. registry. The average labor rate is $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Fleet cost
Inspection (required by AD 90–26–10)	48	None	$3,840, per inspection cycle.	$226,560, per inspection cycle.
Modification (required by AD 90–26–10)	620	$69,246	$118,846	$7,011,914.
Inspection (new action)	48	None	$3,840, per inspection cycle.	$226,560, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–6836 (55 FR 51401, December 14, 1990) and by adding the following new airworthiness directive (AD):

2006–24–02 Boeing: Amendment 39–14831. Docket No. FAA–2006–24877; Directorate Identifier 2005–NM–253–AD.

Effective Date

(a) This AD becomes effective December 27, 2006.

Affected ADs

(b) This AD supersedes AD 90–26–10.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747SR, and 747SP series airplanes, certificated in any category; line numbers 001 through 430 inclusive.

Unsafe Condition

(d) This AD results from a report of cracking discovered in a skin lap joint that was previously inspected using the eddy current method. We are issuing this AD to prevent rapid decompression of the airplane due to disbonding and subsequent cracking of the skin panels.

Compliance

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

Restatement of Certain Requirements of AD 90–26–10

Inspections

(f) Prior to the accumulation of 12,000 flight cycles or within the next 1,000 flight cycles after January 22, 1991 (the effective date of AD 90–26–10), whichever occurs later, unless previously accomplished within the last 1,000 flight cycles, conduct an external detailed and external high frequency eddy current (HFEC) inspection for cracks of the fuselage skin from body station (BS) 220 to BS 520, left- and right-hand sides of the airplane between stringers (S)–6 and S–14, excluding the skin lap joints, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2321, dated October 31, 1989; or Revision 7, dated October 27, 2005. After the effective date of this AD, only Revision 7 may be used. Doing the inspections in this paragraph in accordance with Revision 7 of the service bulletin eliminates the need for doing the actions in paragraph (k) of this AD. Repeat the inspections thereafter at intervals not to exceed 2,000 flight cycles until the terminating modification in paragraph (g) of this AD is done, except as provided by paragraph (h) of this AD.

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

Terminating Modification

(g) For airplanes line numbers 001 through 200 inclusive, prior to the accumulation of 20,000 total flight cycles, or within 48 months after the January 22, 1991, whichever occurs later: Perform the terminating modification of the skin panel from BS 340 to BS 520, S–6 to S–14, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2321, dated October 31, 1989; or Revision 7, dated October 27, 2005. After the effective date of this AD, only Revision 7 may be used. The modification consists of replacing the skin panel with a new skin panel which was manufactured utilizing the improved hot phosphoric acid anodize bonding process.

(h) Replacement of the skin panel required by paragraph (g) of this AD constitutes terminating action for the inspections from BS 340 to BS 520 required by paragraphs (f) and (k) of this AD. The inspections from BS 220 to BS 340 required by paragraph (f) of this AD are to be continued.

Adjustments for Cabin Differential Pressure

(i) Before the effective date of this AD: Flight cycles conducted at 2.0 pounds per square inch (psi) or less cabin differential pressure need not be counted for the purpose of this airworthiness directive.

(j) Before the effective date of this AD: For Model 747SR airplanes only, the threshold

and repetitive inspection intervals specified herein may be multiplied by the 1.2 adjustment factor based on continued mixed operation at lower cabin pressure differentials.

New Requirements of This AD

Additional Inspection of Skins With Alodine-Coated Rivets

(k) For airplanes identified in Figure 9 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2321, Revision 7, dated October 27, 2005, as requiring additional inspection: Within 150 flight cycles after the effective date of this AD, do the inspection in paragraph (k)(1) or (k)(2) of this AD in accordance with the Accomplishment Instructions of the service bulletin.

(1) Do an external detailed inspection for cracking of Area 1, and repeat the inspection thereafter at intervals not to exceed 150 flight cycles until one of the actions in paragraph (k)(1)(i), (k)(1)(ii), or (k)(1)(iii) is accomplished. Repeat the inspection of Area 1 thereafter in accordance with the requirements of paragraph (f) of this AD.

(i) The inspection in accordance with paragraph (k)(1) of this AD has been done seven times. If this option is used: Within 150 flight cycles after the seventh inspection, do the inspection required by paragraph (k)(2) of this AD.

(ii) The inspection in accordance with paragraph (k)(2) has been accomplished.

(iii) The inspections in accordance with paragraph (f) of this AD has been accomplished once in accordance with Revision 7 of the service bulletin.

(2) Do an external HFEC inspection for cracking of Area 1 in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2321, Revision 7, dated October 27, 2005. Repeat the inspection of Area 1 thereafter in accordance with the requirements of paragraph (f) of this AD.

Repair

(l) If any crack is found during any inspection required by this AD: Before further flight, repair in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2321, dated October 31, 1989; or Revision 7, dated October 27, 2005. After the effective date of this AD, only Revision 7 of the service bulletin may be used. Where Revision 7 of the service bulletin specifies to contact Boeing for repair instructions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

Adjustments to Compliance Time: Cabin Differential Pressure

(m) For the purposes of calculating the compliance threshold and repetitive interval for actions required by paragraphs (f), (g), and (k) of this AD, on or after the effective date of this AD: All flight cycles, including the number of flight cycles in which cabin differential pressure is at 2.0 psi or less, must be counted when determining the number of flight cycles that have occurred on the airplane, and a 1.2 adjustment factor may not be used. However, for airplanes on which the repetitive interval for the actions required by paragraphs (f) and (k) of this AD have been calculated in accordance with paragraph (i) or (j) of this AD by excluding the number of flight cycles in which cabin differential pressure is at 2.0 pounds psi or less, or by using a 1.2 adjustment factor: Continue to adjust the repetitive interval in accordance with paragraph (i) or (j) of this AD until the next inspections required by paragraph (f) or (k) of this AD are accomplished. Thereafter, no adjustment to compliance times based on paragraph (i) or (j) of this AD is allowed.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

(4) AMOCs approved previously in accordance with AD 90–26–10 are acceptable for compliance with the requirements of this AD, provided that any alternative terminating action was not based upon inspection results using sliding probe low-frequency eddy current (LFEC), sliding probe HFEC, or mid-frequency eddy current (MFEC) inspection method; and provided that any alternative method future inspections did not incorporate sliding probe LFEC or MFEC inspection method.

Material Incorporated by Reference

(o) You must use Boeing Alert Service Bulletin 747–53A2321, dated October 31, 1989; and Boeing Alert Service Bulletin 747–53A2321, Revision 7, dated October 27, 2005; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. (Only the first page of Boeing Alert Service Bulletin 747–53A2321, dated October 31, 1989, contains the document issue date; no other page of this document contains this information.) The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on November 8, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–19534 Filed 11–21–06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 060731206–6280–02; I.D. 072806A]

RIN 0648–AS67

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 26

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 26 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP). Amendment 26 establishes an individual fishing quota (IFQ) program for the commercial red snapper sector of the reef fish fishery in the Gulf of Mexico. Initial participants in the IFQ program will receive percentage shares of the commercial quota of red snapper based on specified historical landings criteria. The percentage shares of the commercial quota will equate to annual IFQ allocations. Both shares and IFQ allocations will be transferable. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections. The intended effect of this rule is to manage the commercial red snapper sector of the reef fish fishery to preserve its long-term economic viability and to achieve optimum yield from the fishery.

DATES: This rule is effective January 1, 2007, except: Amendments to

§ 622.4(p)(4) § 622.7(gg), and (hh) are effective November 22, 2006. The existing stay of § 622.16 is lifted, effective November 22, 2006. The revision of § 622.16(b) is effective November 22, 2006. The new stay of § 622.16, except paragraph (b), is effective November 22, 2006, until January 1, 2007.

ADDRESSES: Copies of the Final Supplemental Environmental Impact Statement (FSEIS), the Final Regulatory Flexibility Analysis (FRFA), and the Record of Decision (ROD) may be obtained from Phil Steele, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727–824–5305; fax 727–824–5308; e-mail *Phil.Steele@noaa.gov*.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted in writing to Jason Rueter at the Southeast Regional Office address (above) and to David Rostker, Office of Management and Budget (OMB), by e-mail at *David_Rostker@omb.eop.gov*, or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone 727–824–5305; fax 727–824–5308; e-mail *Phil.Steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On August 2, 2006, NMFS published a notice of availability of Amendment 26 and requested public comments (71 FR 43706). On August 24, 2006, NMFS published the proposed rule to implement Amendment 26 and requested public comments (71 FR 50012). NMFS approved Amendment 26 on October 26, 2006. The rationale for the measures in Amendment 26 is provided in the amendment and in the preamble to the proposed rule and is not repeated here.

Comments and Responses

NMFS received a total of 1,890 comments on the proposed IFQ program, including 1,473 comments in favor of the program, urging NMFS to implement the IFQ program by January 1, 2007. The remaining comment letters opposed the IFQ program for reasons summarized below. Similar comments are consolidated, and each is followed by NMFS' response.

Comment 1: Numerous individuals expressed concern about enforcement of the IFQ program and how it will prevent further illegal harvest of red snapper. Additional concerns included an alleged illegal fishery able to meet or exceed the commercial red snapper quota, inadequate law enforcement presence in the Gulf to curb this illegal harvest, IFQ shares given to commercial fishermen with past fishery violations, and inadequate penalties for fishery violations that do not inhibit potential violators from participating in illegal activities. In addition, some commenters recommended the Secretary of Commerce delay implementation of the IFQ program until the enforcement aspects of this program are reviewed by a Gulf of Mexico law enforcement taskforce.

Response: The IFQ program was designed with full input by Federal and state law enforcement officers. The red snapper IFQ program will be intensely monitored, incorporating a vessel monitoring system (VMS) and pre-departure notification requirement implemented via Amendment 18A to the FMP, a requirement for advance notification of landing information, a dockside monitoring component, and real-time data management to account for all red snapper landed, including a checks-and-balances system matching quota allocations with fish purchased. Law enforcement officers will be able to correlate where fish have been caught, where they were physically landed, and to whom the catch (or portion of the catch) was sold. For individuals found in violation of the IFQ program, fines, loss of IFQ shares, and sanctions to their commercial reef fish permit could be imposed.

Comment 2: Twelve comments were received questioning requirements of the IFQ program, including pre-departure notification, advance notification of landing information, restricted offloading times, security of personal identification numbers (PINs) for landing verification, and the cost recovery program.

Response: The enforcement related requirements mentioned above are essential to the success of the IFQ program. Enforcement of regulations must exist to deter individuals from violating the law. The pre-departure notification requirement is associated with the VMS requirement implemented via Amendment 18A to the FMP, not Amendment 26. Advance notification of landing information is required and is essential for monitoring IFQ landings and ensuring the integrity of the IFQ program. The IFQ program requires allocation holders landing red snapper and dealers receiving red snapper to enter data for landings/sale transactions. The IFQ share/allocation holder would validate the transaction online by entering his unique PIN number at the point of transaction submittal to ensure validity in landings data, such as total weight and ex-vessel value of landings. The PIN number is protected so the PIN number is not revealed. The Magnuson Stevens Act requires NMFS to establish a fee to assist in recovering the actual costs directly related to the management and enforcement of any IFQ program. Cost recovery fees would be paid by the IFQ share/allocation holder landing red snapper. NMFS expects these costs should be more than offset by increased profits realized under the IFQ program.

Comment 3: One commenter indicated Amendment 26 disregarded requirements of the Magnuson-Stevens Act. The commenter was concerned the IFQ plan accounted for only past participation and not present participation, specifically stating that the landings data from the years 2005 and 2006 were not used to initially calculate IFQ shares. The commenter was also concerned the IFQ plan did not account for dependence on the fishery.

Response: Throughout the development of the IFQ program, the issues of initial eligibility for and initial allocation of IFQ shares have featured prominently in Council deliberations. Both past and present participation played an important role in designing the IFQ program. To take into account present participation in the fishery, only those who own Class 1 or Class 2 licenses at the time this final rule is published in the **Federal Register** would be eligible for initial distribution of IFQ shares. However, past participation, as evidenced through historical landings associated with a reef fish permit, determines the amount of IFQ shares allocated to each eligible participant. Historical landings are deemed to reflect each participant's dependence on the fishery.

The qualifying landings are those made during the period 1990–2004 for Class 1 licenses or 1998–2004 for Class 1 historical captain and Class 2 licenses. The years 1990 and 1998 reflect the beginning years for which landings could be assigned to appropriate licenses. The Council and NMFS recognize that some long-time participants who no longer own Class 1 or Class 2 licenses, as well as some current owners of Class 2 licenses, may not receive initial IFQ shares. However, after receiving input from the public, the Council chose 2004 as the ending year for allocation purposes to deter speculation in the fishery while the

details of the IFQ program were being developed.

Comment 4: Some commenters requested Limited Access Privilege Programs (LAPPs) be developed for other fisheries such as the for-hire sector or the multi-species reef fish fishery. Others supported a commercial buy-out program of red snapper fishermen by the recreational sector.

Response: The amendment did not consider the topics listed in the above comment. Therefore, this comment is beyond the scope of the rule. However, the Council is currently considering implementing a more comprehensive LAPP in the Gulf of Mexico reef fish fishery.

Comment 5: One organization indicated 17 lapsed Class 2 licenses should not be included in the initial allocation to avoid possible challenges from other fishermen with lapsed or otherwise disputed licenses. The number of active permits used in the amendment is inaccurate.

Response: NMFS records and monitors the number of permits and licenses in the Gulf of Mexico commercial red snapper fishery. At the time of final rule publication, owners of Class 1 or Class 2 licenses will be eligible for initial distribution of IFQ shares, with their shares determined by their average landings during select years for the qualifying period of 1990–2004 for Class 1 licenses or 1998–2004 for Class 1 historical captain and Class 2 licenses. These determinations are based on landings history and whether all Class 1 and Class 2 licenses have been validly issued. When the amendment was being developed, the current number of permits was accurately assessed and provided at that time.

Comment 6: Several commenters were opposed to the VMS requirement because a tracking device is a violation of privacy and vessel owners should not be required to have VMS units installed on their vessel. One commenter suggested fishermen who have three convictions or more involving excessive trip limits, closed area harvest, or illegal sales be required to install VMS on their vessel. The commenter also suggested VMS units be installed on randomly selected vessels with the cost of VMS to be paid for by NMFS.

Response: The final rule does not include the VMS requirement for vessels with a commercial Gulf reef fish vessel permit as proposed in Amendment 26. Amendment 26 stated the VMS requirement would be unnecessary if Reef Fish Amendment 18A and the associated VMS requirement were approved by NMFS. NMFS has implemented the final rule for Amendment 18A (71 FR 45428, August 9, 2006), requiring VMS units be installed on all vessels with a commercial or for-hire reef fish permit. Therefore, there is no need to implement any additional VMS requirements with Amendment 26.

Comment 7: Several commenters indicated the IFQ program marginalizes the recreational sector and the allocation of total allowable catch (TAC) should be shifted more in favor of the recreational fishery.

Response: Amendment 26 does not reallocate TAC between the commercial and recreational fisheries. The commercial quota managed by the IFQ program would be distributed based on the same allocation methodology used for previous years (i.e. 51 percent commercial/49 percent recreational). The primary purpose of the IFQ program is to reduce overcapacity in the commercial red snapper fishery and to eliminate, to the extent possible, the problems associated with derby fishing, in order to assist the Council in achieving optimum yield from the fishery. Reallocating the TAC would need to be addressed in a separate amendment.

Comment 8: One commenter disputed the sentence on page 38 of Amendment 26, which stated, ''The rapid growth and overcapitalization of the red snapper fishery have intensified the race for fish.'' Another commenter stated the commercial red snapper fishery is not overcapitalized.

Response: The issue of overcapitalization in the commercial red snapper fishery has been analyzed in the amendment and has been extensively discussed during the development of the IFQ program. The harvest capability of the red snapper commercial fishery is larger than needed to harvest the commercial quota in an economically efficient manner, i.e. the fishery is overcapitalized. This overcapacity is evidenced by derby-type conditions. For example, the commercial fishery landed its 3.06 million-lb (1.39 million-kg) annual quota in 71.5 days, on average, from 1992 through 1995, and their 4.65 million-lb (2.11 million-kg) annual quota in 77.2, on average, from 1996 through 2003. The current commercial red snapper management regime continues to constrain the ability to effectively achieve the goals and objectives specified in the FMP and in the Magnuson-Stevens Act's ten national standards.

Comment 9: Several commenters stated the IFQ program is unfair to crew members and processors, eliminates jobs, harms coastal economies, and does not protect the historical integrity of coastal fishing towns. One commenter indicated there was no public comment period on the social impacts of the IFQ program, nor was there enough data to properly assess the effects of the program on the ancillary components of the commercial red snapper fishery.

Response: Amendment 26 analyzes the potential effects of the IFQ program on crew members, processors, and coastal fishing communities where they are located. With the potential for consolidation of existing permits and the reduction in overcapacity, crew members may become unemployed with trickle-down effects on fishing communities. This is a collateral consequence that may not be avoided in the process of promoting efficiency in the fishery. Those employed in the fishery, however, can expect a more stable employment opportunity under a more efficient fishery. The IFQ program may also change the dynamics of negotiations in the fishery. With more flexibility in their fishing practices, fishermen may be able to extract some of the profits previously enjoyed by dealers/processors. However, the ex-vessel demand is a derived demand from consumers. Hence, the ability of fishermen to negotiate a better pricing schedule will still be constrained by factors faced by dealers/processors in the wholesale/retail market.

Discussions of the social impacts are more qualitative than quantitative due to data limitations, as recognized in the amendment. However, the socioeconomic information presented in the amendment reflects the best available data. Overall, the IFQ program is expected to produce net social and economic benefits. Public comments have been sought for all aspects of this program, including the social impact analysis, at various public hearings, Council meetings, and during the public comment period for the Draft Environmental Impact Statement (DEIS), the amendment, and proposed rule.

Comment 10: Several commenters responded negatively to the IFQ program because it creates new-found wealth among quota recipients by privatizing a public resource, unequally distributes that wealth among participants, and prohibits new entrants into the fishery because of prohibitively high share costs. Other commenters suggested initial IFQ shares should be distributed equally among Class 1 and Class 2 red snapper license holders instead of being issued based on landings data. These commenters also suggested the Class 1 votes from the referendum were weighted unfairly.

Response: Assigning harvest privileges to a public resource is a controversial issue discussed in the amendment. This issue, however, is not unique to the IFQ program as it also characterizes the current license limitation system. NMFS agrees with the Council in contending that, in addition to effectively addressing overcapitalization and derby conditions in the fishery, the IFQ program can foster stewardship of the resource better than the current system due to the assurance IFQ shareholders have on the amount of fish they have the opportunity to harvest. Further, the Magnuson-Stevens Act makes it clear that IFQ programs do not create, nor can they be construed to create, any right, title, or interest in or to any fish before the fish are harvested. The current license limitation system encourages participants to harvest fish as fast as they can before the quota is reached and the fishery is closed. While an IFQ program may cause some fishermen to feel disenfranchised, an IFQ program will have an overall net benefit to the nation as it helps to achieve optimum yield in the red snapper fishery, as required by the Magnuson-Stevens Act.

Several alternatives were considered regarding the initial distribution of IFQ shares among eligible participants, including equal distribution among eligible Class 1 and Class 2 license holders. The Magnuson-Stevens Act requires consideration of historical participation in distributing IFQ shares among eligible participants. NMFS agrees with the Council that allocation of IFQ shares in proportion to landings is more fair and equitable than an equal distribution of IFQ shares, since landings indicate dependence on and commitment to the fishery. The two red snapper referenda are not part of this final rule, although they were required before the IFQ program could proceed. The weighting of the votes, as specified by the Magnuson-Stevens Act, was based on the proportional harvest under each permit and endorsement between January 1, 1993, and September 1, 1996.

Comment 11: One commenter suggested the development of the IFQ program should not have followed Department of Justice Guidelines relative to market entry. The commenter was also concerned about price fixing by large fish houses that control many of the Class 1 licenses and catch a large portion of the quota. Additionally, the commenter was concerned that the 8–percent ownership cap is too excessive and would allow an entity to acquire excessive shares in the fishery. Finally, the commenter stated the 0.0001 percent minimum share limitation is too low.

Response: Reference to the Department of Justice's Horizontal Merger Guidelines in the proposed rule was made in recognition that some may consider the choice of an ownership cap to be too low. The Guidelines merely describe the analytical process the Department of Justice will employ in determining whether to challenge a horizontal merger. The Council considered several alternatives regarding ownership caps, ranging from no cap to a cap of as low as 2 percent. With input from members of the public, particularly the industry advisory panel, the Council chose an ownership cap equal to the highest allocation an IFQ holder possesses at the time of initial allocation of IFQ shares. If an ownership cap is too high, market power may become too consolidated and produce an unduly anti competitive market. However, setting the limit too low could also have adverse effects on the economic efficiency of the industry. This can happen in cases where it is less costly overall for fewer entities to each catch more fish than it is for many entities to each catch smaller amounts of fish. Aside from considerations of controlling the undue consolidation of market power and maintaining a fair level of competition, Section 303(b)(6) of the Magnuson-Stevens Act requires consideration of several factors in establishing a limited access program such as the red snapper IFQ program. Those factors include, but are not limited to: present participation in the fishery; historical fishing practices in, and dependence on, the fishery; the economics of the fishery; and the cultural and social framework relevant to the fishery and any affected fishing communities. Although the approximately 8–percent cap may not result in consolidation rising to the level of presenting an undue concentration of market power or less competition, a higher cap could result in levels of consolidation producing effects that are problematic under the Magnuson-Stevens Act. Examples would include potentially eliminating numerous small-scale historical participants, adversely affecting the social and cultural framework of the fishery by adversely affecting working conditions and wages for crew, and potentially adversely affecting prices. NMFS solicited comments on appropriateness and magnitude of the proposed ownership cap in the proposed rule. The only comment received suggested the 8–percent cap was too high.

Current information indicates ex-vessel demand for red snapper is elastic, indicating the absence of market power (and resulting price fixing) despite the presence of some entities owning as many as six Class 1 licenses. Being a derived demand, ex-vessel demand is partly determined by the demand at the wholesale and retail markets. Factors affecting the wholesale and retail markets, in addition to the presence of many substitutes in the ex-vessel market, make it very difficult for a dealer or group of dealers to acquire enough market power to influence the ex-vessel price for red snapper. This is especially true with the presence of an ownership cap of about 8 percent. Currently, there are 17 fleet operations, i.e., entities owning more than one Class 1 license, accounting for as much as 40 percent of total commercial harvest of red snapper. It is fairly reasonable to expect these 17 operations to continue their business under the IFQ program. Even if these 17 operations increase their control of red snapper harvest, it is still very unlikely for any one of them to exercise strong market power to affect price fixing.

The Council provided neither a minimum allocation nor minimum landing requirement for initial eligibility. The 0.0001 percent minimum initial IFQ share distribution is mainly intended to ensure the lowest allocation would be at least a practical minimum amount.

Comment 12: Several commenters suggested the IFQ program limits quota shareholders right to a fair market value because they are limited to only selling their shares to other reef fish fishermen, at least for the first 5 years of the program.

Response: Several alternatives were evaluated concerning who should be eligible to receive transfers of IFQ shares/allocations. These alternatives ranged from allowing everyone to receive transfers to only allowing IFQ share/allocation holders to receive transfers. The preferred alternative, allowing transfers to any valid commercial reef fish permit holder during the first 5 years and, thereafter, any U.S. citizen or permanent resident alien, is believed to be most equitable because it initially favors commercial reef fish fishermen who have invested time and resources into the fishery, but ultimately recognizes red snapper as a public resource.

Comment 13: One commenter stated not enough of the cost to implement the IFQ program would be obtained through the cost recovery program, resulting in a taxpayer burden, and suggested the commercial fishermen cover the entire cost of the IFQ program. Another commenter indicated initial IFQ shares should be allocated through an auction

with the proceeds from the auction used to start the IFQ program.

Response: Section 304(d)(2) of the Magnuson-Stevens Act requires the Secretary of Commerce establish a fee to assist in recovering the actual costs directly related to the management and enforcement of any IFQ program. Section 304(d)(2) states that the fee shall not exceed 3 percent of the ex-vessel value of fish harvested under the IFQ program.

Deciding who should initially be eligible to receive IFQ shares, and how those shares should be allocated are two of the most controversial aspects of designing and implementing an IFQ program. Ideally, IFQ shares should be widely distributed to avoid granting excessive windfall profits to a few fishery participants. Broader initial allocations distribute benefits more equitably and compensate more individuals as IFQ shares are consolidated through transfers. However, eligibility criteria also should consider time and capital invested in developing the fishery as required by § 303(b)(6) of the Magnuson-Stevens Act. Class 1 license holders who own or operate most of the high volume vessels in the commercial red snapper fishery would likely conclude this alternative as unfair because they ventured the capital to create the fishery harvesting capacity.

Comment 14: Without a mandatory sunset policy, NMFS is violating the public trust. The IFQ program should be offered for a limited duration so there is no confusion as to public ownership of the resource, and the public resource should not be leased for the benefit of the individual. A review of the IFQ program every 5 years is inadequate.

Response: Existing United States IFQ programs define IFQs as ''revocable privileges'' not permanent franchises. All limited entry systems, by definition, restrict the number of participants in the fishery. IFQ programs are a form of limited entry. As such, they are sometimes perceived (both by participants in fisheries and other members of the public) as an attempt to privatize a public resource and are at odds with the idea the public has an inalienable right to free access of public resources. The Magnuson-Stevens Act states that an IFQ is a permit that may be revoked or limited at any time in accordance with the Act. Giving the privilege to catch red snapper, while reducing overcapitalization and eliminating the effects of a derby fishery, will foster stewardship of the resource among IFQ shareholders who could be assured the opportunity to catch their allocation. The current license limitation system does not foster such a stewardship incentive, but rather encourages participants to compete to harvest the available quota before it is reached and the fishery closed.

A sunset provision (i.e. limiting the duration of the proposed IFQ program to either 5 or 10 years as discussed in the amendment) would adversely affect the marketability of IFQ shares, and, thereby, minimize or negate the effectiveness of the IFQ program in reducing excess fishing capacity and providing associated physical, biological, ecological, social, and economic benefits. Consideration was given to reducing the time for a review of the IFQ program but ultimately a conclusion was reached that 5 years is a more reasonable time for evaluating the effects of the IFQ program.

Comment 15: The IFQ program would completely deplete red snapper in the Gulf of Mexico. The IFQ program would create incentives to discard less economically valuable fish. Species other than red snapper caught as bycatch in the red snapper fishery will be caught more frequently because the IFQ program will allow fishing year round and there no longer is a closed season for red snapper.

Response: The primary purpose of the IFQ program is to reduce overcapacity in the commercial red snapper fishery and to eliminate, to the extent possible the problems associated with derby fishing, in order to achieve optimum yield from the fishery. The IFQ program may increase fishermen's incentive to discard low value fish in favor of high value fish. However, the overall environmental benefits of the IFQ program to the red snapper stock, its habitat and other non-target species are expected to outweigh the adverse effects of any high grading activity. Additionally, NMFS is currently evaluating alternatives to reduce or eliminate bycatch in a Draft Environmental Impact Statement to Evaluate Alternatives to Set Gulf of Mexico Red Snapper Total Allowable Catch and Reduce Bycatch in the Gulf of Mexico Directed and Shrimp Trawl Fisheries (Red Snapper DEIS). The notice of availability for the Red Snapper DEIS published on October 13, 2006 (71 FR 60509).

Comment 16: Several commenters believe the data collection for the commercial and recreational fishery needs to improve for the IFQ program to work successfully.

Response: Data collection for the commercial fishery would improve under the IFQ program. Landings data will be entered into an online accounting system immediately when fish are offloaded. This would provide real time accounting of commercial landings. Since the IFQ program is implemented for the commercial fishery, data collection for the recreational fishery is a separate issue and would be addressed in a separate amendment.

Comment 17: Several individuals were concerned the IFQ program is inconsistent with ecosystem-based management and suggested the IFQ program should be opposed in favor of more fair and sustainable alternatives.

Response: The Council and NMFS evaluated a range of alternative IFQ program elements. NMFS believes the IFQ program described by the preferred alternatives in the amendment would be the best means to accomplish the stated objective, which is to reduce overcapacity in the red snapper fishery, while achieving the best socioeconomic outcome for current red snapper commercial fishermen and the best biological outcome for red snapper and other affected species.

Comment 18: One commenter suggested red snapper TAC and regulations remain status quo for at least 2 years and a precise economic study be conducted on the hurricane impacts on the stock as well as the communities, industries, and business directly or indirectly depending on the fishery.

Response: Amendment 26 did not consider the effects of adjusting red snapper TAC as a method of preventing overfishing. This is discussed in the Red Snapper DEIS. Amendment 26 only discussed how IFQ shares and allocations would be adjusted if commercial quota is changed. The Council and NMFS periodically review and adjust TAC in response to new data and information, which generally take the form of new or updated red snapper stock assessments. The IFQ program specifies how resulting adjustments (reductions or increases) to the commercial quota would be distributed among IFQ shareholders. Adjustments in the commercial quota would be allocated proportionately among recognized IFQ shareholders (e.g., those on record at the time of the adjustment) based on the percentage of the commercial quota each holds at the time of the adjustment. Initial shares for 2007 will be based on 51 percent of 5 million lb (2.3 million kg), which is 2.55 million lb (1.16 million kg) of the initial quota, or 51 percent of whatever TAC has been selected as the Preferred Alternative by NMFS or the Council. Any quota share balance resulting from a decision to specify a larger TAC would be distributed after the date of publication

of the final rule setting the new TAC, but no later than July 1, 2007.

Comment 19: One commenter suggested an IFQ program would not meet the goals of Amendment 26 because the IFQ program will shorten the season as the quota is filled faster, will not reduce overcapacity, will not increase safety at sea, and will not decrease bycatch because Class 2 license holders who will lose their license under the initial eligibility criteria of the IFQ program, will no longer be able to land red snapper previously caught as bycatch when fishing for other species.

Response: These issues are analyzed in the amendment and have been thoroughly discussed in the development of the IFQ program. Unlike the current system of closed and open seasons, the IFQ program will allow the fishery to be open all year long and, thus, allow fishermen to properly schedule their fishing activities. Fishermen, therefore, would not be forced to fish during inclement weather or at times when there are vessel safety concerns just to take advantage of the short open season. The IFQ program could result in consolidation of fishing operations to take advantage of cost savings, thus reducing fishing capacity. Under the IFQ program, both Class 1 and Class 2 license holders would be identified as IFQ shareholders. All owners of Class 1 licenses are expected to receive IFQ share allocations. Of the 628 Class 2 licenses, 146 are expected not to receive any allocation because they did not have any red snapper landings during the qualifying period of 1998–2004. Regarding bycatch of red snapper by a non-IFQ shareholder, an owner of a vessel with a commercial vessel permit for Gulf reef fish could obtain, at no cost, a Gulf red snapper IFQ vessel endorsement and purchase allocation from an IFQ shareholder to accommodate landing of red snapper bycatch. Bringing all commercial red snapper landings under the IFQ program allows better tracking of IFQ landings and commercial quotas.

Comment 20: Commercial fishermen have publicly testified they would not change their fishing methods with the IFQ program, but Amendment 26 indicates one of the benefits to the program would be fewer hooks in the water.

Response: The purpose of the IFQ program proposed in the amendment is to reduce overcapacity in the commercial fishery and to end derby fishing. The harvest privileges provided by such a program are intended to eliminate the incentive to over invest in the fishery and race to fish, and to give fishermen a long-term interest in the health and productivity of the fishery and, thus, an incentive to conserve it for the future. In some cases, the increased flexibility afforded IFQ program participants has improved fishing and handling methods, thereby increasing product quality and reducing bycatch discard mortality. Extending the duration of the fishing season should increase catch efficiency. Subsequent changes in fishing practices would be expected with a fishery that is now open year-round instead of the first 10 days of each month. Over time the IFQ program is expected to attract those fishermen who have the most vested interests in the fishery and are the most efficient fishermen. Increased efficiency would lead to increased catch per unit effort and therefore, less hooks in the water to catch the same amount of fish.

Comment 21: The share allocation provisions in the proposed rule are flawed since the provisions do not consider the allocation of the initial share to small- and entry-level fishermen who are not yet participating in the fishery as required by the Magnuson Stevens Act. Also, the proposed rule does not make provisions for reserving funds for assistance to new entrants.

Response: The primary purpose of the IFQ program is to reduce overcapacity in the commercial red snapper fishery and to eliminate, to the extent possible the problems associated with derby fishing, in order to achieve optimum yield from the fishery. After the initial allocation, there would be a cost to enter the program, as new entrants must purchase shares. Therefore, those interested in entering the fishery who cannot afford to buy shares will be excluded from the program. One of the principal reasons for developing the proposed IFQ program is the fishery is overcapitalized, that is, the collective harvest capacity of fishery vessels and participants is in excess of that required to harvest the TAC. To remedy this problem, by definition the harvest capacity must be reduced. Therefore, loss of employment for some current participants, and negative effects on small communities, are unavoidable adverse effects of the proposed action. However, the overall net social and economic benefits of an IFQ program are expected to be better for the Nation as the program helps the red snapper fishery achieve optimum yield as required by the Magnuson-Stevens Act. The Council and NMFS did consider, during development of Amendment 26, the option of using funds from the cost recovery plan to aid these individuals in purchasing IFQ shares/allocations but elected not to do so at this time. However, this option may be reconsidered, at the Council's discretion, as the program evolves.

Comment 22: One commenter indicated provisions requiring IFQ holders use the harvest privileges or forfeit them back to the government (i.e. a use it or lose it provision) are unfair. Another commenter indicated this provision was fair.

Response: Although a use it or lose it provision was considered in the amendment, it was not proposed. The IFQ program, as implemented, would not include a use it or lose it provision.

Changes from the Proposed Rule

In § 622.4(a)(2)(ix), language was added to clarify that the IFQ program requirements do not preclude the existing ability of a person aboard a vessel with a commercial vessel permit for Gulf reef fish, nor the ability of a person aboard a vessel with an IFQ vessel endorsement, to fish for red snapper under the bag limit provisions. Those existing bag limit provisions include prohibition of the possession of the bag limit when commercial quantities of Gulf reef fish are possessed on board a vessel and a prohibition on sale or purchase of any Gulf reef fish caught under the bag limit provision.

In § 622.16(c)(3)(i), the advance notice of landing provision, the requirement to report the address of the dealer where IFQ red snapper are to be received has been removed. In some cases, fish are landed at sites other than the dealer's location, and the specific dealer address may not be known at the time of initial offloading. This revision would accommodate that circumstance without jeopardizing enforceability of the program. Also, in this paragraph, the time frame for the advance notice of landing has been revised from ''...at least 3 hours in advance of landing...'' to ''...at least 3 hours, but no more than 12 hours, in advance of landing...''. This more specific time frame will provide fishers a reasonable time period to report and will provide a better-defined and more practical time period for enforcement purposes. Finally, in this same paragraph, language has been added to clarify that failure of a vessel owner or operator to comply with the advance notice of landing requirement, will preclude authorization to complete the required landing transaction report and will preclude issuance of the transaction approval code that is required to legally possess IFQ red snapper.

Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Administration has delegated authority

to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Classification

The Administrator, Southeast Region, NMFS, determined that Amendment 26 is necessary for the conservation and management of the Gulf red snapper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be significant for purposes of Executive Order 12866.

NMFS prepared a final supplemental environmental impact statement (FSEIS) for this amendment; a notice of availability was published on August 2, 2006 (71 FR 43706).

NMFS prepared an FRFA, as required by section 604 of the Regulatory Flexibility Act. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of significant issues raised by public comments, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of the full analysis is available from the NMFS (see **ADDRESSES**). A summary of the analysis follows.

Twelve comments were received on issues involving pre-departure and post-landing notifications, restricted offloading times, cost recovery program, and security of personal identification numbers (PINs) for landing verification. Except for cost recovery, all these issues relate to enforcement and monitoring of catches. These requirements are necessitated to effectively track and validate landings on a real-time basis and to enhance the likelihood of a successful IFQ program. The cost recovery program is a Magnuson-Stevens Act requirement mainly designed to shift the cost of the IFQ program to those who would directly benefit from the program. The fee is currently set at the maximum allowable level, 3 percent of ex-vessel value, but may be adjusted downward if the fee exceeds the actual costs directly related to the management and enforcement of the program. NMFS is strongly committed to providing security for PINs and will ensure such information is handled in compliance with existing requirements relevant to confidential information.

One commenter questioned whether the IFQ program considered past and present participation, dependence on the fishery, and potential for excessive share ownership. The commenter was also concerned that 2005 and 2006 landings were not used in calculating initial IFQ shares. The amendment contains substantial discussions of these issues, in addition to the fact that the Council received many comments from the public on each of these issues. NMFS agrees with the Council that restricting eligibility for initial IFQ distribution and consideration of landings history for calculating IFQ shares reflect past and present participation in the fishery as well as dependence on the fishery. NMFS also agrees with the Council in disallowing 2005 and 2006 landings to deter speculation in the fishery while the details of IFQ program were being developed.

One organization commented that the number of active permits used in the amendment is inaccurate and that 17 lapsed Class 2 licenses should not be included in the initial allocation. NMFS records and monitors Class 1 and Class 2 licenses in the commercial red snapper fishery on a daily basis. The number used in the amendment accounts for all existing Class 1 and Class 2 licenses, regardless of whether they are active or inactive, expired or not. The current regulations allow renewal of a Class 1 or Class 2 license any time after it expires. The amendment only provides that whoever owns a Class 1 or Class 2 license at the time the final rule is published is eligible for initial IFQ allocation, with actual shares determined by landings during the qualifying period of 1990–2004 for Class 1 licenses not issued based on historical captain status, and 1998–2004 for Class 1 licenses issued based on historical captain status and for Class 2 licenses.

One commenter noted the commercial red snapper fishery is not at overcapacity while another one disputed the statement in the Amendment that the rapid growth and overcapitalization of the red snapper fishery have intensified the race for fish. Since the 1990's, the harvest capability of the commercial red snapper fishery has far exceeded the level to harvest the quota in an economically efficient way. This has resulted in a derby-like fishery, with the usual negative results such as seasonally depressed ex-vessel prices due to market gluts and fishing during unfavorable weather conditions, among others. Management responded to these conditions by imposing more restrictive regulatory measures to alleviate the derby effects.

One commenter stated that the IFQ program is unfair to crew members and processors, eliminates jobs, harms coastal economies, and does not protect the historical integrity of coastal fishing towns. The amendment notes that the expected consolidation of operations which reduce overcapacity would result in some crew members being displaced and this would create trickle-down effects on fishing communities. This is an unavoidable consequence of promoting efficiency in the fishery but could also result in more stable employment for some crew members. The IFQ program may also change the dynamics of negotiating in favor of harvesters, but the extent of such change is still constrained by factors faced by dealers/processors in the wholesale and retail market.

Several commenters suggested distributing IFQ shares equally among Class 1 and Class 2 license holders. Others commented that the program unequally distributes wealth among participants and that the program prohibits new entrants into the fishery due to prohibitive share costs. The Council considered several alternatives on initial distribution of IFQ shares, including equal allocation among Class 1 and Class 2 licenses. NMFS agrees with the Council's decision to allocate IFQ shares in proportion to landings, although this may result in unequal initial distribution of wealth. The reason for this is that proportional allocation is more fair and equitable than equal distribution, because proportional landings are more reflective of historical participation in, dependence on, and commitment to the fishery. Entry into the fishery is actually expected to be less costly under the IFQ program than under the current system, since IFQs can be purchased in lower denominations whereas licenses can only be bought as whole licenses. New entrants can especially benefit from this, because they can first experiment on a limited basis and evaluate their performance before committing more resources into the fishery.

One commenter suggested, in effect, that the ownership cap is too high and raised concern about price fixing by large fish houses owning many Class 1 licenses. The Council considered ownership cap alternatives ranging from 2 percent to no cap. The Council's choice of an ownership cap equal to the highest allocation an IFQ holder receives at the time of initial allocation (about 8 percent) was based on inputs from members of the public, including the industry advisory panel. The Council deemed this level not to result in market power concentration while at the same time it would not penalize the current largest operation. In the absence of market power, price fixing is not likely to happen. In addition, at least the current 17 fleet operations are expected to remain in the fishery under the IFQ programs and, thus, would provide

enough competition to make price fixing very unlikely.

Several commenters suggested the requirement, during the first 5 years of the program, to sell IFQ shares only to a person who has a commercial vessel permit for Gulf reef fish limits shareholders' right to a fair market value. The Council and NMFS recognize this potential side effect. However, the Council and NMFS approved this alternative to ensure, initially, IFQ shares are owned by persons who have a demonstrated dependence on the commercial reef fish fishery.

One commenter stated the IFQ program will shorten the season, will not reduce overcapacity, and will not increase safety at sea. The same commenter also said the program will not reduce bycatch especially for Class 2 license holders ineligible for initial IFQ distribution who will no longer be able land red snapper as bycatch. The amendment discusses at length that under the IFQ program, the fishery will be open year round. This affords more flexibility among fishermen to schedule their harvest to take advantage of stock, market, weather, and other conditions, including vessel safety. Consolidation of operations is an expected result as operations scale down to take advantage of cost efficiencies in production, thus reducing overcapacity. With less effort in the fishery, bycatch is expected to decrease. Class 2 licenses which will not receive allocations are those that reported no landings as bycatch or otherwise.

These and other comments have not resulted in changing the proposed rule, so the economic analysis conducted for the proposed rule has also not changed. The following completes the FRFA summary.

The Magnuson-Stevens Act provides the statutory basis for the final rule. The final rule will establish an IFQ program for the commercial red snapper fishery in the Gulf. Specifics for this IFQ program include the following: (1) no limit on the duration of the program, but a program evaluation is required every 5 years; (2) maximum IFQ share ownership equal to the maximum percentage issued to an initial recipient of IFQ shares; (3) restriction on initial eligibility only to owners of Class 1 or Class 2 license holders; (4) proportionate allocation of initial IFQ shares based on average annual landings for 10 consecutive years during 1990–2004 for Class 1, seven consecutive years during 1998–2004 for Class 1 historical captains, and five years during 1998–2004 for Class 2; (5) establishment of an appeals process and a set-aside of 3 percent of the commercial quota to resolve appeals; (6) restriction on transfers of IFQ shares/allocations only to those with a valid commercial reef fish permit during the first 5 years and, thereafter, to any U.S. citizen or permanent resident alien; (7) proportionate allocation of commercial quota adjustments based on percentage holdings at the time of the adjustment and phased-in issuance of IFQ allocations for the 2007 season; and, (8) provision for IFQ cost recovery fees to be paid by IFQ holders but collected by registered IFQ dealers/processors. The main objectives of the final rule are to address the excess capacity and derby problems in the commercial red snapper fishery.

The final rule would generally impact two types of businesses in the Gulf reef fish fishery, namely, commercial fishing vessels (including recreational for-hire vessels with commercial reef fish permits) and fish dealers. At present, the Gulf of Mexico (GOM) commercial reef fish permits are under a license limitation program, and licenses are renewable every year. Also, the commercial red snapper fishery is presently under a two-tier license limitation program. A Class 1 license entitles the holder a trip limit of 2,000 lb (907 kg) of red snapper while a Class 2 license affords a lower trip limit of 200 lb (91 kg). Each type of license is allowed only one trip per day. The IFQ program would replace this two-tier license limitation system in the commercial red snapper fishery, but the limited access program for commercial reef fish permits remains.

There are 1,118 active commercial reef fish permits and 91 others that are currently expired but may be renewed within a year. Thus, a total of 1,209 vessels may be considered to comprise the universe of commercial harvest operations in the GOM reef fish fishery. Of the 1,209 commercial permittees, 136 entities hold Class 1 licenses and 628 entities hold Class 2 licenses. Of the 136 Class 1 licenses, seven have been issued on the basis of the historical captain criterion. All original owners of Class 1 historical captain licenses have sold their licenses. Reported average annual gross receipts (in 2004 dollars) of commercial reef fish vessels in the GOM range from $24,095 for low-volume vertical line vessels to $116,989 for high-volume longline vessels. The corresponding annual net incomes range from $4,479 for low-volume vertical line vessels to $28,466 for high-volume vertical line vessels. Permit records indicate there are 17 Class 1 fleet operations owning 58 licenses. In 2004, the top three fleet operations landed a total of 987,532 lb (447,937 kg) of red snapper, or an average of 329,177 lb (149,312 kg) per fleet operation. At the 2004 average red snapper ex-vessel price of $2.83 per pound, the average pounds landed convert to ex-vessel revenues of $931,571. No fleet information is available for Class 2 licenses, but it is fairly safe to assume that if ever a Class 2 fleet operation exists, it would generate much less revenues than its Class 1 counterparts.

There currently exists a permitting requirement for dealers to buy or sell reef fish, including red snapper, caught in the GOM. This permitting requirement remains under the IFQ program, but in addition, a red snapper endorsement would be required for dealers to buy or sell red snapper. Based on the permits file, there are 227 dealers possessing permits to buy and sell reef fish species. However, based on logbook records, there are 154 reef fish dealers actively buying and selling red snapper. It is possible that some of the 227 dealers may be handling red snapper in one year but not in another. Dealers in Florida purchased about $1.8 million worth of red snapper, followed by dealers in Louisiana with purchases of $1.4 million, and dealers in Texas with purchases of $1.3 million. Dealers in Mississippi purchased $174 thousand worth of red snapper, and those in Alabama, $88 thousand. These dealers may hold multiple types of permits and, because we do not know 100 percent of the business revenues, it is not possible to determine what percentage of their business comes from buying and selling red snapper.

Average employment information per reef fish dealer in the GOM is unknown. Although dealers and processors are not synonymous entities, employment for reef fish processors in the Southeast totals approximately 700 individuals, both part- and full-time. It is assumed all processors must be dealers, yet a dealer need not be a processor. Further, processing is a much more labor intensive operation than dealing. Therefore, given the employment estimate for the processing sector, it is likely the average dealer employment would be lower.

The Small Business Administration (SBA) defines a small business as one that is independently owned and operated, is not dominant in its field of operation, and has annual receipts not in excess of $4.0 million in the case of commercial harvesting entities or $6.5 million in the case of for-hire entities. In the case of fish processors and fish dealers, rather than a receipts threshold, the SBA specifies employee thresholds of 500 and 100 employees, respectively.

Based on the gross revenue and employment profiles presented above, all permitted commercial reef fish vessels (including fleet operations) and reef fish dealers affected by the final regulations may be classified as small entities.

The final rule introduces additional reporting and record-keeping requirements mainly through the tracking of IFQ shares and the corresponding red snapper landings and ex-vessel values.An electronic reporting system is the approach to track IFQ shares and corresponding red snapper landings. The reporting burden would mainly fall on the dealers. An IFQ dealer endorsement would be required of any dealer purchasing red snapper. The IFQ dealer endorsement would be issued at no cost to those individuals who possess a valid GOM reef fish dealer permit and request the endorsement. Although the current GOM reef fish dealer permit must be renewed annually at a cost of $100 for the initial permit ($25 for each additional permit), the IFQ dealer endorsement would remain valid as long as the individual possesses a valid GOM reef fish dealer permit and abides by all reporting and cost recovery requirements of the IFQ program. As an integral part of the electronic monitoring system, an IFQ dealer would be required to have access to a computer and the Internet for inputting, among other data, pounds and value of red snapper purchased by the dealer from an IFQ shareholder. If a dealer does not have current access to computers and the Internet, he or she may have to expend approximately $1,500 for computer equipment and accessories (one-time cost) and $300 annual cost for Internet access. Dealers would need some basic computer and Internet skills to input information for all red snapper purchases into the IFQ electronic reporting system. Dealers also have to remit to NMFS on a quarterly basis, the cost recovery fees equivalent to 3 percent of the ex-vessel value of red snapper purchased from IFQ shareholders. Although IFQ shareholders pay this fee, it is the responsibility of dealers to collect and remit these fees to NMFS. In addition to this quarterly remittance, dealers would be required to submit to NMFS a year-end report summarizing all transactions involving the purchase of red snapper. There is currently no available information to determine how many of the 227 reef fish dealers or of the current 154 red snapper dealers have the necessary electronic capability to participate in the IFQ program. However, demonstration of this capability would be necessary for IFQ program participation by any dealer.

IFQ shareholders also have to use the electronic reporting system to report transfer/assignment of shares and allocation as well as to monitor their outstanding IFQ allocations. Similar skills and equipment needs for dealers also apply to IFQ shareholders. There are 95 IFQ holders based on Class 1 license qualification and as many as 482 IFQ holders based on Class 2 license qualification. Over time under the IFQ program, the number of IFQ shareholders is expected to decline.

As required by the Sustainable Fisheries Act of 1996, two referenda involving qualified commercial red snapper fishery participants have been conducted. Results from both referenda indicate strong support for an IFQ program in the commercial red snapper fishery. No other federal rules have been uncovered that would duplicate, overlap or conflict with the final rule.

The 764 vessels that have Class 1 or Class 2 licenses comprise 64 percent of all vessels with GOM commercial reef fish permits. Also, at least 154, or 68 percent, of the 227 permitted reef fish dealers would be affected. It is clear then the final rule would affect a substantial number of small entities.

Since all affected vessel and dealer operations are small entities, the final rule would not result in disproportional impacts where small entities are placed at a significant competitive disadvantage to large entities. Some vessel operations are relatively larger than others. In particular, 17 fleet operations account for as much as 40 percent of the entire commercial quota for red snapper. These 17 fleet operations and another 78 single vessel operations would initially receive about 90 percent of IFQ shares. The other 482 smaller operations would receive the rest of the IFQ shares. Finally, 146 Class 2 vessel operations would likely not receive any initial IFQ shares, because they have no landings history during the qualifying period of 1998–2004 for these licenses.

The final rule has varying effects on the profitability of the affected vessel operations. Most likely, it has minimal effects on the profits of the 146 Class 2 vessel operations that have no red snapper landings. These vessels would mainly lose their relatively low-cost entry into the red snapper fishery should the need arise. Under the final rule, assuming they already have a Gulf reef fish permit, they have to buy shares/allocations even if they intend to fish only on a limited basis. Some of the 482 Class 2 vessel operations that may have increasingly relied on red snapper to supplement their overall harvests may receive small IFQ shares. They may either have to buy more shares/allocations to continue fishing for red snapper or sell their shares. Either way, their overall profits may decline, at least initially, although in selling their IFQ shares they would receive some remuneration. The 136 Class 1 vessel operations and some Class 2 vessel operations that have relatively large red snapper landings are expected to benefit most from the IFQ program. An IFQ system is expected to improve the profitability of these vessels. This improvement would generally take time, since fishermen would have to adjust their operations to achieve the most profitable position. Such adjustment may involve consolidation of multiple vessel operations to lower costs, scheduling of harvests to take advantage of market and weather conditions, negotiation with purchasers to strike a long-term deal at relatively stable prices, or some other arrangements that take advantage of a relatively certain share of a season's quota at the start of the season. Some entities may be successful in making adjustments while others may not. For those that cannot, there is always the option to sell their shares. They may leave the red snapper fishery, but would receive some remuneration for doing so.

Imposition of a cost recovery fee would also affect vessel profits. The fee, which is currently set at its allowable maximum of 3 percent of ex-vessel revenues, could potentially result in a bigger percentage reduction in profits, particularly for smaller operations. Larger operations, such as most Class 1 vessels, can absorb this fee because their profits are expected to increase under the IFQ program.

The extent to which the IFQ monitoring system, including the collection and remittance of the cost recovery fees, would affect dealers' profitability cannot be quantified at this time. However, the relatively established dealers, the monetary cost requirement under an electronic monitoring system is probably small, especially if they already have computer systems in place. Smaller operations, however, may totally stay out of the red snapper fishery.

This amendment considered several alternatives to the final rule. An alternative to the IFQ program is the current license limitation system. Under this system, overcapacity and derby effects have substantially constrained the profitability of the commercial harvest industry. The IFQ program is expected to effectively address these

major issues/problems in the fishery. There are two other alternatives with respect to the duration of the IFQ program. One specifies no duration while the other imposes a term limit on the program. The former has similar effects as the final rule, but it does not contain a mandatory evaluation of the program every 5 years. A sunset provision, as in the latter alternative, offers a lower likelihood for the IFQ program to achieve its intended objectives. Also, it would introduce uncertainties into the program due to potential changes in the ''rules of the game.''

With respect to an ownership cap, two other alternatives were considered. One places no cap on ownership of IFQ shares while the other places a cap ranging from 2 to 15 percent of the commercial quota. The first alternative provides a fertile ground for consolidation of IFQ shares, but it could also lead to concentration of ownership to a select few at the expense of eliminating historically small-scale operations in the fishery. The second alternative may be too liberal (e.g., 15 percent) as to lead to over-consolidation or too restrictive (e.g., 2 percent) as to penalize the more efficient operations. It is worth noting that, as per advice of the Office of Management and Budget, public comment was especially sought on the issue of ownership cap as the proposed rule may be too limiting. The only public comment received on this issue suggested the ownership cap in the proposed rule is too high. The response to this comment discussed the rationale for not changing the final rule.

Two other alternatives were considered on the issue of initially eligible persons. The first one does not specify persons eligible to receive initial IFQ shares, and thus does not provide guidance for initially allocating IFQ shares. The second restricts initial eligibility to Class 1 license holders. This is too restrictive as to disallow at least 482 Class 2 license holders from continued participation in the fishery at the start of the IFQ program.

As to the issue of allocating initial IFQ shares, two other alternatives were considered. The first does not specify a methodology for allocating initial IFQ shares, and thus does not provide guidance for allocating IFQ shares to eligible participants. The second allocates initial IFQ shares equally among all eligible participants. This alternative would penalize the highliners and reward the small-scale operations in the fishery. There are more participants who would benefit from this alternative, but the magnitude of adverse impacts on at least 136 operations would be relatively large.

Regarding the appeals process, three other alternatives were considered. The first does not establish an appeals process, and thus would not provide fishermen an avenue to contest landings information used by NMFS to determine their IFQ shares. The second establishes an appeals board composed of state directors/designees who would advise the RA on appeals. The third establishes an advisory panel composed of IFQ shareholders. The final rule is simple and more straightforward than any of the alternatives that establish an appeals board, and it also does not pose problems relative to confidentiality of individual landings information.

There are five other alternatives regarding the transfer of IFQ shares/allocations. The first provides no limit on transfer; the second limits transfers only to those with valid commercial reef fish permits; the third limits transfers only to IFQ shareholders; the fourth allows transfers to U.S. citizens and permanent resident aliens; and, the fifth limits transfers only to IFQ shareholders during the first 5 years of the IFQ program and those with valid commercial reef fish permits thereafter. With the exception of the first alternative, all others would tend to limit the price an IFQ seller gets, so the resulting IFQ prices would not capture the true value of the resource. In addition, such limitations would constrain the entry of potentially more efficient producers. The final rule would be less restrictive than these alternatives but still would be more restrictive than the first alternative that does not impose limits on transfer. However, the final rule addresses concerns relative to the preservation of the historical and current participation in the fishery.

Two other alternatives were considered on the issue of minimum landings. Both alternatives impose a minimum landings requirement to retain IFQ shares, and thus would reduce the flexibility of IFQ shareholders to adjust their operations, particularly in the downward direction, from year to year for business or other reasons.

On the issue of allocating adjustments in the commercial quota, three other alternatives were considered. The first does not specify a method for allocating adjustments, so it does not provide adequate guidance for allocating quota changes. The second would allocate quota changes equally among IFQ share holders, and the third would allocate quota changes equally for 50 percent of the change and proportionately for the other 50 percent. The second alternative would provide smaller operations larger benefits with quota increases and also larger losses with quota decreases. The third alternative would favor smaller operations at the expense of larger operations. Both large and small vessel operations were considered small entities for SBA purposes.

The final rule regarding a cost recovery fee is intended to abide by the Section 304(d)(2) provision of the Magnuson-Stevens Act. One other alternative considered in this respect is not to impose a fee, which would not be in compliance with the noted provision. Another alternative considered is similar to the final rule, except that collection and submission of fees reside on the IFQ shareholders and not on the dealers. Under this alternative and the final rule, a small entity bears the cost of collecting and remitting the fees. The final rule, however, affords a better accounting control for the government.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the final rule, and shall designate such publications as ''small entity compliance guides.'' As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all commercial Gulf reef fish vessel permit holders and all dealers with Gulf reef fish dealer permits.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under control number 0648–0551. The collection-of-information requirements and estimated average public reporting burdens, in minutes, are as follows: (1) Dealer account activation--5; (2) Dealer transaction report--7; (3) Shareholder account activation--5; (4) Allocation holder account activation--10; (5) Advance notification of landing--3; (6) Transfer of share--15; and (7) Transfer of allocation--5. These estimates of the average public reporting burdens include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding the burden estimates or any other aspect of the collection-of-information requirements, including suggestions for

reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a 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.

The addition to the regulations at 50 CFR 622.16(b) contains administrative procedures necessary for timely implementation of the red snapper IFQ program. These necessary advance procedures include and provide for: determination of initial eligibility for an IFQ; calculation of initial IFQ shares and allocations; notification to participants of the requirement for IFQ endorsements and of procedures for obtaining endorsements; shareholder notification regarding landings histories, initial determination of shares and allocations, and instructions for setting up an online IFQ account; notification to dealers regarding endorsement requirements, procedures for obtaining endorsements, and instructions for establishing an online IFQ dealer account; and the opportunity and ability of IFQ participants to review and respond to NMFS' initial determinations regarding landings histories, shares, and allocations and to establish online IFQ accounts and obtain IFQ endorsements that are required as of the beginning of the fishing year, January 1, 2007. A delay in the effective date of these essential administrative procedures would impede IFQ participants' ability to complete required actions prior to the beginning of the fishing year and deny IFQ participants the opportunity to participate in the fishery at the beginning of the fishing year. These procedures are primarily the responsibility of NMFS.

Delay in the effectiveness of these essential administrative procedures would unnecessarily delay implementation of the IFQ program beyond the intended January 1, 2007, start date which is the beginning of the fishing year. These administrative procedures involve numerous actions by NMFS (e.g., initial determinations of eligibility, initial determinations of optimal landings histories, initial determinations of IFQ shares and allocations, and notification to participants via certified mail) that are prerequisites for subsequent response and action by participants (e.g., confirming or contesting NMFS' initial determinations, establishing IFQ accounts, and obtaining required IFQ endorsements) all of which need to occur prior to the beginning of the fishing year. The addition of the prohibitions at 50 CFR 622.7(gg) and (hh) as of the date of publication of this final rule is necessary to ensure the integrity of information provided as part of the advance administrative procedures. The removal and reserving of 50 CFR 622.4(p)(4) as of the date of publication of this final rule is necessary to: prevent subsequent transfer of Class 1 and Class 2 licenses that determine IFQ eligibility, stabilize the universe of eligible IFQ participants, and allow NMFS to conduct the advance administrative procedures necessary to implement the IFQ program in a timely manner. Therefore, the need to implement these provisions in a timely manner constitutes good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for 50 CFR 622.16(b), 622.7(gg) and (hh), and 622.4(p)(4). Finally, the requirement for prior notice and opportunity for public comment is waived with respect to the revisions to the table of OMB control numbers in 15 CFR 902.1(b) because this action is a rule of agency organization, procedure, or practice under 5 U.S.C. 553(b)(A).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: November 17, 2006.

Samuel D. Rauch III,

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

■ For the reasons set out in the preamble, 15 CFR Chapter IX and 50 CFR Chapter VI are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, paragraph (b), under ''50 CFR'', the entry ''622.16'' is added in numerical order to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648–)
* * * *	*
50 CFR	
* * * *	*
622.16	–0551
* * * *	*

50 CFR Chapter VI

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 3. The authority citation for part 622 continues to read as follows:

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

■ 4. In § 622.1, revise paragraph (a), the first sentence of paragraph (b), Table 1 entry ''FMP for the Reef Fish Resources of the Gulf of Mexico'', and add footnote 5 to read as follows:

§ 622.1 Purpose and scope.

(a) The purpose of this part is to implement the FMPs prepared under the Magnuson-Stevens Act by the CFMC, GMFMC, and/or SAFMC listed in Table 1 of this section.

(b) This part governs conservation and management of species included in the FMPs in or from the Caribbean, Gulf, Mid-Atlantic, South Atlantic, or Atlantic EEZ, unless otherwise specified, as indicated in Table 1 of this section. * * *

TABLE 1—FMPS IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
* *	* *	*
FMP for the Reef Fish Resources of the Gulf of Mexico	GMFMC	Gulf.[5]
* *	* *	*

[5] Regulated area includes adjoining state waters for Gulf red snapper harvested or possessed by a person aboard a vessel with a Gulf red snapper IFQ vessel endorsement or possessed by a dealer with a Gulf red snapper IFQ dealer endorsement.

■ 5. In § 622.2, definitions of ''Actual ex-vessel value'' and ''IFQ'' are added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Actual ex-vessel value means the total monetary sale amount a fisherman receives for IFQ landings from a registered IFQ dealer.

* * * * *

IFQ means individual fishing quota.

* * * * *

■ 6. Section 622.4 is amended by:

■ A. Adding a new sentence after the first sentence of paragraph (a)(2)(v).

■ B. Revising paragraphs (a)(2)(ix), (a)(4), the first sentence of paragraph (d), paragraph (g)(1), and the first sentence of paragraph (h)(1).

■ C. Removing and reserving paragraph (p)(4).

■ D. Removing and reserving paragraphs (p)(i) through (p)(3) and (p)(5) and (p)(6).

The additions and revisions read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(v) * * * See paragraph (a)(2)(ix) of this section regarding an additional IFQ vessel endorsement required to fish for, possess, or land Gulf red snapper. * * *

* * * * *

(ix) *Gulf red snapper IFQ vessel endorsement.* For a person aboard a vessel, for which a commercial vessel permit for Gulf reef fish has been issued, to fish for, possess, or land Gulf red snapper, regardless of where harvested or possessed, a Gulf red snapper IFQ vessel endorsement must have been issued to the vessel and must be on board. As a condition of the IFQ vessel endorsement issued under this paragraph (a)(2)(ix), a person aboard such vessel must comply with the requirements of § 622.16 regardless of where red snapper are harvested or possessed. An owner of a vessel with a commercial vessel permit for Gulf reef fish can download an IFQ vessel endorsement from the NMFS IFQ website at *ifq.sero.nmfs.noaa.gov*. If such owner does not have an IFQ online account, the owner must first contact IFQ Customer Service at 1–866–425–7627 to obtain information necessary to access the IFQ website and establish an IFQ online account. There is no fee for obtaining this endorsement. The vessel endorsement remains valid as long as the vessel permit remains valid and the vessel owner is in compliance with all Gulf reef fish and Gulf red snapper IFQ reporting requirements, has paid all IFQ fees required under paragraph (c)(2) of this section, and is not subject to sanctions under 15 CFR part 904. The endorsement is not transferable. The provisions of this paragraph do not apply to fishing for or possession of Gulf red snapper under the bag limit specified in § 622.39(b)(1)(iii). See § 622.16 regarding other provisions pertinent to the Gulf red snapper IFQ system.

* * * * *

(4) *Dealer permits, endorsements, and conditions* —(i) *Permits.* For a dealer to receive Gulf reef fish, golden crab harvested from the South Atlantic EEZ, South Atlantic snapper-grouper, rock shrimp harvested from the South Atlantic EEZ, dolphin or wahoo harvested from the Atlantic EEZ, or wreckfish, a dealer permit for Gulf reef fish, golden crab, South Atlantic snapper-grouper, rock shrimp, Atlantic dolphin and wahoo, or wreckfish, respectively, must be issued to the dealer.

(ii) *Gulf red snapper IFQ dealer endorsement.* In addition to the requirement for a dealer permit for Gulf reef fish as specified in paragraph (a)(4)(i) of this section, for a dealer to receive Gulf red snapper subject to the Gulf red snapper IFQ program, as specified in § 622.16(a)(1), or for a person aboard a vessel with a Gulf red snapper IFQ vessel endorsement to sell such red snapper directly to an entity other than a dealer, such persons must also have a Gulf red snapper IFQ dealer endorsement. A dealer with a Gulf reef fish dealer permit can download a Gulf red snapper IFQ dealer endorsement from the NMFS IFQ website at *ifq.sero.nmfs.noaa.gov*. If such persons do not have an IFQ online account, they must first contact IFQ Customer Service at 1–866–425–7627 to obtain information necessary to access the IFQ website and establish an IFQ online account. There is no fee for obtaining this endorsement. The endorsement remains valid as long as the Gulf reef fish dealer permit remains valid and the dealer is in compliance with all Gulf reef fish and Gulf red snapper IFQ reporting requirements, has paid all IFQ fees required under paragraph (c)(2) of this section, and is not subject to sanctions under 15 CFR part 904. The endorsement is not transferable. See § 622.16 regarding other provisions pertinent to the Gulf red snapper IFQ system.

(iii) *State license and facility requirements.* To obtain a dealer permit or endorsement, the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

* * * * *

(d) * * * Unless specified otherwise, a fee is charged for each application for a permit, license, or endorsement submitted under this section, for each request for transfer or replacement of such permit, license, or endorsement, and for each fish trap or sea bass pot identification tag required under § 622.6(b)(1)(i)(B). * * *

* * * * *

(g) * * *

(1) *Vessel permits, licenses, and endorsements and dealer permits.* A vessel permit, license, or endorsement or a dealer permit or endorsement issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (n) of this section for a fish trap endorsement, in paragraph (o) of this section for a king mackerel gillnet permit, in paragraph (q) of this section for a commercial vessel permit for king mackerel, in paragraph (r) of this section for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, in paragraph (s) of this section for a commercial vessel moratorium permit for Gulf shrimp, in § 622.17(c) for a commercial vessel permit for golden crab, in § 622.18(e) for a commercial vessel permit for South Atlantic snapper-grouper, or in § 622.19(e) for a commercial vessel permit for South Atlantic rock shrimp. A person who acquires a vessel or dealership who desires to conduct activities for which a permit, license, or endorsement is required must apply for a permit, license, or endorsement in accordance with the provisions of this section and other applicable sections of this part. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers. In those cases where a permit, license, or endorsement is transferable, the seller must sign the back of the permit, license, or endorsement and have the signed transfer document notarized.

* * * * *

(h) * * *

(1) * * * Unless specified otherwise, a vessel owner or dealer who has been issued a permit, license, or endorsement under this section must renew such

permit, license, or endorsement on an annual basis.

* * * * *

■ 7. In § 622.7, paragraphs (gg) and (hh) are added to read as follows:

§ 622.7 Prohibitions.

* * * * *

(gg) Fail to comply with any provision related to the Gulf red snapper IFQ program as specified in § 622.16.

(hh) Falsify any information required to be submitted regarding the Gulf red snapper IFQ program as specified in § 622.16.

■ 8. The stay of § 622.16 is lifted and the section is revised to read as follows:

§ 622.16 Gulf red snapper individual fishing quota (IFQ) program.

(a) *General.* This section establishes an IFQ program for the commercial fishery for Gulf red snapper. Under the IFQ program, the RA initially will assign eligible participants IFQ shares equivalent to a percentage of the annual commercial red snapper quota, based on their applicable historical landings. Shares determine the amount of Gulf red snapper IFQ allocation, in pounds gutted weight, a shareholder is initially authorized to possess, land, or sell in a given calendar year. Shares and annual IFQ allocation are transferable. See § 622.4(a)(2)(ix) regarding a requirement for a vessel landing red snapper subject to this IFQ program to have a Gulf red snapper IFQ vessel endorsement. See § 622.4(a)(4)(ii) regarding a requirement for a Gulf red snapper IFQ dealer endorsement. Details regarding eligibility, applicable landings history, account setup and transaction requirements, constraints on transferability, and other provisions of this IFQ system are provided in the following paragraphs of this section.

(1) *Scope.* The provisions of this section apply to Gulf red snapper in or from the Gulf EEZ and, for a person aboard a vessel with a Gulf red snapper IFQ vessel endorsement as required by § 622.4(a)(2)(ix) or for a person with a Gulf red snapper IFQ dealer endorsement as required by § 622.4(a)(4)(ii), these provisions apply to Gulf red snapper regardless of where harvested or possessed.

(2) *Duration.* The IFQ program established by this section will remain in effect until it is modified or terminated; however, the program will be evaluated by the Gulf of Mexico Fishery Management Council every 5 years.

(3) *Electronic system requirements.* (i) The administrative functions associated with this IFQ program, e.g., registration and account setup, landing transactions, and transfers, are designed to be accomplished online; therefore, a participant must have access to a computer and Internet access and must set up an appropriate IFQ online account to participate. Assistance with online functions is available from IFQ Customer Service by calling 1–866–425–7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(ii) The RA will mail initial shareholders and dealers with Gulf reef fish dealer permits information and instructions pertinent to setting up an IFQ online account. Other eligible persons who desire to become IFQ participants by purchasing IFQ shares or allocation or by obtaining a Gulf red snapper IFQ dealer endorsement must first contact IFQ Customer Service at 1–866–425–7627 to obtain information necessary to set up the required IFQ online account. Each IFQ participant must monitor his/her online account and all associated messages and comply with all IFQ online reporting requirements.

(iii) During catastrophic conditions only, the IFQ program provides for use of paper-based components for basic required functions as a backup. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. NMFS will provide each IFQ dealer the necessary paper forms, sequentially coded, and instructions for submission of the forms to the RA. The paper forms will also be available from the RA. The program functions available to participants or geographic areas deemed affected by catastrophic conditions will be limited under the paper-based system. There will be no mechanism for transfers of IFQ shares or allocation under the paper-based system in effect during catastrophic conditions. Assistance in complying with the requirements of the paper-based system will be available via IFQ Customer Service 1–866–425–7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(b) *Procedures for initial implementation*—(1) *Determination of eligibility for initial IFQ shares.* To be eligible as an initial IFQ shareholder a person must own a Class 1 or Class 2 Gulf red snapper license as of November 22, 2006. For the purposes of this paragraph, an owner of a license is defined as the person who controls transfer of the license and is listed as the qualifier on the face of the license. NMFS' permit records are the sole basis for determining eligibility based on Class 1 or Class 2 license history. No more than one initial eligibility will be granted based upon a given Class 1 or Class 2 license.

(2) *Calculation of initial IFQ shares and allocation*—(i) *IFQ shares.* The RA will calculate initial IFQ shares based on the highest average annual landings of Gulf red snapper associated with each shareholder's current Class 1 or Class 2 license during the applicable landings history. The applicable landings history for a Class 1 license owner whose license was not issued based on historical captain status includes any 10 consecutive years of landings data from 1990 through 2004; for a Class 1 license owner whose license was issued on the basis of historical captain status, all years of landings data from 1998 through 2004; and for a Class 2 license holder, any 5 years of landings data from 1998 through 2004. All landings associated with a current Class 1 or Class 2 license for the applicable landings history, including those reported by a person who held the license prior to the current license owner, will be attributed to the current license owner. Only legal landings reported in compliance with applicable state and Federal regulations will be accepted. Each shareholder's initial share is derived by dividing the shareholder's highest average annual landings during the applicable landings history by the sum of the highest average annual landings of all shareholders during the respective applicable landings histories. Initial IFQ shares will not be issued in denominations of less than 0.0001 percent.

(ii) *Initial share set-aside to accommodate resolution of appeals.* During the first year of implementation of this IFQ program only, the RA will reserve a 3–percent IFQ share, prior to the initial distribution of shares, to accommodate resolution of appeals, if necessary. Any portion of the 3–percent share remaining after the appeals process is completed will be distributed as soon as possible among initial shareholders in direct proportion to the percentage share each was initially allocated. If resolution of appeals requires more than a 3–percent share, the shares of all initial shareholders would be reduced accordingly in direct proportion to the percentage share each was initially allocated.

(iii) *IFQ allocation*. IFQ allocation is the amount of Gulf red snapper, in pounds gutted weight, an IFQ shareholder or allocation holder is authorized to possess, land, or sell during a given fishing year. IFQ allocation is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for Gulf red snapper.

(iv) *Special procedure for initial calculation of 2007 IFQ allocations*. Because of uncertainty regarding the 2007 commercial quota for Gulf red snapper and the timing of its implementation and to avoid the possibility of having to revoke some proportion of initial allocation if the quota was subsequently reduced, the RA may initially calculate the 2007 IFQ allocations based on a proxy commercial quota. If a commercial quota adjustment for Gulf red snapper has not been submitted for review by the Secretary of Commerce in time for calculation of 2007 IFQ allocations, the RA will initially calculate 2007 allocations based on a proxy commercial quota of 2.55 million lb (1.16 million kg). Alternatively, if a commercial quota adjustment for Gulf red snapper has been submitted for review by the Secretary of Commerce in time to allow calculation of 2007 allocations, the RA will base 2007 IFQ allocations on the proposed quota. Under either scenario, as soon as the actual 2007 commercial quota is final, but no later than July 1, 2007, the RA will adjust the 2007 IFQ allocations, as necessary, consistent with the actual quota.

(3) *Shareholder notification regarding landings history, initial determination of IFQ shares and allocations, and IFQ account setup information*. (i) As soon as possible after November 22, 2006, the RA will mail each Class 1 or Class 2 red snapper license owner information pertinent to the IFQ program. This information will include—

(A) Gulf red snapper landings associated with the owner's license during each year of the applicable landings history;

(B) The highest average annual red snapper landings based on the owner's applicable landings history;

(C) The owner's initial IFQ share based on the highest average annual landings associated with the owner's applicable landings history;

(D) The initial IFQ allocation;

(E) Instructions for appeals;

(F) General instructions regarding procedures related to the IFQ online system, including how to set up an online account; and

(G) A user identification number--the personal identification number (PIN) will be provided in a subsequent letter.

(ii) The RA will provide this information, via certified mail return receipt requested, to the license owner's address of record as listed in NMFS' permit files. A license owner who does not receive such notification from the RA by December 22, 2006 must contact the RA to clarify eligibility status and landings and initial share information.

(iii) The initial share information provided by the RA is based on the highest average landings associated with the owner's applicable landings history; however, a license owner may select a different set of years of landings, consistent with the owner's applicable landings history, for the calculation of the initial IFQ share. The license owner must submit that information to the RA postmarked no later than December 22, 2006. If alternative years, consistent with the applicable landings history, are selected, revised information regarding shares and allocations will be posted on the online IFQ accounts no later than January 1, 2007. A license owner who disagrees with the landings or eligibility information provided by the RA may appeal the RA's initial determinations.

(4) *Procedure for appealing IFQ eligibility and/or landings information*. The only items subject to appeal under this IFQ system are initial eligibility for IFQ shares based on ownership of a Class 1 or Class 2 license, the accuracy of the amount of landings, and correct assignment of landings to the license owner. Appeals based on hardship factors will not be considered. Appeals must be submitted to the RA postmarked no later than April 1, 2007 and must contain documentation supporting the basis for the appeal. The RA will review all appeals, render final decisions on the appeals, and advise the appellant of the final decision.

(i) *Eligibility appeals*. NMFS' records of Class 1 and Class 2 licenses are the sole basis for determining ownership of such licenses. A person who believes he/she meets the permit eligibility criteria based on ownership of a vessel under a different name, as may have occurred when ownership has changed from individual to corporate or vice versa, must document his/her continuity of ownership.

(ii) *Landings appeals*. Landings data for 1990 through 1992 are not subject to appeal. Appeals regarding landings data for 1993 through 2004 will be based solely on NMFS' logbook records. If NMFS' logbooks are not available, state landings records or data that were submitted in compliance with applicable Federal and state regulations, on or before June 30, 2005, can be used.

(5) Dealer notification and IFQ account setup information. As soon as possible after November 22, 2006, the RA will mail each dealer with a valid Gulf reef fish dealer permit information pertinent to the IFQ program. Any such dealer is eligible to receive a red snapper IFQ dealer endorsement which can be downloaded from the IFQ website at *ifq.sero.nmfs.noaa.gov* once an IFQ account has been established. The information package will include general information about the IFQ program and instructions for accessing the IFQ website and establishing an IFQ dealer account.

(c) *IFQ operations and requirements*—

(1) *IFQ Landing and transaction requirements*. (i) Gulf red snapper subject to this IFQ program can only be possessed or landed by a vessel with a Gulf red snapper IFQ vessel endorsement. Such red snapper can only be received by a dealer with a Gulf red snapper IFQ dealer endorsement. The person landing the red snapper must hold or be assigned IFQ allocation at least equal to the pounds of red snapper landed, except as provided in paragraph (c)(1)(ii) of this section.

(ii) An IFQ shareholder or his agent or employee assigned to land the shareholder's allocation can legally exceed, by up to 10 percent, the shareholder's allocation remaining on the last fishing trip of the fishing year. Any such overage will be deducted from the shareholder's allocation for the subsequent fishing year.

(iii) The dealer is responsible for completing a landing transaction report for each landing and sale of Gulf red snapper via the IFQ website at ifq.sero.nmfs.noaa.gov at the time of the transaction in accordance with reporting form and instructions provided on the website. This report includes, but is not limited to, date, time, and location of transaction; weight and actual ex-vessel value of red snapper landed and sold; and information necessary to identify the fisherman, vessel, and dealer involved in the transaction. The fisherman must validate the dealer transaction report by entering his unique PIN number when the transaction report is submitted. After the dealer submits the report and the information has been verified, the website will send a transaction approval code to the dealer and the allocation holder.

(2) *IFQ cost recovery fees*. As required by section 304(d)(2)(A)(i) of the Magnuson-Stevens Act, the RA will collect a fee to recover the actual costs directly related to the management and enforcement of the Gulf red snapper IFQ

program. The fee cannot exceed 3 percent of the ex-vessel value of Gulf red snapper landed under the IFQ program. Such fees will be deposited in the Limited Access System Administration Fund (LASAF). Initially, the fee will be 3 percent of the actual ex-vessel value of Gulf red snapper landed under the IFQ program, as documented in each landings transaction report. The RA will review the cost recovery fee annually to determine if adjustment is warranted. Factors considered in the review include the catch subject to the IFQ cost recovery, projected ex-vessel value of the catch, costs directly related to the management and enforcement of the IFQ program, the projected IFQ balance in the LASAF, and expected non-payment of fee liabilities. If the RA determines that a fee adjustment is warranted, the RA will publish a notification of the fee adjustment in the **Federal Register**.

(i) *Payment responsibility*. The IFQ allocation holder specified in the documented red snapper IFQ landing transaction report is responsible for payment of the applicable cost recovery fees.

(ii) *Collection and submission responsibility*. A dealer who receives Gulf red snapper subject to the IFQ program is responsible for collecting the applicable cost recovery fee for each IFQ landing from the IFQ allocation holder specified in the IFQ landing transaction report. Such dealer is responsible for submitting all applicable cost recovery fees to NMFS on a quarterly basis. The fees are due and must be submitted, using *pay.gov* via the IFQ system, no later than 30 days after the end of each calendar-year quarter; however, fees may be submitted at any time before that deadline. Fees not received by the deadline are delinquent.

(iii) *Fee payment procedure*. For each IFQ dealer, the IFQ system will post, on individual message boards, an end-of-quarter statement of cost recovery fees that are due. The dealer is responsible for submitting the cost recovery fee payments using pay.gov via the IFQ system. Authorized payments methods are credit card, debit card, or automated clearing house (ACH). Payment by check will be authorized only if the RA has determined that the geographical area or an individual(s) is affected by catastrophic conditions.

(iv) *Fee reconciliation process—delinquent fees*. The following procedures apply to an IFQ dealer whose cost recovery fees are delinquent.

(A) On or about the 31st day after the end of each calendar-year quarter, the RA will send the dealer an electronic message via the IFQ website and official notice via mail indicating the applicable fees are delinquent; the dealer's IFQ account has been suspended pending payment of the applicable fees; and notice of intent to annul the dealer's IFQ endorsement.

(B) On or about the 61st day after the end of each calendar-year quarter, the RA will mail to a dealer whose cost recovery fee payment remains delinquent, official notice documenting the dealer's IFQ endorsement has been annulled.

(C) On or about the 91st day after the end of each calendar-year quarter, the RA will refer any delinquent IFQ dealer cost recovery fees to the appropriate authorities for collection of payment.

(v) *Annual IFQ dealer ex-vessel value report*. The IFQ online system will generate an annual IFQ Dealer Ex-Vessel Value Report for each IFQ dealer. The report will include quarterly and annual information regarding the amount and value of IFQ red snapper received by the dealer, the associated cost recovery fees, and the status of those fees. The dealer's acceptance of this report constitutes compliance with the annual dealer IFQ reporting requirement.

(3) *Measures to enhance IFQ program enforceability*—(i) *Advance notice of landing*. The owner or operator of a vessel landing IFQ red snapper is responsible for calling NMFS Office of Law Enforcement at 1–866–425–7627 at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing and the name of the IFQ dealer where the red snapper are to be received. Failure to comply with this advance notice of landing requirement will preclude authorization to complete the landing transaction report required in paragraph (b)(5)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

(ii) *Time restriction on landing and offloading*. IFQ red snapper may be landed and offloaded only between 6 a.m. and 6 p.m., local time.

(iii) *Restrictions on transfer of IFQ red snapper*. At-sea or dockside transfer of IFQ red snapper from one vessel to another vessel is prohibited.

(iv) *Requirement for transaction approval code*. Possession of IFQ red snapper from the time of transfer from a vessel through possession by a dealer is prohibited unless the IFQ red snapper are accompanied by a transaction approval code verifying a legal transaction of the amount of IFQ red snapper in possession.

(4) *Transfer of IFQ shares and allocation*. Through January 1, 2012, IFQ shares and allocations can be transferred only to a person who holds a valid commercial vessel permit for Gulf reef fish; thereafter, IFQ shares and allocations can be transferred to any U.S. citizen or permanent resident alien. However, a valid commercial permit for Gulf reef fish, a Gulf red snapper IFQ vessel endorsement, and Gulf red snapper IFQ allocation are required to possess, land or sell Gulf red snapper subject to this IFQ program.

(i) *Share transfers*. Share transfers are permanent, i.e., they remain in effect until subsequently transferred. Transfer of shares will result in the corresponding allocation being automatically transferred to the person receiving the transferred share beginning with the fishing year following the year the transfer occurred. However, within the fishing year the share transfer occurs, transfer of shares and associated allocation are independent--unless the associated allocation is transferred separately, it remains with the transferor for the duration of that fishing year. A share transfer transaction that remains in pending status, i.e., has not been completed and verified with a transaction approval code, after 30 days from the date the shareholder initiated the transfer will be cancelled, and the pending shares will be re-credited to the shareholder who initiated the transfer.

(ii) *Share transfer procedures*. A shareholder must initiate the request for the RA to transfer IFQ shares by using the online Gulf red snapper IFQ website at *ifq.sero.nmfs.noaa.gov*. Following the instructions provided on the website, the shareholder must enter pertinent information regarding the transfer request including, but not limited to, amount of shares to be transferred, which must be a minimum of 0.0001 percent; name of the eligible transferee; and the value of the transferred shares. For the first 5 years this IFQ program is in effect, an eligible transferee is a person who has a valid commercial vessel permit for Gulf reef fish; is in compliance with all reporting requirements for the Gulf reef fish fishery and the red snapper IFQ program; is not subject to sanctions under 15 CFR part 904; and who would not be in violation of the share cap as specified in paragraph (c)(6) of this section. Thereafter, share transferee eligibility will be extended to include U.S. citizens and permanent resident aliens who are otherwise in compliance with the provisions of this section. NMFS will evaluate and verify the information entered. If the information is not accepted, NMFS will send the shareholder an electronic message explaining the reason(s). If the

information is accepted, NMFS will send the shareholder an initial transaction approval code and make an application for share transfer available for downloading and printing. The shareholder and eligible transferee must complete the application, have their signatures notarized, and mail the signed application to the RA at least 30 days prior to the date on which the applicant desires to have the transfer effective. The signed application must be received by the RA prior to December 1. See paragraph (c)(4)(v) of this section regarding a prohibition on transfer during December of each year. If the RA approves the application for transfer, the online system will send the shareholder and the transferee an electronic message acknowledging the approval; a transfer is effective upon receipt of the message. The adjusted shares resulting from a transfer may be viewed online by each of the respective shareholders involved in the transaction. If the RA does not approve the transfer application, the RA will return the application to the shareholder with an explanation and instructions for correcting any deficiencies.

(iii) *Allocation transfers.* An allocation transfer is valid only for the remainder of the fishing year in which it occurs; it does not carry over to the subsequent fishing year. Any allocation that is unused at the end of the fishing year is void.

(iv) *Allocation transfer procedures.* Unlike share transfers which require a notarized application for transfer, allocation transfers can be accomplished online via the red snapper IFQ website. An IFQ allocation holder can initiate an allocation transfer by logging on to the red snapper IFQ website at *ifq.sero.nmfs.noaa.gov*, entering the required information, including but not limited to, name of an eligible transferee and amount of IFQ allocation to be transferred and price, and submitting the transfer electronically. If the transfer is approved, the website will provide a transaction approval code to the transferor and transferee confirming the transaction.

(v) *Prohibition of transfer of shares during December each year.* No IFQ shares may be transferred during December of each year. This period is necessary to provide the RA sufficient time to reconcile IFQ accounts, adjust allocations for the upcoming year if the commercial quota for Gulf red snapper has changed, and update shares and allocations for the upcoming fishing year.

(5) *Fleet management and assignment of IFQ allocation.* An IFQ shareholder or IFQ allocation holder who owns more than one vessel with a valid Gulf reef fish vessel permit and a valid Gulf red snapper IFQ vessel endorsement may assign IFQ allocation to a person aboard such vessel and provide that person the IFQ account information necessary to conduct landing transactions.

(6) *IFQ share cap.* No person, including a corporation or other entity, may individually or collectively hold IFQ shares in excess of the maximum share initially issued to a person for the 2007 fishing year, as of the date appeals are resolved and shares are adjusted accordingly. For the purposes of considering the share cap, a corporation's total IFQ share is defined as the sum of the IFQ shares held by the corporation and the IFQ shares held by individual shareholders of the corporation. A corporation must identify the shareholders of the corporation and their percent of shares in the corporation.

(7) *Redistribution of shares resulting from permanent permit or endorsement revocation.* If a shareholder's commercial vessel permit for Gulf reef fish or Gulf red snapper IFQ vessel endorsement has been permanently revoked under provisions of 15 CFR part 904, the RA will redistribute the IFQ shares held by that shareholder proportionately among remaining shareholders based upon the amount of shares each held just prior to the redistribution. During December of each year, the RA will determine the amount of revoked shares, if any, to be redistributed, and the shares will be distributed at the beginning of the subsequent fishing year.

(8) *Annual recalculation and notification of IFQ shares and allocation.* On or about January 1 each year, IFQ shareholders will be notified, via the IFQ website at *ifq.sero.nmfs.noaa.gov*, of their IFQ share and allocation for the upcoming fishing year. These updated share values will reflect the results of applicable share transfers and any redistribution of shares resulting from permanent revocation of applicable permits or endorsements under 15 CFR part 904. Allocation is calculated by multiplying IFQ share times the annual red snapper commercial quota. Updated allocation values will reflect any change in IFQ share, any change in the annual commercial quota for Gulf red snapper, and any debits required as a result of prior fishing year overages as specified in paragraph (c)(1)(ii) of this section. IFQ participants can monitor the status of their shares and allocation throughout the year via the IFQ website.

8A. Section 622.16, with the exception of paragraph (b), is stayed until January 1, 2007.

§ 622.34 [Amended]

■ 9. In § 622.34, paragraph (l) is removed and reserved.

■ 10. In § 622.42, paragraph (a)(1)(i) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) *Red snapper*—4.65 million lb (2.11 million kg), round weight.

* * * * *

§ 622.44 [Amended]

■ 11. In § 622.44, paragraph (d) is removed and reserved.

[FR Doc. 06–9342 Filed 11–17–06; 4:47 pm]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AC34

Financial Reporting Requirements for Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is amending Commission regulations to require introducing brokers (''IBs'') submitting CFTC financial Forms 1–FR–IB that are certified by independent public accountants to file such financial reports electronically with the National Futures Association (''NFA''). The amendments also require that certified Financial and Operational Combined Uniform Single Reports (''FOCUS'' Reports), submitted by IBs registered with the Securities and Exchange Commission (''SEC'') as securities brokers or dealers (''B/Ds'') in lieu of Form 1–FR–IB, be filed either electronically or in paper form in accordance with the rules of the NFA. The CFTC also is amending Commission regulations to require that, with respect to any such electronic filing, a paper copy including the original signed certification be maintained by the IB in its records for a period of five years in accordance with Commission Regulation 1.31.

DATES: *Effective Date:* December 22, 2006.

FOR FURTHER INFORMATION CONTACT: Thomas J. Smith, Deputy Director and

Chief Accountant, at (202) 418–5430 or Jennifer C.P. Bauer, Special Counsel, at (202) 418–5472, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Electronic mail: *tsmith@cftc.gov* or *jbauer@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4f(b) of the Commodity Exchange Act (''Act'') authorizes the Commission to adopt regulations imposing minimum financial requirements on IBs.[1] Commission Regulation 1.10(a)(2)(ii)(A)[2] requires each person filing an application for registration as an IB to file a financial Form 1–FR–IB[3] certified by an independent public accountant concurrently with the application. IBs that also are registered with the SEC as a B/D may file a FOCUS Report in lieu of a Form 1–FR–IB. The application for registration, and the certified Form 1–FR–IB or FOCUS Report, must be filed with the NFA in paper form.[4]

Regulation 1.10(b)(2)(ii)(A) requires each registered IB to annually file a certified Form 1–FR–IB as of the close of the IB's fiscal year with NFA. IBs that are registered with the SEC as B/Ds may file an annual FOCUS Report with NFA in lieu of the Form 1–FR–IB. Regulation 1.10(b)(2)(iii) requires that certified Forms 1–FR–IB, or FOCUS Reports, must be filed in paper form with NFA and may not be filed electronically. Regulation 1.10(d)(4) requires that Forms 1–FR–IB, or FOCUS reports filed in lieu thereof, be accompanied by an oath or affirmation from specified persons that the information in the filing is true and correct.

The Commission previously has approved rules submitted by NFA that require IBs to submit uncertified Forms 1–FR–IB, or FOCUS Reports, electronically using the NFA EasyFile electronic filing system.[5] NFA implemented electronic filing of the uncertified Form 1–FR for IBs beginning in 2002 by providing them with the WinJammer software utilized by other self-regulatory organizations and the Commission for the Forms 1–FR and FOCUS Reports filed electronically by futures commission merchants (''FCMs''). The EasyFile system was developed by NFA as a web-based alternative to WinJammer using the same security procedure available under NFA's On-line Registration System, or ORS.[6]

NFA petitioned the Commission to amend its regulations to permit NFA to expand the EasyFile electronic 1–FR–IB submissions of IBs to include the mandatory filing of certified Form 1–FR–IBs through the use of an electronic file in the Portable Document Format (''.pdf format''). The Commission has determined to amend its Regulations 1.10 and 1.31 as set forth herein to effectuate this purpose. NFA has not requested the amendment of regulations to require mandatory electronic filing of certified FOCUS Reports from IBs that are SEC registered B/Ds as NFA currently does not have the systems capability to receive FOCUS reports through EasyFile.[7] However, NFA has indicated that it will develop a mechanism to receive certified FOCUS Reports from IBs electronically in the future, and the Commission has determined to also amend its Regulation 1.10 to accommodate the future electronic filing of such reports by requiring such reports to be submitted in accordance with NFA rules, either electronically or in paper form.

NFA previously petitioned the Commission for rule amendments in 2005 to enable NFA to implement mandatory electronic filing of commodity pool certified annual reports using the Web-based structure of EasyFile system, which amendments were adopted by the Commission and became effective in March 2006.[8] As a result of these amendments and NFA's rules, currently all certified commodity pool annual reports must be received by NFA electronically, through the use of electronic files in the Portable Document Format (''.pdf format'').

NFA's electronic filing system for certified financial statements from IBs will similarly require that the IB submit an electronic .pdf file of the entire certified statement, including the financial information, footnotes, auditors' statement, and any necessary reconciliation of the IB's certified financial statement and most recent unaudited 1–FR. Because the IB will have already electronically submitted the unaudited Form 1–FR–IB to NFA through EasyFile, the IB will not have to re-enter any data from the certified statement unless that statement includes a reconciliation and difference from the unaudited Form 1–FR–IB of the same date. When the IB submits the electronic filing, NFA's EasyFile system prompts the submitter to read and to indicate agreement to an electronic oath or affirmation. The submitter already will have securely accessed NFA's system and had his or her identification authenticated through the use of his or her unique user identification and password combination, established and maintained by the firm's Security Manager. The IB's Security Manager can establish users and assign them abilities to enter data and/or submit the report and data in the NFA electronic filing system. The IB is responsible for ensuring that only persons who are duly authorized to bind the IB, in accordance with Regulation 1.10(d)(4), are granted the permission, through the use of a unique user identification and password, to submit the report and make the required oath or affirmation. This oath or affirmation is made with respect to the .pdf file of the annual report and any information entered into the system from the certified statement. The electronic version of the oath or affirmation will appear in dialog boxes when reports or data are submitted, and completion of the submission will require an affirmative acceptance of the oath or affirmation by the user. In clarification of the proposing release, a Personal Identification Number is not used to authenticate the identity of the authorized representative in the NFA's EasyFile system. The EasyFile system architecture uses a secure user identification and password combination for the same purpose, to authenticate the identity of the authorized user submitting the report.

II. Comments

NFA was the only entity to file a comment letter on the proposed amendments. NFA supported the proposed amendments and stated that ''(t)hese amendments will simplify the filing process and allow it to keep pace with technological changes without

[1] 7 U.S.C. 6f(b).

[2] The regulations of the Commission cited in this release may be found at 17 CFR Ch. I (2006).

[3] The Form 1–FR–IB is a financial report that includes a statement of financial condition, a statement of income or loss, a statement of minimum net capital, and appropriate footnote disclosures.

[4] NFA is a registered futures association under Section 17 of the Commodity Exchange Act, 7 U.S.C. 21, and has been delegated responsibility for processing the Commission's registration function. NFA also is a self-regulatory organization, as defined in Regulation 1.3(ee).

[5] By letter dated June 1, 2004, NFA submitted to the Commission for its review and approval, pursuant to Section 17(j) of the Act (7 U.S.C. 21(j)), amendments to Section 5 of NFA Financial Requirements, regarding IB financial requirements, which amendments were approved by the Commission and were effective June 30, 2004.

[6] The firm's security manager can establish users with unique and secure user identification and password combinations and assign them abilities to enter data and/or submit the report in the NFA EasyFile system. This ''Security Manager'' procedure is part of NFA's existing electronic system for registration processing.

[7] NFA's petition states that EasyFile is not yet equipped to handle the receipt of FOCUS reports from IBs. Uncertified FOCUS reports of IBs are still submitted to NFA electronically using WinJammer.

[8] 71 FR 8939 (Feb. 22, 2006).

losing any of the protections provided by the current requirements''. NFA also commented in support of the additional amendment to require IBs that file FOCUS reports in lieu of Form 1–FR to file electronically or in paper copy, according to NFA instructions, which will permit NFA to implement electronic filing of such reports when it develops the systems capacity to receive them electronically. NFA staff also verbally commented that the current EasyFile system architecture used by IBs and commodity pool operators does not include the use of a Personal Identification Number as discussed in the proposing release, but instead uses a unique user identification and password combination that fully satisfies the same purpose for the authentication of the authorized person making the electronic oath or affirmation. The Commission has therefore changed the language proposed for Regulation 1.10(d)(4)(iii) to clarify that in the case of a Form 1–FR filed via electronic transmission in accordance with procedures established or approved by the Commission, such transmission must be accompanied by the Personal Identification Number or other user authentication assigned under such procedures to the authorized signer, and such Personal Identification Number or other user authentication will constitute and become a substitute for the manual signature of such authorized representative.

III. Amendments

Regulation 1.10(b)(2)(iii) requires that a Form 1–FR certified by an independent public accountant that is filed by an FCM, IB or applicant for registration as an FCM or IB, must be filed in paper form and may not be filed electronically. The Commission is amending Regulation 1.10(b)(2)(iii) to provide that a certified Form 1–FR required from an IB, or applicant for IB registration, must be filed electronically with NFA through compliance with NFA's electronic filing procedures, and that a paper copy with the original, manually signed certification must be maintained by the IB in accordance with Regulation 1.31.

The Commission also is amending Regulation 1.10(d)(4)(ii), by revising the second sentence and redesignating the revised sentence as Regulation 1.10(d)(4)(iii). Regulation 1.10(d)(4)(iii) would confirm that, in the case of a Form 1–FR–IB filed via electronic transmission in accordance with NFA procedures approved by the Commission, such transmission must be accompanied by the user authentication assigned under such procedures to the authorized signer, and the use of such user authentication will constitute and become a substitute for the manual signature of the authorized signer for the purpose of making the required oath or affirmation.

In addition, the Commission is amending Regulation 1.10(h), to provide that an IB that is permitted to file a copy of its certified FOCUS Report in lieu of Form 1–FR file such report either in paper form, or through compliance with NFA's electronic filing procedures, according to the rules of NFA. The amendment to Regulation 1.10(h) also will require that a paper copy with the original, manually signed certification be maintained by the IB in accordance with Regulation 1.31 for any IB FOCUS Report electronically filed with NFA. Lastly, the Commission is amending Regulation 1.31(d) to provide that paper copies of electronically filed certified Forms 1–FR or FOCUS Reports must be retained by the IB in hard copy with the original manually signed certification. These amendments implement mandatory electronic filing of certified annual reports on Form 1–FR–IB with NFA, as NFA has petitioned, and allow electronic filing by IBs of certified FOCUS reports as NFA may in the future require.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.*, requires that agencies, in rulemaking consider the impact of those rules on small businesses. The Commission previously has established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[9] These amendments will not place any additional burdens upon IBs that are small businesses since all such parties already are subject to the financial reporting requirements under Regulation 1.10 and already comply with the electronic filing of uncertified reports through NFA's electronic filing system. The Commission's proposal solicited public comment on this analysis.[10] No comments were received. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

This rulemaking alters the method of collection for a required collection of information under Part 1 of the Commission's rules, but is not anticipated to change the burden under such collection as the actual financial reporting requirement has not changed and all the parties subject to such requirement already must use NFA's electronic filing system for the filing of uncertified reports. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission submitted a copy of this section to the Office of Management and Budget (''OMB'') for its review. No comments were received in response to the Commission's invitation in the notice of proposed rulemaking[11] to comment on any change in the potential paperwork burden associated with these rule amendments.

C. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by Section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission's proposal contained an analysis of its consideration of these costs and benefits and solicited public comment thereon.[12] No comments were received with respect to the analysis of the Commission's consideration. Therefore, pursuant to such consideration, the Commission has decided to adopt these amendments as discussed above.

[9] 47 FR 18618 (April 30, 1982).

[10] 71 FR 54789 at 54791 (September 19, 2006).

[11] *Id.*

[12] 71 FR at 54791–2.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Reporting and recordkeeping requirements.

■ Accordingly, 17 CFR part 1 is amended as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

■ 2. Section 1.10 is amended by:
■ a. revising paragraph (b)(2)(iii);
■ b. revising paragraph (d)(4)(ii);
■ c. adding paragraph (d)(4)(iii); and
■ c. revising paragraph (h), to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

* * * * *

(b) * * *

(2) * * *

(iii) A Form 1–FR required to be certified by an independent public accountant in accordance with § 1.16 which is filed by a futures commission merchant or applicant for registration as a futures commission merchant must be filed in paper form and may not be filed electronically. A Form 1–FR required to be certified by an independent public accountant in accordance with § 1.16 which is filed by an introducing broker or applicant for registration as an introducing broker must be filed electronically in accordance with NFA's electronic filing procedures, and a paper copy of such filing with the original manually signed certification must be maintained by such introducing broker or applicant in accordance with § 1.31.

* * * * *

(d) * * *

(4) * * *

(ii) If the registrant or applicant is registered with the Securities and Exchange Commission as a securities broker or dealer, the representative authorized under § 240.17a–5 of this title to file for the securities broker or dealer its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE.

(iii) In the case of a Form 1–FR filed via electronic transmission in accordance with procedures established or approved by the Commission, such transmission must be accompanied by the Personal Identification Number or other user authentication assigned under such procedures to the authorized signer, and the use of such Personal Identification Number or other user authentication will constitute and become a substitute for the manual signature of the authorized signer for the purpose of making the oath or affirmation referred to in this paragraph.

* * * * *

(h) *Filing option available to a futures commission merchant or an introducing broker that is also a securities broker or dealer.* Any applicant or registrant which is registered with the Securities and Exchange Commission as a securities broker or dealer may comply with the requirements of this section by filing (in accordance with paragraphs (a), (b), (c), and (j) of this section) a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE (FOCUS Report), in lieu of Form 1–FR; *Provided, however,* That all information which is required to be furnished on and submitted with Form 1–FR is provided with such FOCUS Report; and *Provided, further,* That a certified FOCUS Report filed by an introducing broker or applicant for registration as an introducing broker in lieu of a certified Form 1-FR-IB must be filed according to NFA rules, either in paper form or electronically in accordance with NFA electronic filing procedures, and if filed electronically, a paper copy of such filing with the original manually signed certification must be maintained by such introducing broker or applicant in accordance with § 1.31.

* * * * *

■ 3. Section 1.31 is amended by revising paragraph (d) to read as follows:

§ 1.31 Books and records; keeping and inspection.

* * * * *

(d) Trading cards, documents on which trade information is originally recorded in writing, written orders required to be kept pursuant to § 1.35(a), (a–1)(1), (a–1)(2) and (d), and paper copies of electronically filed certified Forms 1–FR and FOCUS Reports with the original manually signed certification must be retained in hard-copy for the required time period.

* * * * *

Issued in Washington, DC, on November 14, 2006 by the Commission.

Eileen Donovan,

Acting Secretary of the Commission.

[FR Doc. E6–19533 Filed 11–21–06; 8:45 am]

BILLING CODE 6351–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–2276; MB Docket No. 04–12; RM–10834]

Radio Broadcasting Services; Littleville and Russellville, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissal of petition for reconsideration.

SUMMARY: The staff approves the withdrawal of a petition for reconsideration in this FM allotment rulemaking proceeding and finds no reason for further consideration of the matters raised therein. *See* **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MB Docket No. 04–12, adopted November 1, 2006, and released November 3, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*.

The *Report and Order* in this proceeding reallotted and changed the community of license for Station WLAY–FM from Channel 278A at Russellville to Channel 278A at Littleville, Alabama. The withdrawal of the petition for reconsideration and related pleadings complies with Section 1.420(j) of the Commission's rules because the parties have documented that the consideration that J. Michael Self will receive does not exceed his legitimate and prudent out of pocket expenses. *See* 69 FR 25845 (May 10, 2004).

This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Memorandum Opinion and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the petition for reconsideration was dismissed).

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–19658 Filed 11–21–06; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 71, No. 225
Wednesday, November 22, 2006

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

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

[Docket no. AO–14–A74, et al.; DA–06–01]

Milk in the Northeast and Other Marketing Areas; Tentative Final Decision on Proposed Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
1001	Northeast	AO–14–A73
1005	Appalachian	AO–388–A14
1006	Florida	AO–356–A37
1007	Southeast	AO–366–A43
1030	Upper Midwest	AO–361–A38
1032	Central	AO–313–A47
1033	Mideast	AO–166–A71
1124	Pacific Northwest	AO–368–A34
1126	Southwest	AO–231–A67
1131	Arizona	AO–271–A39

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This tentative final decision proposes to adopt, on an interim final and emergency basis, changes to the manufacturing allowances contained in the Class III and Class IV product price formulas applicable to all Federal milk marketing orders. This decision is subject to producer approval.

DATES: Comments should be submitted on or before January 22, 2007.

ADDRESSES: Comments (four copies) should be filed with the Hearing Clerk, Stop 9200-Room 1031, United States Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–9200. Comments may also be submitted at the Federal eRulemaking portal: *http://www.regulations.gov* or by submitting comments via e-mail to: *amsdairycomments@usda.gov.* Reference should be made to the title of action and docket number.

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

SUPPLEMENTARY INFORMATION: This tentative final decision adopts on an interim final and emergency basis, amendments to the manufacturing (make) allowances for cheese, butter, nonfat dry milk (NFDM) and dry whey powder contained in the Class III and Class IV product price formulas. Specifically, this decision proposes the following manufacturing allowances:

	Adopted make allowance
Cheese	$0.1682/lb
Butter	0.1202/lb
NFDM	0.1570/lb
Dry whey	0.1956/lb

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.

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 of 1937 (Act), as amended (7 U.S.C. 604–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the 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 habitant, or has its principal place of business, has jurisdiction in equity to review the USDA'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.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered 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.

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.

For the month of January 2006, the month the initial public hearing was held, the milk of 52,570 dairy farmers was pooled on the Federal order system. Of the total, 49,153 dairy farmers, or 94 percent, were considered small businesses. During the same month, 536 plants were regulated by or reported their milk receipts to be pooled and price on a Federal order. Of the total, 286 plants, or 53 percent, were considered small businesses.

This decision provides that all orders be amended by changing the make allowances contained in the formulas used to compute component prices and the minimum class prices in all Federal milk orders. Specifically, the make allowance for butter would increase from $0.1150 to $0.1202 per pound; the

make allowance for cheese would increase from $0.1650 to $0.1682 per pound; the make allowance for NFDM would increase from $0.1400 to $0.1570 per pound; and the make allowance for dry whey would increase from $0.1590 to $0.1956 per pound.

The adoption of these new make allowances serves to approximate the average cost of producing cheese, butter, NFDM and dry whey for manufacturing plants located in Federal milk marketing areas.

The established criteria for the make allowance changes are applied in an identical fashion to both large and small businesses and will not have any different impact on those businesses producing manufactured milk products. The following economic analysis discusses impacts of the order amendments on order participants including producers and manufacturers. Based on the economic analysis we have concluded that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

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

This tentative final decision does not require additional information collection that needs clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. The forms require only a minimal amount of information that can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities. Also, parties may suggest modifications of this proposed rule for the purpose of tailoring its applicability to small businesses.

Economic Analysis

Analysis

In order to assess the impact of make allowance changes in Federal order product pricing formulas, the Department has conducted an economic analysis. While the primary purpose of this tentative final decision is to amend the product pricing formulas used to price milk regulated under Federal milk marketing orders and classified as either Class III or Class IV milk, these product price formulas also affect the prices of regulated milk classified as Class I and Class II.

Scope of Analysis

Impacts of increasing make allowances were measured as changes from the USDA Agricultural Baseline Projections to 2015 (OCE–2006–1, *http://www.usda.gov/oce/commodity/ag_baseline.htm*). The baseline projections are ''a Departmental consensus on a long-run scenario for the agricultural sector.'' Included is a national, annual projection of the supply-demand-price situation for milk. The USDA baseline and the model baseline assume: (1) The Milk Price Support Program (MPSP) will continue unchanged; (2) The Dairy Export Incentive Program will be utilized to the maximum extent allowed beginning in the 2006/07 fiscal year; (3) The Milk Income Loss Contract (MILC) program will continue through September 2007 [1]; and (4) The Federal Milk Marketing Order Program will continue unchanged. This analysis maintains the first three assumptions as unchanged. The only changes to the Federal Milk Marketing Order Program are those that are brought about by the changes in make allowances adopted in this decision. Since the model is an annual model, a simplifying assumption is made that the make allowance changes become effective January 1, 2007.

Demands for fluid milk and manufactured dairy products are functions of per capita consumption and population. Per capita consumption for the major milk and dairy products are estimated as functions of own prices, substitute prices, and income. Retail margins are assumed unchanged from the baseline. The demands for fluid milk and soft manufactured products are satisfied first by the eligible supply of milk. The milk supply for manufactured hard products is the volume of milk marketings remaining after satisfying the volumes demanded for fluid and soft manufactured products. Milk is manufactured into cheese, butter or nonfat dry milk (NFDM) according to returns to manufacturing in each class. Wholesale prices for cheese, butter, NFDM and dry whey reflect supply and demand for these products. These manufactured dairy product prices underlie the Federal order pricing system.

Summary of Results

The impacts of the changes to the Class III and Class IV formulas that are set forth in this tentative final decision are summarized using annual and nine-year, 2007–2015, average changes from the model baseline. The results presented for the Federal order system are in the context of the larger U.S. market. In particular, the Federal order price formulas use national manufactured dairy product prices.

Producers. Over the nine-year period, the average Federal order minimum blend price for milk at test decreases $0.08 (0.55 percent) from a baseline level of $14.71 per hundredweight (cwt). The average U.S. all-milk price decreases by about $0.05 (0.35 percent) from a baseline level of 14.79 per cwt. Federal order marketings decrease by an average 136 million pounds annually due to the production decrease in response to lower producer milk prices. Federal order milk cash receipts decrease by an average $125 million annually (0.65 percent) from baseline receipts of $19,165 million. U.S. milk marketings decrease by an average 206 million pounds annually (0.11 percent), yielding an average producer revenue decrease of $125 million annually (0.44 percent) from average baseline receipts of $28,396 million.

Milk Manufacturers and Processors. Increasing Federal order make allowances benefits dairy manufacturers by widening the spread between Federal order minimum prices and the prices that they receive for manufactured dairy products. While prices paid for milk are lower, prices received for dairy products are higher due to the tighter milk supply. Over the nine year projection period, wholesale dairy product prices increase as follows: $0.0119 per pound (0.82 percent) for cheddar cheese, $0.0305 (1.99 percent) for butter, $0.0012 (0.14 percent) for NFDM, and $0.0015 (0.56 percent) for dry whey.

With the proposed increases in make allowances, most Federal order component prices decrease on average over the nine-year projection period: $0.0038 per pound (0.16 percent) for protein, $0.0156 (2.24 percent) for nonfat solids, and $0.0361 (30.22 percent) for other solids. For the butterfat price, the increase in the butter price more than offsets the increase in the butter make allowance, resulting in

[1] Dairy producers are not eligible to choose September 2007 as a month for which MILC payments are to be applied. This provision was included so that it would not be necessary to include MILC payments in the Federal budget for fiscal year 2007–08.

an average increase of $0.0303 per pound (1.78 percent) over the projection period. Changes in Federal order component prices translate into reductions for Federal order skim milk pricing factors at 3.5 percent butterfat over the nine-year period: $0.22 per cwt for Class I and Class III, $0.14 per cwt for Class II and Class IV. Federal order Class I and III average prices decrease by $0.11 per cwt over the projection period, while Class II and IV prices decrease by $0.03 per cwt.

There are notable differences between changes in Federal order class prices at 3.5 percent butterfat and changes in Federal order class prices at class butterfat percentages. Butterfat tests for the four Federal order milk classes differ from one class to another due to the mix of products within each class. Butterfat proportions are higher for Class II and IV milk than for Class I and III milk. Average Class I and III prices at test are below baseline levels over the nine-year period: $0.16 per cwt (1.12 percent) for Class I and $0.11 per cwt (0.83 percent) for Class III. For Class II and Class IV prices at test, the increase in the butterfat price more than offsets the increase in the make allowances, resulting in prices above baseline levels for the nine-year period: $0.12 per cwt (0.58 percent) for Class II and $0.03 per cwt (0.20 percent) for Class IV.

Consumers. The expected $0.16 per cwt (1.12 percent) decrease in the minimum nine-year average Class I price at test results in an average $0.0137 per gallon decrease in the price of fluid milk for consumers. Consumers increase consumption of fluid milk products slightly, resulting in an increase of 17 million pounds (0.04 percent) in Federal order Class I marketings. Consumers reduce consumption of manufactured dairy products in response to higher dairy product prices. All of the manufacturing Federal order class marketings decrease as follows: 26 million pounds (0.15 percent) for Class II, 30 million pounds (0.06 percent) for Class III and 97 million pounds (0.62 percent) for Class IV.

Government Outlays. In 2007, with lower milk prices, MILC payments increase by $25 million (12.94 percent) above the baseline level of $190 million. This impact rounds to approximately $0.01 per cwt averaged over all of the milk production.

With an increase in Federal order make allowances, dairy product prices increase, milk production declines and government removals decrease relative to baseline levels. The analysis assumes that current MPSP make allowances will remain in effect throughout the projection period. Over the projection period government removals of NFDM decrease by an average of 9 million pounds (2.95 percent) per year. This reduces government outlays by an average $7 million per year over the projection period.

Detailed Analysis Information

A complete Economic Analysis, Class III and IV Make Allowances, Tentative Final Decision is available on the Internet at *http://www.ams.usda.gov/dairy/proposals/classIII_IV_make_all.htm.* For further information contact Howard McDowell, Senior Economist, USDA/AMS/Dairy Programs, Office of the Chief Economist, Room 2753, South Building, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–7091, e-mail address *howard.mcdowell@usda.gov*.

Prior Documents in This Proceeding

Notice of Hearing: Issued December 30, 2005; published January 5, 2006 (71 FR 545).

Notice of Intent to Reconvene Hearing: Issued June 28, 2006; published June 23, 2006 (71 FR 36715).

Notice to Reconvene Hearing: Issued August 31, 2006; published September 6, 2006 (71 FR 52502).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this tentative final decision with respect to the proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Northeast and other marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act (AMAA) and applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Room 1031-Stop 9200, 1400 Independence Avenue, SW., Washington, DC 20250–9200, by the January 22, 2007. Four (4) copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

A public hearing was held upon proposed amendments to the marketing agreement and the orders regulating the handling of milk in the Northeast and other marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 (AMAA), 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 hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. Some evidence was received that specifically addressed these issues, and some of the evidence encompassed entities of various sizes.

The proposed amendments set forth below are based on the record of the first session of a public hearing held in Alexandria, Virginia, on January 24–27, 2006, pursuant to a notice of a hearing issued December 30, 2005; published January 5, 2006 (71 FR 545) and a second session of a public hearing held in Strongsville, Ohio, on September 14–15, 2006, pursuant to a reconvened hearing notice issued August 31, 2006; published September 6, 2006 (71 FR 52502).

The material issues on the record of the hearing relate to:

1. Amending the manufacturing allowances.

2. Determination of emergency marketing conditions.

Findings and Conclusions

1. Amending the Manufacturing Allowances

This tentative final decision adopts on an interim basis, a proposal published in the hearing notice as Proposal 1 which seeks to amend the manufacturing allowances for butter, cheese, NFDM and dry whey. Specifically, this decision adopts the following manufacturing allowances: cheese—$0.1682 per pound, butter—$0.1202 per pound, NFDM—$0.1570 per pound and dry whey—$0.1956 per pound.

The Federal Milk order system currently uses product price formulas to compute prices handlers must account for in the marketwide pooling of milk used in Class III and Class IV products. Class III and Class IV prices form the base from which Class I and Class II prices are determined.

The price formulas used to compute Class III and Class IV prices contain a factor called a manufacturing (make) allowance. The make allowance factor represents the cost manufacturers incur in making raw milk into one pound of product. Federal milk order pricing formulas currently contain the following make allowances: cheese—$0.1650 per pound, butter—$0.1150 per pound, NFDM—$0.1400 per pound and dry

whey—$0.1590 per pound. These make allowances were last amended in 2003 and were determined on the basis of a California Department of Food and Agriculture (CDFA) and a USDA Rural Business Cooperative Service (RBCS) survey of 1998 manufacturing costs. The current make allowances were computed by taking a weighted average of the CDFA and RBCS surveys and adjusting for return on investment, general and administrative costs and marketing costs.

a. *The following summary of testimony and post-hearing briefs pertains to the first session of the public hearing held January 24–27, 2006, in Alexandria, Virginia.*

A proposal published in the hearing notice as Proposal 1 seeking to amend the current make allowances was offered by Agri-Mark Dairy Cooperative (Agri-Mark). Agri-Mark is a Capper-Volstead cooperative with approximately 1300 member-owners located throughout New England and New York and operates 4 manufacturing plants. Proposal 1 seeks to amend the make allowances for cheese, butter, NFDM and dry whey powder contained in the Class III and Class IV price formulas based upon the results of the California State 2004 dairy products manufacturing cost survey conducted by the CDFA and a 2004 manufacturing cost survey conducted by the RBCS. The results of these surveys, reported in dollars per pound, are as follows:

	All cheese	40-lb. block cheese	Dry whey powder	Butter	NDFM
RBCS [2]	$0.13295	$0.15136	$0.11409	$0.16588	$0.16816
CDFA	Not reported	0.1769	0.2673	0.1368	0.1543

[2] Results do not include factors for return on investment, general and administrative costs, marketing costs and milk transportation and procurement costs.

A witness from the RBCS testified regarding the methodology used by RBCS in conducting the 2004 Dairy Product Plant Costs Survey. The witness did not testify in either support of or in opposition to Proposal 1. The witness said the study was conducted at the request of dairy-farmer owned cooperatives as a technical assistance project from which cooperatives could compare their costs to average costs of all participating cooperatives. The witness stated that 9 cooperatives voluntarily submitted 2004 cost data for 17 cheese plants, 8 butter plants and 16 NFDM plants. Due to data incompatibility, the witness said that one butter plant and two NFDM plants were not included in the final study. The witness noted that the number of plants surveyed in 2004 was greater than the number of plants surveyed in 1998. The witness testified that the study represents the second time that this technical assistance project collected and analyzed cost data for dried and condensed dry whey processing. The witness reported that the data collected did not include costs from privately owned manufacturing plants and that none of the plants surveyed were located in the State of California.

The RBCS witness testified that the plant data represented each plant's cost of producing butter, NFDM, commodity cheese and condensed dry whey or dried dry whey depending on the product(s) produced at the individual plants. The RBCS witness explained the basic data collection methodology used in requesting data from individual plants and testified that the manufacturing costs provided by the cooperatives represented only those costs incurred by the plant from the receiving deck to the shipping deck of the plant. The witness testified that milk procurement, milk transportation, as well as plant administrative and management overhead, return on investment costs and marketing costs were not included in the data collected. The witness also noted that the cost of producing dry whey was excluded from the cost of cheese manufacturing. According to the witness, the data provided were not audited or verified by an independent party. The witness explained that the cost data were aggregated by product category and a weighted average cost of production for each product type was then calculated. The witness said that the RBCS data did not support concluding that as plant size increased, costs of production decreased on a per unit basis.

Two witnesses from CDFA testified regarding the methodology used in conducting a 2004 processing costs survey for cheddar cheese, butter, NFDM and dry whey powder for manufacturing plants located in the State of California. The witnesses noted that 2003 was the first year that CDFA included dry whey processing costs in their manufacturing cost survey. The witnesses did not testify in either support of or in opposition to Proposal 1.

The CDFA witnesses explained that plant participation in the cost survey is voluntary and that the 2004 survey represented 99.9 percent of butter production, 98.5 percent of Cheddar and Monterey Jack production, 99.17 percent of NFDM production and 79 percent of dry whey powder production in the State of California. The witnesses testified that all cost survey data collected is from audited plant cost records. The CDFA witnesses noted that the audited costs for California plants demonstrated that costs per unit of output are inversely related to plant size. The witnesses elaborated that as plant size increases, the costs of production on a per unit basis decrease consistently across manufacturing product categories.

A witness appearing on behalf of Agri-Mark testified in support of Proposal 1. The witness testified that the costs of manufacturing dairy products have increased since the make allowances were amended in 2003 by relying on cost data from 1998 and 1999. The witness asserted that many manufacturing plants are unable to recoup their increased costs in the marketplace and, the witness asserted, caused some plants located in the Northeast marketing area to cease operating. The witness argued that the Class III and Class IV make allowances should be updated using 2004 data contained in the CDFA and RBCS surveys to reflect current manufacturing costs.

The Agri-Mark witness asserted that the role of Class III and Class IV plants is to balance the milk needs of the Class I and II markets. According to the witness, monthly Class III milk volumes as a percentage of the annual average monthly volume in the Northeast order for 2005 ranged from a high of 107 percent in May to a low of 92 percent in October. Class IV usage for that same time period ranged from 145 percent in May to 48 percent in September, said the witness. The witness also stated that when milk production in the Northeast marketing area increased in 2000, it was primarily Class IV plants that balanced the increased supply.

The Agri-Mark witness stressed that even though Class IV plants are

balancing the market by processing the additional producer milk supply, they are not profitable in the Northeast marketing area. The witness explained that one dairy processor attempted to recoup their increased energy costs in the market through an energy surcharge on its finished products. However, stated the witness, the surcharge was captured in the NASS survey price and subsequently the Class IV milk price paid by manufacturing plants also increased.

The Agri-Mark witness estimated that its members lost $15.5 million in 2004 because manufacturing costs were not adequately covered in the pricing formula for cheese. According to the witness, this resulted in a loss of $0.6500 per hundredweight (cwt) on all its producer-member milk. In this regard, the witness asserted that Agri-Mark members were subsidizing the Northeast order blend price because they are paying a classified price for Class III and Class IV milk that is higher than the value of the milk used to make these products. The witness conceded, however, that despite incurring a loss on its producer-member milk Agri-Mark does pay premiums for milk it purchases for processing into Class III and Class IV products.

The Agri-Mark witness proposed that the updated cheese make allowance is computed by taking a weighted average of the RBCS 40-pound block cheddar and the all California total cheese manufacturing plant costs. The witness calculated this value to be $0.1794 per pound. The witness was of the opinion that the RBCS 40 pound block cost should be used because the CDFA survey had standardized its reported costs to plants that produce 40 pound blocks.

The Agri-Mark witness proposed that the butter make allowance should be computed by using the weighted average cost for all RBCS butter plants with the weighted average costs of all CDFA butter plants. The witness calculated this value to be $0.1515 per pound. The witness explained that only the high cost sub-group of CDFA butter plants was used in 2003 when the current make allowances were adopted. The witness was of the opinion that using only the high cost sub-group would now be inappropriate because those plants were not similar in size to the RBCS butter plants.

The Agri-Mark witness proposed that the NFDM make allowance should be computed using the RBCS weighted average cost for all NFDM plants and the weighted average cost of the medium cost sub-group of CDFA NFDM plants. The witness calculated this value to be $0.1867 per pound. The witness was of the opinion that this methodology and value was appropriate because of the comparable plant volumes between the two groups. The low cost plants in the CDFA survey produce a large volume of NFDM, the witness said, and including those plants in the calculation would distort the average costs of the plants in the RBCS study. The witness explained that using a weighted average by product volume implies that half of the product will be produced at a cost lower than the weighted average and half of the product would be produced at a cost higher than the weighted average. If the low cost CDFA plants were included in the make allowance calculation, the witness concluded that because of their high product volume more than half of the product and a majority of plants regulated by the Federal order system would not be able to cover their manufacturing costs.

The Agri-Mark witness expressed concern regarding the large variation in the CDFA survey cost of dry whey ($0.2673 per pound) and the RBCS survey cost of dry whey ($0.11409 per pound). According to the witness, CDFA has only collected data on dry whey processing for two years and during that same time period the survey cost of dry whey ($0.2670 per pound) was not recommended as the appropriate make allowance—instead, a make allowance of $0.2000 per pound was adopted. This was also the second time the RBCS survey collected data for dry whey production and the witness was of the opinion that there may have been problems regarding the reporting and allocation of dry whey costs that resulted in the RBCS survey product cost far below the CDFA cost. The witness insisted that because dry whey cost accounting methodology is new and not standardized, the Department should not rely on, or adopt the RBCS or CDFA survey costs for dry whey. Rather, the witness asserted that it would be more appropriate to use the methodology adopted when make allowances were last amended which added a factor of $0.0190 to the NFDM make allowance. The witness was of the opinion that either a $0.0190 or $0.0250 factor would be appropriate and would result in a dry whey make allowance of either $0.2057 or $0.2117 per pound.

The Agri-Mark witness also supported updating the return on investment, administrative and marketing cost factors that are incorporated into the make allowance calculations. The previous Department decision amending the make allowances adopted the cost factors that were contained in the CDFA survey, and the witness was of the opinion that the same cost factors contained in the 2004 CDFA survey should again be used.

The Agri-Mark witness submitted data estimating the impact the proposed make allowances would have on class and component prices. According to the witness, the price of butterfat would fall $0.0440 per pound, the price of protein would remain the same, the price of nonfat solids would fall $0.0460 per pound, and the price of other solids would fall either $0.0480 per pound or $0.0540 per pound depending on the factor used to calculate the dry whey powder make allowance. Additionally, the witness predicted that the Class III price would fall either $0.4300 per cwt or $0.4600 per cwt (depending on the dry whey powder factor) and the Class IV price would fall $0.5500 per cwt.

The Agri-Mark witness also offered data regarding increased energy costs that have occurred over the past 4 years. Referring to U.S. Department of Energy data, the witness asserted that crude oil prices increased 33 percent in 2004 and 36 percent in 2005, and those prices are expected to increase 52 percent and 45 percent above 2004 levels in 2006 and 2007, respectively. Other similar increases were seen in natural gas prices, the witness noted. In this regard, the witness offered a modification to Proposal 1 to include an energy adjustment for 2005 using the Producer Price Indexes for Industrial Natural Gas and Industrial Electric Power Distribution. According to the witness, those indexes recorded a 6 percent increase in electric power costs and a 23.8 percent increase in industrial natural gas costs from 2004 to 2005.

If the energy adjustment were incorporated into the make allowance, the Agri-Mark witness proposed that the make allowances be set at $0.1815 per pound for cheese, $0.1543 per pound for butter, $0.1965 per pound for NFDM, and either $0.2155 per pound or $0.2117 per pound for dry whey powder. This set of proposed make allowances would result in a decrease of the Class III price of either $0.5100 or $0.5400 per cwt and a decrease in the Class IV price by $0.6500 per cwt.

The Agri-Mark witness conceded that adoption of Proposal 1 would decrease the blend prices paid to all dairy farmers. The witness was of the opinion that their proposed higher make allowances would lead to lowering blend prices by $0.09 to $0.13 per cwt over 5 years. However, the witness said, if the make allowances are not amended to reflect current costs, manufacturing plants that are unable to recoup their increased costs would go out of business

causing disorderly marketing conditions because there would be fewer local outlets for producer milk. The witness claimed that some cooperatives are currently decreasing the price paid to their members in an effort to recoup some of their increased manufacturing costs. The witness said that while Agri-Mark pays premiums above the minimum Federal order blend price to its members, they also are collecting a $0.15 per cwt assessment on all of their members' milk to offset some of the cooperative's losses. The witness said that if the make allowances were not increased, dairy farmers who are members of cooperatives would continue to lose money as cooperatives that operate manufacturing plants would further need to decrease the price they pay to their members in an effort to recoup additional loses. The Agri-Mark witness strongly urged the Department to expedite the rulemaking process by eliminating a recommended decision.

A second witness appearing on behalf of Agri-Mark offered testimony regarding the production costs experienced at Agri-Mark plants. The witness asserted that their production costs have steadily increased since 1998 when that cost data was used in establishing current make allowances. According to the witness, Agri-Mark has taken many steps to increase efficiency and to lower costs, such as installing more efficient equipment, purchasing supplies in bulk quantities and forward pricing their energy needs. Despite these efforts, explained the witness, Agri-Mark has still been unable to offset increases in most production costs. To support their claim of increased production costs, the witness provided data which listed various costs experienced at Agri-Mark manufacturing plants from 2001 to 2005.

A post-hearing brief submitted on behalf of Agri-Mark; Northwest Dairy Association; Foremost Farms USA Cooperative; Associated Milk Producers, Inc.; and Land O'Lakes, Inc. expressed support for updating the make allowances. Hereinafter, these entities will be referred to as ''Agri-Mark, et al.'' The brief argued that the hearing record clearly establishes that manufacturers are incurring higher processing costs since current make allowances were adopted. The brief asserted that the current make allowances force many manufacturers to operate at a financial loss. The brief estimated that Agri-Mark members alone are incurring losses in excess of $700,000 per month.

The Agri-Mark, et al., brief stated that unlike the competitive pricing system, the current pricing system does not give manufacturers the ability to recoup increased processing costs from the marketplace. The current set of fixed make allowances, wrote Agri-Mark, et al., do not reflect current manufacturing costs which are shown in the most current CDFA and RBCS surveys. The brief asserted that the inadequate make allowances have played a role in many manufacturing plant closures in recent years, and claimed that more plants would be forced out of business if the make allowances were not updated as quickly as possible.

The Agri-Mark, et al., brief asserted that the RBCS and CDFA surveys are reliable and representative of manufacturing costs throughout the country. The brief also stressed the importance of including a 2005 energy adjuster in determining any amended make allowances. The brief reiterated Agri-Mark's concern with the dry whey cost data contained in both the RBCS and CDFA surveys and advocated deriving the dry whey make allowance by adding a 1.9 cent per pound factor to the NFDM make allowance, noting that the same methodology was used to derive the current dry whey make allowance.

The Agri-Mark brief conceded that any increase in the make allowances will reduce producer income. However, the brief stated that the Department did not account for the current loss of revenue by cooperative members whose manufacturing plants are currently operating at a financial loss in their baseline analysis. The brief also asserted that the baseline analysis did not include the impact on producer revenue due to closures which might result from fewer local outlets for their milk supply. The brief concluded that if these and other factors were included in the baseline analysis, the reduction in producer revenue would not be as large as projected.

A witness appearing on behalf of National Milk Producers Federation (NMPF) testified in support of Proposal 1. According to the witness, NMPF consists of 33 dairy-farmer cooperative associations that represent 75 percent of the country's dairy farmers. The witness said that NMPF supports updating the make allowances to reflect current manufacturing costs to provide needed cost relief to the dairy product manufacturing industry. The witness stated that the current make allowances were derived from manufacturing cost data collected in 1998 and that costs have increased making the current make allowances obsolete. The witness maintained that the updated CDFA and RBCS survey data should be combined according to the same basic methodology used by the Department when the current make allowances were established. The witness urged the Department to implement these changes on an emergency basis and omit a recommended decision.

The NMPF witness explained that make allowances set the maximum margin a manufacturer can earn for its products. According to the witness, if a manufacturer is able to produce at a per unit cost less the make allowance, then they generate a processing premium. However, the witness said, if a manufacturer's per unit cost is greater than the make allowance they do not earn a processing premium and have no method under the current pricing formulas to recoup those costs from the marketplace. The witness asserted that this undermines the ability of manufacturing plants to provide market balancing services and the Federal orders the ability to provide for orderly marketing conditions.

The NMPF witness testified that the CDFA and RBCS surveys together represent a large portion of the domestic manufacturing industry—41 percent of cheddar cheese production, 51 percent of butter production, 81 percent of NFDM production and 45 percent of dry whey production. While the witness supported using the Department's methodology for establishing the current make allowances, NMPF proposed a modification. The current butter make allowance was determined after excluding the lower-cost CDFA butter plants from the calculation of the average plant cost, the witness explained. According to the witness, this exclusion is no longer justified because that group represents a large share of U.S. butter production and should now be included.

The NMPF witness also explained that the most volatile input cost of manufacturing is energy and asserted that recent increases in energy costs have countered many cost reducing measures undertaken by manufacturers to increase productivity or efficiency. The witness was of the opinion that the energy cost factor contained in the make allowances should be indexed and adjusted monthly to take into account the volatile energy market. The witness insisted that this was an appropriate way to maintain equity between producers and manufacturers explaining that processors would not be unduly harmed when energy prices rise and producers would not be harmed when energy prices fall. Therefore, the witness said, the Department should adopt a monthly energy price adjuster using the monthly Bureau of Labor Statistics

Producer Price Indexes for Industrial Electricity and Industrial Natural Gas, and use the weighted average 2004 electricity and fuels costs from the RBCS and CDFA surveys as the initial base for the adjuster. The witness added that if an energy index is not adopted, the make allowances that are determined as a result of the proceeding may become obsolete before they are implemented if there are large fluctuations in energy prices. The witness supported delaying implementation of an energy cost factor until the issuance of a final decision if its consideration would delay adopting adjustments in the make allowances. A post-hearing brief submitted on behalf of NMPF reiterated their support for updating the make allowances.

A witness appearing on behalf of Land O' Lakes (LOL) testified in support of Proposal 1. According to the witness, LOL is a Capper-Volstead cooperative with more than 4,000 members that owns manufacturing plants located throughout the United States. The witness explained that Class III and Class IV prices are determined in part by taking the market price of various manufactured goods and subtracting the cost of converting milk into that specific commodity (make allowance). The witness said that the current classified pricing system was implemented in 2000 and the current make allowances were last adopted in 2003 relying on data that was collected in 1998. The LOL witness stated that all of LOL's plants have experienced increased manufacturing costs since 1998. The witness emphasized that despite efforts by LOL to reduce costs increase in processing costs could not be completely offset.

The LOL witness stressed that relative plant size, comparable per unit costs and recognition of balancing costs should be criteria used by the Department in appropriately weighting the CDFA and RBCS surveys to determine the make allowances. The witness further suggested that when establishing the butter make allowance, the weighted average of the CDFA and RBCS butter plants should be used because the costs of the average plant size measured by both surveys are comparable. According to the witness, this would result in a butter make allowance of $0.1515 per pound. The NFDM make allowance should be computed using the weighted average of the RBCS NFDM plants and Group II of the CDFA NFDM plants, the witness stated. The costs of those two groups, after adjusting the RBCS data for return on investment, general and administrative costs and marketing expenses, are similar, the witness said, and would result in a NFDM make allowance of $0.1867 per pound.

For determining the cheese make allowance, the LOL witness advocated using the weighted average RBCS cost with the weighted average CDFA cost because those costs are similar. The witness asserted that the resulting cheese make allowance should be $0.1710 per pound. The witness also insisted that the RBCS and CDFA survey costs for dry whey processing are counter-intuitive and supported Agri-Mark's modification to add a factor to the NFDM make allowance to determine the dry whey make allowance.

The LOL witness maintained that the make allowances need to be amended to reflect current manufacturing and to remedy an error in the RBCS cost data presented at a 2000 hearing on Federal order product price formulas that contained some California plants. The witness also recognized that lower blend prices would result if Proposal 1 is adopted. However, the witness said, LOL cooperative members are currently bearing the additional cost of processing manufactured products which the witness asserted should be born by all producers. The witness emphasized that all of the LOL butter, cheese, and NFDM plants that participated in the RBCS survey lost money in 2004 even though the average selling price for the products were above the NASS average price for the year. The witness urged the Department to expedite the hearing process and omit a recommended decision to provide cost relief to manufacturing operations.

A post-hearing brief submitted on behalf of LOL reiterated their support of adoption of Proposal 1. The brief supported adoption of the specific make allowances advanced by Agri-Mark including a 2005 energy adjuster and adoption of an energy index in the calculation of the make allowances that would be updated quarterly. The brief expressed opposition to reopening the hearing record to take evidence regarding the proper make allowances to be included in the Class I and Class II price formulas.

A witness appearing on behalf of the National Cheese Institute (NCI) testified in support of Proposal 1. NCI is a trade association with 70 member companies representing manufacturers, marketers, distributors and suppliers of cheese. The witness said that the make allowances should be updated with the 2004 CDFA and RBCS survey data using the methodology that established the current make allowances and that they be adjusted for 2005 energy cost increases. The witness specified that after adding an energy adjustment the make allowance should be set no lower than the following: $0.1810 per pound for cheese, $0.2220 per pound for dry whey, $0.1540 per pound for butter and $0.1970 per pound for NFDM.

The NCI witness explained that the Federal order pricing system prior to Federal order reform was based on the competitive market prices paid for unregulated milk in the Upper Midwest region. The witness asserted that this pricing scheme reacted to changes in manufacturing costs and therefore manufacturers did not need to seek government intervention to recover any cost increases. However, the current pricing system determines the classified prices received by farmers based on the products' finished wholesale prices minus fixed make allowances that represents the handlers' costs incurred to make the finished products, explained the witness. The current system, the witness said, does not react to cost changes. If a manufacturer's costs of production increases, the plant still only receives the fixed make allowance to produce that specific product, the witness said even if this does not cover all of its processing costs. The witness noted that while a plant could increase its finished product prices to recover additional expenses, the higher prices would be included in the NASS product price survey and would consequently increase their cost for raw milk. According to the witness this circularity in price determination undercuts market forces and justifies increasing the make allowances.

The NCI witness maintained that manufacturing costs have increased substantially since RBCS and CDFA survey data for 1998 was used to establish the current make allowances. The witness asserted that if the make allowances are not updated, cheese manufacturers will either have to decide to lose money on each pound of product or stop production entirely. While the witness supported the methodology used by the Department to set the current make allowances, NCI offered their views regarding what CDFA cost sub-groups should be used in establishing new make allowances. The witness also insisted that because the 2004 CDFA and RBCS survey results do not include 2005 energy cost increases, an adjustment as proposed by Agri-Mark, to reflect these increases, is justified. The witness testified that a 2.5 cent factor should be added to the NFDM make allowance to establish the dry whey make allowance. The NCI witness concluded that the increasing differences between current make allowances and actual manufacturing

costs justifies the need for emergency action by the Department through the omission of a recommended decision.

A post-hearing brief submitted on behalf of NCI reiterated their support for updating the make allowances using CDFA and RBCS 2004 survey data, adjusted for 2005 energy costs, on an emergency basis. The brief stated that such an update should result in new make allowances that would be set no lower than the following: $0.1810 per pound for cheese, $0.1540 per pound for butter, $0.1970 per pound for NFDM and $0.2220 per pound for dry whey. The brief stated that the hearing record is replete with evidence demonstrating a significant increase in manufacturing costs and the manufacturers' inability to recoup those costs though the marketplace. The brief also argued that the RBCS data regarding the costs of producing dry whey do not include all input costs and are not representative of typical U.S. dry whey drying plants. Therefore, the brief said, the Department should continue the methodology used in the past and establish a dry whey make allowance by adding a differential to the NFDM make allowance.

A witness appearing on behalf of Lactalis America Group (Lactalis) testified in support of Proposal 1. According to the witness, Lactalis produces and markets a variety of cheeses across the United States. The witness testified that their manufacturing costs of production have increased 14 percent since 1998 even though their plant capacity had increase by 25 percent during that time frame. The witness projected that Lactalis' costs of production would increase 16 percent in 2006 as compared to 2005. The witness urged the Department to expedite the rulemaking process and omit a recommended decision.

A witness appearing on behalf of Alto Dairy Cooperative (Alto) testified in support of Proposal 1. According to the witness, Alto is a Capper-Volstead cooperative located in Wisconsin that markets over 1.5 billion pounds of milk annually and operates 2 manufacturing plants. The witness stated that a financially stable dairy manufacturing industry which provides numerous local outlets for milk is vital to maintaining a stable market for dairy farmers. The witness was of the opinion that the current make allowances disadvantage cheese manufacturers because they do not adequately account for the current costs of manufacturing. The witness stated that even though Alto has become more efficient, their costs of production still increased 3 cents per pound because of increases in costs for natural gas, packaging materials and transportation. The witness urged the adoption of Proposal 1 on an expedited basis.

A witness appearing on behalf of Associated Milk Producers, Inc. (AMPI) testified in support of Proposal 1. According to the witness, AMPI is a Capper-Volstead cooperative that represents 4,000 dairy farmers in 7 Midwestern states and whose milk is pooled on the Upper Midwest and Central orders. The witness expressed support for increasing the make allowances because of increased manufacturing costs, particularly for energy, that have occurred since 2001. The witness was of the opinion that adequate make allowances are critical in allowing a manufacturing plant to cover their processing costs and earn a competitive rate of return on equity. The witness said that if the make allowances remained too low plant profitability will continue to erode and investment in plants and manufacturing equipment will decrease. The witness emphasized that manufactured dairy products compete in a national market against other unregulated or state-regulated plants that either have no regulated pricing system or have a make allowance that more accurately reflects current marketing conditions.

The AMPI witness also supported the inclusion of a 2005 energy adjustor as advanced by Agri-Mark. The witness said that AMPI experienced 31 percent higher average natural gas costs in 2005 than in 2004. The witness noted that for the months of September through December 2005, AMPI's natural gas costs were on average 65 percent higher than during the same time period in 2004. The witness asserted that the steep increases in energy prices that occurred in 2005 need to be reflected in any update of the make allowances. The witness also supported indexing energy costs as proposed by NMPF, provided its inclusion would not delay the issuance of a decision, and that its inclusion should be contained in a later decision. The witness urged the Department to expedite the hearing process and omit a recommended decision.

A witness appearing on behalf of Foremost Farms USA Cooperative (Foremost) testified in support of Proposal 1. According to the witness, Foremost is a Capper-Volstead cooperative with 3,476 members that markets 5.05 billion pounds of milk and operates 15 manufacturing plants and 2 distributing plants. The witness said the current make allowances have dramatically risen since 1998 and is causing manufacturing plants to lose substantial amounts of money.

The witness explained that Foremost has taken numerous steps since 2000 to increase their competitiveness and efficiency by reconfiguring their product mix, closing numerous plants and a storage and distribution facility, increasing employee health care contributions, and purchasing packaging, ingredients, and other supplies in bulk. Despite these efforts Foremost has been unable to completely offset as the cost increases in energy, employee healthcare, and packaging materials, the witness stated. The witness claimed that at their Lancaster, Wisconsin, cheese plant, 2004 manufacturing costs per pound for cheese had increased 25.6 percent since 1999. According to the witness, the increased costs were linked to higher natural gas, electricity, and employee fringe benefits. The witness added that the 2005 manufacturing costs per pound of cheese at the same plant was 14.1 percent higher than 2004. The witness also emphasized that Foremost has attempted to raise its product prices and premiums but those increases were incorporated into the NASS Dairy Product Price survey that in turn, resulted in higher Federal order minimum class prices for their raw milk.

The Foremost witness stressed that make allowances need to be increased quickly; otherwise they will be unable to continue absorbing cost increases without paying their members less for their milk. The witness supported adoption of Proposal 1 with an energy adjustor and urged its adoption on an emergency basis.

A witness appearing on behalf of Davisco Foods International (Davisco) testified in support of Proposal 1. According to the witness, Davisco operates three manufacturing plants that collectively produce 1 million pounds of cheese per day. The witness offered support for the testimony offered by the NCI. The witness stated that the price Davisco is able to charge for products is not high enough to return the classified price to the marketwide pool and cover their manufacturing costs. According to the witness, many of Davisco's processing costs have increased from 1998 to 2004. During this time period, the witness explained, labor costs have increased 25 percent per man hour, employee benefits have increased 92 percent and natural gas costs have increase 149 percent per therm. The witness said energy costs increased substantially again in 2005. The witness insisted that in order to maintain a viable dairy manufacturing industry, make allowances need to be amended

on an emergency basis to reflect current market conditions.

A witness appearing on behalf of Michigan Milk Producers Association (MMPA) testified in support of Proposal 1. According to the witness, MMPA is a Capper-Volstead cooperative with approximately 2,400 members that markets over 3.3 billion pounds of milk per year and operates 2 manufacturing plants. The witness said that MMPA participated in the 1998 and 2004 RBCS manufacturing cost surveys and presented data revealing their cost increases during that time period. According to the witness, MMPA's manufacturing costs per pound of NFDM were 54 percent higher in 2004 than in 1998 and represent $2.1 million in additional processing costs that they were unable to recoup from the marketplace. During that same period, the witness noted, the manufacturing costs per pound of butter increased 14.3 percent, reducing their profit margin by $207,000. The witness insisted that energy costs have been the major driver of cost increases and said that in 2006 MMPA forecasts their gas costs to increase by nearly $1.3 million. The witness stressed that MMPA tried to increase their product prices but those higher prices were captured by the NASS product price survey which in turn resulted in higher raw milk costs.

The MMPA witness emphasized the need for increasing make allowances to reflect current manufacturing costs and urged the Department to act on an emergency basis. The witness also offered support for indexing fuel costs and periodically adjusting make allowances to reflect changes in energy costs.

A post-hearing brief submitted on behalf of MMPA reiterated support for adoption of Proposal 1. The brief stated that MMPA manufacturing plants have been incurring financial losses because processing costs are not fully recovered by current make allowances. The brief supported the make allowances advanced by Agri-Mark and NMPF. The brief also advocated that the make allowances be adjusted for 2005 energy cost increases and that the new allowances include a monthly energy adjuster. MMPA wrote that by indexing energy costs in the make allowances, manufacturers would not be harmed if future energy costs continue to increase and if energy costs decrease producers would share in the additional revenue resulting from lower processing costs. The brief described large financial losses that MMPA member-owned plants would incur if make allowances are not adjusted as quickly as possible.

A witness appearing on behalf of Northwest Dairy Association (NDA) testified in support of Proposal 1. According to the witness, NDA is a Capper-Volstead cooperative with approximately 640 dairy-farmer members, of which 520 pool their milk on the Pacific Northwest order and also operates manufacturing plants in the northwest through its subsidiary, WestFarm Foods. The witness said that make allowances need to be updated to reflect the current marketing conditions. The witness insisted that the current make allowances do not reflect the higher costs of energy, labor and packaging and that efforts to recoup these costs from the marketplace have been unsuccessful. Therefore, the witness asserted that updating the make allowances is a logical step to ensure that manufacturing plants do not continue to lose money from higher costs that cannot be recouped.

The NDA witness stressed that balancing costs should be considered as part of determining the appropriate make allowances for Class IV products—butter and NFDM. The witness claimed that NDA's NFDM processing costs were 2 to 5 cents per pound higher in their NFDM plants that specifically are used to balance the market. The witness said that NDA provided dry whey cost data for the RBCS survey and noted an error in their data—NDA did not include the purchase of a large amount of condensed dry whey in their total dry whey processing cost. The witness claimed that after accounting for this purchase, their dry whey processing cost increased 1.969 cents per pound for all dry whey manufactured by NDA.

The NDA witness offered support for adjusting the make allowances to reflect 2005 energy costs and for indexing energy costs to periodically adjust the make allowances as proposed by NMPF. However, the witness insisted that manufacturing plants need immediate cost relief. The witness urged the Department to first amend the make allowances on an emergency basis and by including a 2005 energy adjuster. Then if necessary, the witness added, consider the NMPF proposal to index energy costs.

A post-hearing brief submitted on behalf of NDA reiterated support for emergency action by the Department. The NDA brief focused on the appropriate level on the appropriate make allowance for dry whey. The brief expressed concern over the large cost difference in CDFA and RBCS dry whey cost survey data and the unintended exclusion of some input costs for dry whey processing by some of the RBCS survey participants. The brief recommended that the dry whey make allowance be derived by adding a factor to the NFDM make allowance.

A witness appearing on behalf of WestFarm Foods (WestFarm) testified in support of Proposal 1 and offered testimony explaining the processing differences and related manufacturing cost differences between NFDM and dry whey powder. According to the witness, WestFarm performs the processing and marketing operations for NDA. The witness reviewed the testimony contained in a 2000 hearing record on make allowances and concluded that the assumptions made about dry whey processing are still valid. The witness updated the 2000 testimony with costs from the RBCS study, described the process of dry whey processing using reverse osmosis, and compared those costs to manufacturing NFDM. The witness concluded that in 2004 the additional cost of producing a pound of dry whey powder was 2.905 cents higher than producing a pound of NFDM with energy costs accounting for 1.120 cents. The witness attributed the higher cost of producing dry whey powder partly to the larger volume of milk needed to produce a pound of dry whey powder than a pound of NFDM. The witness noted that WestFarm uses reverse osmosis technology to produce dry whey, and in 2004 their additional production costs were 2.7151 cents higher than producing NFDM. The witness concluded that regardless of the process used to produce dry whey, the cost of dry whey production is higher than that of NFDM production and urged the Department to take this into consideration when setting a make allowance for dry whey.

A witness appearing on behalf of O–AT–KA Milk Products Cooperative, Inc. (O–AT–KA) testified in support of Proposal 1. According to the witness, O–AT–KA is owned by three producer-owned cooperatives—Upstate Farms Cooperative, Inc.; Niagara Milk Cooperative, Inc.; and Dairy Farmers of America, Inc.—and which operates manufacturing plants that produce a variety of manufactured milk products. The witness stated that O–AT–KA plants provide a vital balancing function to maintain orderly marketing of milk in the Northeast order. However, the witness said, the current fixed make allowances do not reflect the increased manufacturing costs that O–AT–KA members have had to bear and as a result, O–AT–KA producers are not being adequately compensated for the service they provide to the entire market. The witness asserted that efforts to recoup their increased costs by

increasing their product prices would only result in an increase in their raw milk costs. Accordingly, the witness concluded that updating the make allowances remains the only method to provide manufacturers with cost relief.

The O–AT–KA witness explained that after adjusting their 2005 manufacturing costs to include a return on investment factor, their cost of producing NFDM was $0.2218 per pound ($0.0818 more than the current NFDM make allowance) and their cost of producing butter was $0.1497 per pound ($0.0347 per pound more than the current butter make allowance.) The witness concluded that these higher manufacturing costs resulted in a $1.9 million loss in revenue for O–AT–KA members in 2005. The witness expressed concern with O–AT–KA's ability to continue manufacturing milk products while continuously experiencing financial losses.

The O–AT–KA witness offered support for adoption of Proposal 1 and the specific make allowances proposed by Agri-Mark. The witness was also of the opinion that the make allowances should be updated to include an energy adjustor to reflect the large changes in 2005 energy costs. The witness offered support for a monthly energy cost adjustment to ensure that energy price changes are reflected in make allowances.

The O–AT–KA witness recognized that increasing make allowances reduces producer income but asserted that not updating the make allowances would result in more plant closings, increased hauling costs, and lower producer premiums. The witness urged the Department to take emergency action and omit a recommended decision.

A post-hearing brief submitted on behalf of O–AT–KA and Upstate Farms Cooperative, Inc. reiterated their support for updating the make allowances on an emergency basis. The brief stated that the make allowances should be updated with data from the CDFA and RBCS 2004 costs surveys, include an adjustment for 2005 energy costs and adjust make allowances by changes in energy.

A witness appearing on behalf of Saputo Cheese USA, Inc. (Saputo) testified in support of Proposal 1. According to the witness, Saputo owns and operates 15 manufacturing plants throughout the United States and purchases 3 to 4 billion pounds of milk annually. The witness stated that the current make allowances are causing cheese manufacturers to operate their plants at a financial loss because of dramatic increases in manufacturing costs. The witness explained that Saputo has experienced a 96 percent increase in electricity costs, a 125 percent increase in natural gas costs and an increase in excess of 150 percent in packaging costs from March 31, 2000, to December 31, 2005. The witness admitted that Saputo does not produce cheddar cheese but claimed that they are still unable to recoup their increased costs in the marketplace because of the competitive environment. The witness stated that manufacturing costs have increased since the 1998 cost data was used to establish the current make allowances. The witness urged the Department to take emergency action to provide manufacturers with some cost relief and omit issuing a recommended decision.

A witness appearing on behalf of Glanbia Foods, Inc. (Glanbia) testified in support of Proposal 1. According to the witness, Glanbia operates three manufacturing plants in Idaho and the milk that they purchase is not pooled on any Federal order. The witness said that even though they are not Federally regulated they still pay prices for their milk supply that must be competitive with Federal order class prices. The witness said that Glanbia has experienced significant increases in manufacturing costs since 1999 and particularly so over the past 12–18 months. The witness said that Glanbia's electricity costs from 1999–2005 increased by 34 percent; 370 percent for natural gas; 111 percent for diesel; 44 percent for labor and 90 percent for employee health insurance. The witness expressed the opinion that the Department should act swiftly to update the make allowances.

A witness appearing on behalf of Hilmar Cheese Company, Inc. (Hilmar) testified in support of Proposal 1. According to the witness, Hilmar operates a cheese and dry whey manufacturing plant in California and is currently building a cheese plant in Texas that will be receiving Federal marketing order priced milk. The witness stated that Hilmar has increased its efficiency between 1998 and 2004 but those gains have not fully compensated for increased manufacturing costs. The witness attributed increased manufacturing costs to, among other things, packaging—an increase of 56 percent, supplies—an increase of 11 percent, and repairs and maintenance—an increase of 113 percent. The witness stressed that their cost increases from 2004 to 2005 alone were higher than the total increase in costs for the entire period of 1998 to 2004. The witness was of the opinion that the make allowances should be updated and adjusted for higher 2005 energy costs as proposed and modified by Agri-Mark.

A witness appearing on behalf of Kraft Foods (Kraft) testified in support of Proposal 1. According to the witness, Kraft owns and operates numerous manufacturing plants throughout the United States and also purchases dairy products as ingredients for other products. The witness said the long-run viability of the dairy industry depends on both the profitability of the dairy farm sector and the manufacturing sector. Current make allowances do not accurately represent current manufacturing costs and attempts to increase the price of finished products to recoup some of the increased costs have proved futile, the witness emphasized. The witness said that this situation hampers manufacturer's efforts to operate profitably. The witness explained that manufacturing input costs have dramatically increased since the 1997–1999 time period when manufacturing cost data was collected to determine the current make allowances. Relying on Department of Energy and Department of Labor data, the witness claimed that from 1998 to October 2005, electricity prices increased 24 percent per kilowatt hour, natural gas prices increased 155 percent per thousand cubic feet and labor costs increased 32 percent per hour. The witness concluded that these cost increases demonstrate the higher costs manufacturers face in operating and the need for higher make allowances to be adopted on an emergency basis.

A witness appearing on behalf of the Association of Dairy Cooperatives in the Northeast (ADCNE) testified in support of Proposal 1. According to the witness, ADCNE members include Agri-Mark; Dairylea Cooperative, Inc.; Dairy Farmers of America, Inc.; Land O'Lakes, Inc.; Maryland and Virginia Milk Producers Cooperative Association, Inc.; O–AT–KA Milk Products Cooperative, Inc.; St. Albans Cooperative Creamery, Inc. and Upstate Farms Cooperative, Inc. and collectively represent more than 65 percent of the milk pooled on the Northeast order. The ADCNE witness offered support for testimony given by NMPF regarding the need to raise make allowances. The witness was of the opinion that the make allowances should be updated using the CDFA and RBCS 2004 survey data and should contain a monthly energy cost adjustor to reflect price fluctuations in the energy market. Dairy Farmers of America, Inc. and Dairylea Cooperative, Inc. withdrew their support for increasing the make allowances during

the hearing and in their post-hearing brief.

The ADCNE witness asserted that because the Northeast marketing area has the largest Class IV utilization in the Federal order system, marketing 2.9 billion pounds of milk in 2005, Northeast order Class IV plants play a vital role in balancing the market's fluid needs. In this regard, the witness stressed that make allowances need to be amended on an emergency basis to ensure that Northeast order Class IV plants are able to recover their processing costs and continue their important role in balancing the fluid needs of the marketing area.

A post-hearing brief submitted on behalf of ADCNE reiterated their support for adoption of Proposal 1. The brief stated that current make allowances are not equitable to manufacturers because individual plant processing costs have significantly increased since the current make allowances were set using 1998 costs. The brief also argued that the CDFA and RBCS survey data are reliable and together represent a wide variety of plant sizes located throughout the United States. The ADCNE brief supported using the methodology proposed by NMPF as the best approach for updating the make allowances.

A witness appearing on behalf of Leprino Foods Company (Leprino) testified in support of Proposal 1. According to the witness, Leprino operates nine manufacturing plants in the United States, of which receive milk pooled on the Federal order system. The witness said that the current make allowances no longer accurately reflect the manufacturing costs to produce cheese and urgently need to be updated. The witness was of the opinion that the RBCS, adjusted for return on investment, general and administrative costs and marketing costs, together with CDFA survey results should be used to update the make allowances.

However, the Leprino witness believed that the RBCS results for dry whey costs were not accurate and should not be relied upon in setting the make allowance for dry whey. The witness explained that the average dry whey plant size in the RBCS survey was much larger than the average size of all U.S. dry whey plants which, because of economies of scale inherent in larger plants, could have caused the RBCS survey result for dry whey to be too low. The witness also expressed concern that some input costs relevant for producing dry whey were not included in the RBCS survey such as the cost of condensing dry whey in other plants and transporting the condensed dry whey to a drying facility. Had these factors been included, the witness speculated, the RBCS dry whey processing cost may have been higher. The Leprino witness supported adding a factor to the NFDM make allowance to set the dry whey make allowance and concluded that a dry whey make allowance of $0.2215 per pound was appropriate.

A post-hearing brief filed on behalf of Leprino reiterated their support for updating the make allowances. The brief stated that the hearing record contains voluminous amounts of evidence to demonstrate that manufacturing costs have significantly increased from the base period of 1997–1999 relied upon to set the current make allowances. The Leprino brief offered specific justification to set each of the make allowances to: 18.1 cents per pound for cheese, 22.22 cents per pound for dry whey, 15.4 cents per pound for butter and 19.7 cents per pound for NFDM. The brief urged the Department to take emergency action.

A dairy-farmer member of Agri-Mark whose milk is pooled on the Northeast order testified in support of Proposal 1. The witness testified that while Agri-Mark producer members do not like paying an assessment on their production, they recognize that their manufacturing plants are in need of immediate cost relief due to increased processing costs. The witness said that Agri-Mark members are currently incurring a 15-cent per cwt assessment on their milk checks in order to cover some of the operating losses of the cooperative. The witness noted that unless the make allowances are updated, the assessment could soon be raised to 30 cents per cwt. The witness insisted that having a strong dairy processing sector is important to ensure that all producers have a market for their milk. Therefore, the witness urged the Department to update the make allowances to provide some cost relief to dairy manufacturers.

A witness appearing on behalf of Rich Dairy Products (RDP) testified in support of Proposal 1. According to the witness, RDP buys and sells a variety of dairy products but does not own any manufacturing facilities. The witness supported updating the make allowances to reflect cost increases that have occurred since the establishment of the current make allowances.

A dairy farmer witness appearing on behalf of Select Milk Producers (Select), Lone Star Milk Producers (Lone Star) and Zia Milk Producers (Zia), testified in opposition to Proposal 1. Hereinafter, these entities will be referred to as ''Select, *et al.*'' Select, *et al.*, are Capper-Volstead cooperatives who collectively market approximately 40 percent of the milk pooled on the Southwest order. The witness stated that dairy farmers have also been experiencing rising costs for inputs such as fertilizer, fuel and electricity. To recoup these costs, the witness asserted that dairy farmers and their cooperatives have to become more efficient to lower their manufacturing costs.

The Select, et al., witness cited consolidated hauling routes, building reverse osmosis plants and only shipping full tanker loads of milk as steps Select and other cooperatives have taken to lower their costs. The witness insisted that processors should seek out similar processing efficiencies instead of seeking to raise manufacturing allowances which would lower producer milk prices paid to dairy farmers. The witness claimed that if the blend price is reduced 25 cents per cwt as a result of raising the make allowances, Select, et al. farm revenue would be reduced by $300,000 to $400,000 a year. The witness also added that Select has long term contracts with its buyers that are based on the Class III price. If the make allowances were raised, the witness claimed that Select producers would be unable to recover lost revenue.

A dairy farmer witness appearing on behalf of Continental Dairy Products, Inc. (Continental) testified in opposition to Proposal 1. According to the witness, Continental is a dairy-farmer owned cooperative with 21 producers located in Indiana, Michigan and Ohio. The witness was opposed to increasing make allowances because it would result in lower prices paid to dairy farmers. The witness stressed that farmers have also experienced higher costs for inputs such as energy, fertilizer and labor, and have had to either absorb these costs by becoming more efficient. Like processors, the witness said that dairy farmers similarly have no recourse for recouping cost increases from the marketplace. The witness insisted that instead of reducing producer revenue to pay for increased make allowances, manufacturing plants should seek out efficiencies to lower their processing costs.

A brief submitted on behalf of Select, et al., Continental and the Dairy Producers of New Mexico (DPNM) opposed the adoption of Proposal 1. The brief stated that the DPNM is a trade association of producers located in New Mexico and Texas. Hereinafter, these entities will be referred to as ''Continental, et al.''

The Continental, et al., brief argued that while supporters of Proposal 1

claimed that the 2004 RBCS study was an update of the 1998 study, it was actually a completely different study. The brief stated that the 2004 study differed from the 1998 survey because it surveyed twice as many plants, was designed specifically for the purpose being used as a basis for changing the make allowances and contained cost information for a different set of commodities. The brief claimed that because the 2004 RBCS survey is fundamentally different than the 1998 survey, relying on the 2004 data to update the make allowances is not appropriate.

The Continental, et al., brief also noted the lack of plant profitability information in the RBCS survey. While the CDFA survey results contained information regarding the percentage of plants that produce at costs above or below the average cost, the brief stated that similar information is not available in the RBCS survey. Continental, *et al.*, wrote that plant profitability should be taken into account when determining make allowances or, as a result, the Department could set make allowances at a rate that would guarantee profitability for some inefficient plants at the expense of producer revenue.

The Continental, *et al.*, brief also insisted that the make allowances should not be changed because no consideration was given to changing the yield factors contained in the Class III and Class IV price formulas. The brief claimed that product yields by plants included in the cost surveys are significantly higher than the yield factors contained in the current product price formulas. Continental, *et al.*, was of the opinion that changing make allowances without taking into account product yields could result in manufacturers receiving higher returns and further reduce producer revenue.

The Continental, et al., brief also opposed using an energy cost adjustor in the make allowances. The brief stated that adjusting make allowances by changes in energy costs was not a proposal noticed in the hearing notice. The brief also questioned the accuracy of the proposed method for adjustments on changes in energy costs. The brief noted that such adjustments would make it difficult for handlers and producers to minimize their price risk of monthly changing make allowances.

The Continental, et al., brief stated that supporters for increasing make allowances argued that they have been unable to recoup their higher processing costs from the marketplace because any increase to the price of their finished products is captured by the NASS price survey which, in turn, results in higher raw milk costs. The brief argued that instead of changing the make allowances, proponents should seek to fix what Continental, et al. considers as the root of the problem—the NASS survey. The brief also claimed that over 75 percent of the cheese sold in the United States is not included in the NASS survey and therefore those plants can raise the price of their finished product prices to offset higher manufacturing costs without increasing the cost of raw milk.

The Continental, et al., brief asserted that increasing the make allowances to any of the levels proposed could, on average, reduce the blend price paid to dairy farmers by 19 cents to as much as 59 cents per cwt. The brief stressed that this would cost dairy farmers millions of dollars in lost revenue and would cause many family farms to go out of business. Increasing the make allowances, the brief concluded, would not provide manufacturing plants with an incentive to become more efficient because they their higher costs are financed by lower prices paid to dairy farmers.

The Continental, et al., brief stated that after the past few years of high producer prices, milk prices are declining and predicted that this trend would continue for the next few years. The brief asserted that any further decline in prices paid to dairy farmers would only cause market instability and requested that the proceeding be terminated.

The Continental, et al., brief said that if the Department chose to increase the make allowances, the new make allowances should not apply to the minimum prices for the Southwest order because manufacturing plants regulated by that order are able to manufacture profitably under the current set of make allowances. The brief argued that producers pooled on the Southwest order should not have their revenue decreased because of inefficient plants located in other parts of the country.

A witness appearing on behalf of the National Farmers Union (NFU) testified in opposition to Proposal 1. The witness said that NFU has over 250,000 members nationwide. The witness was of the opinion that increasing make allowances would essentially guarantee manufacturers a profit. The witness was opposed to manufacturers having a guaranteed profit because dairy farmers are not assured of a profitable milk price under the Federal milk order system. The witness testified that the current milk pricing system does not include dairy farmers' costs of production and that the adoption of Proposal 1 would only financially harm dairy farmers. The witness urged the Department to deny Proposal 1 and instead, adopt make allowances that would also take into account dairy farmer costs of production.

A witness appearing on behalf of Family Dairies USA (Family Dairies) testified in opposition to Proposal 1. According to the witness, Family Dairies is a Capper-Volstead cooperative located in Wisconsin with 3,700 dairy farmer-members. The witness testified that while manufacturing costs have increased, dairy farmers are similarly coping with increased production costs and cannot increase the price they receive for their milk.

A witness appearing on behalf of Southeast Milk, Inc. (SMI) testified in opposition to Proposal 1. According to the witness SMI is a Capper-Volstead cooperative that markets milk for approximately 300 dairy farmers located in Florida, Georgia, Alabama and Tennessee. The witness said that SMI sells most of its milk to Class I plants and insisted that if make allowances are increased, their producers' income will needlessly decline even though they sell little milk for manufacturing. According to the witness, SMI producers could collectively lose $6.3 million to $14 million of revenue in a single year if the make allowances are increased. SMI producers do receive over-order premiums but the witness claimed that SMI would be unable to recover any lost revenue through additional premiums. The witness insisted that the number of Southeast and Florida dairy producers has been declining rapidly and the remaining dairy farmers in these regions are already struggling to produce enough local milk just to meet fluid demands. The witness claimed that any reduction in the Class I price would only accelerate the loss of dairy farmers in these areas. The witness also insisted that dairy farmers who supply primarily Class I plants should not have their income reduced by subsidizing the manufacturing market by providing larger make allowances.

A post-hearing brief submitted on behalf of SMI reiterated their opposition increasing make allowances. The brief asserted that the competitive pay price in the Upper Midwest marketing area is above the announced blend price and claimed that if manufacturers are able to pay above the blend price for their raw milk, an increase in the make allowances is unwarranted. The brief also asserted that dairy farmers located in high Class I utilization markets would bear an inequitable loss in revenue if make allowances are increased.

A witness appearing on behalf of Dairy Farmers of America (DFA) and Dairylea Cooperative (DLC) testified in opposition to Proposal 1. The DFA/DLC witness stated that if the Department found it appropriate to update the make allowances, that an energy cost adjuster should be included to ensure that as energy prices change, that make allowance formula would also change.

A post-hearing brief submitted on behalf of DFA/DLC supported updating the make allowances contingent that any changes apply only to the Class III and Class IV price formulas. The brief argued that unlike Class III and Class IV processors, manufacturers of Class I and Class II products have the ability to recoup higher processing costs from the marketplace. The brief stated that if higher make allowances are used in setting Class I and Class II, then prices processors of those products will receive a financial windfall for costs that they do not incur. The brief stressed that this would cause extreme financial harm to dairy farmers nationwide.

A witness appearing on behalf of the Progressive Agriculture Organization, Faithopity Farms, Farm Wives United, Tioga Valley Milk Cooperative, Family Farm Defenders, American Raw Milk Producers Association, Pennsylvania Farmers Union, National Family Farm Coalition and the South Auburn Grange testified in opposition to raising make allowances. The witness testified that dairy farmer income should not be reduced to cover higher process costs of manufacturers of Class III and Class IV products. The witness stressed that dairy farmers have also experienced higher production costs and that dairy farmers cannot raise their price as a means to offset higher costs.

An independent dairy farmer witness appearing on behalf of the Progressive Agriculture Organization, Pennsylvania Farmers Union and the National Family Farm Coalition Dairy subcommittee, testified in opposition to Proposal 1. The witness was opposed to raising make allowances because it will result in lower dairy farmer income. The witness also emphasized that dairy farmers cannot raise their milk price when their costs of production increase. The witness stressed that instead of decreasing farmer income, manufacturers should strive to recoup their costs through the marketplace or by becoming more efficient.

An independent dairy farmer witness, whose milk is pooled on the Northeast order, testified in opposition to increasing make allowances. The witness stated that their farm is burdened with higher production costs and that any reduction in the blend price they receive would injure their farming operation. According to the witness, if higher make allowances are adopted, their farm income would be reduced approximately $3,000 to $5,500 per year. The witness was of the opinion that manufacturers should recover their increased costs from the marketplace and not by reducing the income of dairy farmers who have no milk order provisions by which to recover higher costs.

A second independent dairy farmer whose milk is pooled on the Northeast order testified in opposition to increasing make allowances. The witness was of the opinion that dairy manufacturers should recoup their processing costs from the marketplace or become more efficient to lower their production costs. The witness said that dairy farmers have also faced higher production costs for items such as fuel and health insurance. The witness said that dairy farmers do not have the ability to pass their higher costs on to their customers. The witness estimated that if higher make allowances are adopted, their farm income would be reduced to between $7,500 and $13,000 per year.

A dairy farmer from Tennessee whose milk is pooled on the Southeast order testified in opposition to increasing make allowances. The witness was opposed to increasing the make allowances because it will lower producer revenue. The witness said that the Southeast marketing area has declining dairy farm numbers and any decrease in the revenue they receive would only serve to accelerate the decline.

A post-hearing brief submitted on behalf of the Kentucky Dairy Development Council (KDDC) expressed opposition to increasing the make allowances. According to the brief, KDDC represents approximately 300 dairy farmers located in the State of Kentucky. The brief claimed that if the make allowances are adopted at levels proposed by Agri-Mark, Kentucky dairy farmers would lose an estimated $426,000 to $1.28 million a month. The brief stated that Kentucky milk production has been declining and any decrease in producer revenue would only hasten that decline.

b. The following summary of testimony and post-hearing briefs pertains to the second session of the public hearing held September 14–15, 2006, in Strongsville, Ohio.

A professor from Cornell University testified regarding a research study conducted by the Cornell Program on Dairy Markets and Policy (CPDMP), to assess the cost of processing cheddar cheese, dry whey, butter and nonfat dry milk. The witness did not testify in support of or in opposition to any proposal presented at the hearing. The witness offered a working paper of the CPDMP study that explained the methodology and results.

The CPDMP witness explained that the number of plants surveyed in the study were drawn from the AMS list of Dairy Plants Surveyed and Approved for Grading and a separate plant list maintained by CPDMP. The witness explained that plants eligible to participate in the survey were selected on the basis that they had to produce one of the four commodity products (cheddar cheese, dry whey, NFDM or butter) but the plant also had to produce their product(s) in one or more of the package sizes surveyed by NASS. The witness said that each plant surveyed was asked to provide cost data for a recent 12-month period including fiscal year data. The witness explained that the plants participating in the cost survey were geographically dispersed throughout the country, though none were located in the State of California.

The CPDMP witness testified that a sample of cheese plants was selected by size and represented both cooperatively owned and proprietary plants. Five plants were randomly selected from the largest ten percent of cheese plants by volume and all five plants opted to participate in the study, the witness said. The witness explained other cheese plants were selected randomly; however, only 11 of these cheese plants had submitted complete cost data. The other four plants had either submitted incomplete cost data or had problems with their data and therefore were not included in the study. The witness emphasized that the sample of cheese plants purposely over-represented large sized plants. The witness explained that large plants would have been underrepresented on a cost basis if the survey had relied on a purely random draw of cheese plants.

A total of 12 dry whey plants surveyed were a subset of the cheese plant sample and were all proprietary plants, said the witness. According to the witness, 8 NFDM plants and 10 butter plants were selected by a non-stratified random draw of the population. While all 8 of the NFDM plants selected opted to participate in the study, only 4 butter plants selected opted to participate, noted the witness.

The CPDMP witness described the cost accounting methodology used in the CPDMP study as very similar to the methodology used by CDFA's study of manufacturing costs. There are differences, the witness noted, in that

CPDMP did not have the authority to audit data collected from the plants, that CPDMP did not calculate a current value of assets from schedules of economic depreciation, and that the sample of plants used in the CPDMP study was a less than the total number of plants. The witness added that the manufacturing costs contained in the CPDMP study contain a ROI allowance, but do not include marketing costs. The witness noted that the ROI factor used in the CPDMP study differs from that in the CDFA study. According to the witness, the CDFA data used detailed accounting records and depreciation schedules for plant and equipment while the CPDMP study relied on plant estimates of fair market value for plant and equipment.

The witness concluded that the cost of processing, given in cost per pound of product, for the sample of plants in the CPDMP study was as follows:

	Cheese	Dry whey	NFDM	Butter
Simple Average	$0.2065	$0.2282	$0.1484	$0.1492
Weighted Average	0.1638	0.1941	0.1423	0.1108

The CPDMP witness noted that the study, as well as previous cost of processing studies conducted by CPDMP, indicated that economies of scale are evident across all dairy manufacturing plant types.

The CPDMP witness explained that the 16 cheese plants participating in the study enabled CPDMP to perform a nonlinear regression in a study addendum to make inferences of the cost of processing cheese for the entire survey population of 53 cheese plants. According to the witness, the CPDMP study estimates that the weighted average cost of processing cheese for the 53 cheese plants is $0.2028 per pound. The witness estimated that if the cheese make allowance was set at this level, 82 percent of the volume of cheddar cheese made in the country and 33 percent of the cheese plants in the country would be able to cover their processing costs. The witness explained that the weighted average costs of processing for dry whey, NFDM and butter could not be made because of the small number of plants and not knowing the volume of production.

The CPDMP witness further explained that the nonlinear regression used the manufacturing cost data submitted by the 16 cheese plants to generate a cost curve and cost equation for the 53 plants that comprise the number of cheese plants for the study. According to the witness, the derived cost equation suggests that a plant producing an amount of cheese approaching an infinite number of pounds per year would have an estimated manufacturing cost per pound approaching $0.170028 which represents the lowest calculated cost per pound of cheese produced. On the other hand, a plant producing approximately 683,000 pounds of cheese per year would have a manufacturing cost per pound approaching $1.170028 and represents the highest calculated cost per pound of cheese produced. The witness reported that, based on the regression analysis, 87 percent of the variability observed in the cost of making cheese can be explained by the volume of cheese production.

The CPDMP witness also testified from another study addendum that during the time period that manufacturing plants offered cost data, the cost of energy had increased significantly. The witness attempted to index the cost of energy using Producer Price Indexes for natural gas and industrial electric from the Bureau of Labor Statistics and from this adjust manufacturing cost information to capture energy cost increases. According to the witness, to index the costs of processing to 2005 energy costs, the following amounts would need to be added to the make allowances—$0.0034 for cheese, $0.0070 for NFDM, $0.0076 for dry whey and $0.0029 for butter.

A dairy farmer appearing on behalf of Select, et al., testified in opposition to changing the make allowances. According to the witness, Continental Milk Producers, Inc. and Dairy Producers of New Mexico endorsed the CPDMP witness's testimony. The witness asserted that the weighted average costs contained in the CPDMP study were very similar (with the exception of dry whey) to the make allowances used in the current Class III and Class IV product price formulas. From this, the witness concluded that the current make allowances for cheese, NFDM and butter should not be increased. In the witness's opinion, if the Department chooses to change the dry whey make allowance, it should be based on the NFDM make allowance plus an energy cost adjustment to account for the additional energy needed to produce dry whey.

The Select, et al., witness testified that there are four cheese plants located in the Southwest region of the country and asserted that all but one of those plants are able to operate profitably under the current make allowances. The witness testified that the cheese plants in the Southwest have taken many steps to lower their manufacturing costs. The witness was of the opinion that other cheese plants need to also take steps to improve their efficiency instead of seeking to increase the make allowances to cover their costs. The witness asserted that some producers in the Southwest region are receiving $1.50 below the Class III price for their milk because of the abundant supply of milk in the region and the higher cost of transporting milk to market. The witness estimated that if make allowances were increased such that the blend price to farmers was lowered by $0.50 per cwt, dairy farmers in the Southwest region would lose between $3 to $5 million dollars per month.

A post-hearing brief submitted on behalf of Select, et al., reiterated their opposition to increasing make allowances and appealed to terminate the proceeding. Select, et al., was of the opinion that the CPDMP study is the only valid data that the Department should consider in whether or not make allowances should be changed. They asserted that the CPDMP study weighted average make allowances are so similar to the current make allowances that making any changes would be unjustified. If the Department determines that make allowances should be changed, Select, et al., proposed using the CPDMP study weighted average costs for butter, NFDM and cheese, but that the NFDM make allowance for dry whey be adjusted for additional energy costs. They also opposed the inclusion of an energy adjustor or the consideration of plant balancing costs in setting new make allowances.

Select, et al., wrote that the adjusted NFDM weighted average of $0.1423 offered by the CPDMP witness is not reliable because all of the CDMP study data was not audited. Select, et al., also elaborated that the CPDMP weighted average cost for dry whey is not reliable because of the small number of plants represented in the study and because most industry participants testified that the dry whey make allowance should be set at the NFDM make allowance plus an adjustment for additional energy costs. Additionally, the brief argued that

the CPDMP cost estimate derived for the 53 cheese plants should not be used because the estimates for butter, NFDM and dry whey could not also be derived. Select, et al., wrote that the data used to derive the cheese manufacturing cost estimate is not current because it does not contain 2 new large cheese plants in the southwest region that produce in excess of 10 percent of the cheese volume represented by the total 53 cheese plants of the study.

Select, et al., also argued that the Department should not make any changes to the make allowances without first considering changes to the other parts of the price formulas, specifically factors for shrinkage and product yields.

The Select, et al., brief characterized the underlying problem facing manufacturers is the ''circularity'' of price changes that are reflected in the NASS price survey. If manufacturers are able to recover their higher cost from the marketplace by increasing the price of the product, the NASS survey, in turn, reflects these higher prices and the formula, in turn, will result in a higher value for raw milk. They were of the opinion that if the circularity problem is addressed by the Department, manufacturers will be able to recoup their additional costs in the marketplace thus negating any need for raising the make allowances and lowering producer revenue.

The Select, et al., brief claimed that the cheese manufacturers seeking higher make allowances account for less than 20 percent of the producer milk pooled on the Federal Order system. The brief also stated that there is no evidence to establish a measure of efficiency for these manufacturers or if there are other factors affecting or inherent in their businesses which cause them to be unable to produce cheese at or below the current make allowance. The brief also stressed that although cheese manufacturers say they are unable to produce cheese at the current make allowances, one can not simultaneously conclude if a plant is not profitable because the hearing record has no data regarding product selling prices.

A witness appearing on behalf of NMPF testified in support of increasing the make allowances and incorporating a monthly energy cost adjustor. The NMPF witness reiterated testimony given at the first public hearing regarding that the volatility of energy costs make an energy adjustor necessary to ensure that energy cost swings are reflected in the make allowances. The witness stated that energy costs have fallen since January 2006 and surmised that if new fixed make allowances had been implemented in late 2005, they would now be too high manufacturing costs have decreased due to lower energy prices. The witness warned that if the Department recommends a change in the make allowances without containing a monthly energy cost adjustor, the new make allowances could become outdated before they are implemented.

A post-hearing brief submitted on behalf of NMPF reiterated their proposal for the inclusion of a monthly energy cost adjustor in the updated make allowances. NMPF wrote that the inclusion of a monthly energy cost adjustor would be the only way to ensure that make allowances do not quickly become outdated due to fluctuating energy costs.

The Secretary of Agriculture for the Commonwealth of Pennsylvania (Secretary) testified in opposition to increasing the make allowances. The Secretary claimed that within the past 10 years Pennsylvania has lost over 2,000 dairy farms and 75,000 dairy cows because of low milk prices. The Secretary was of the opinion that any change in the make allowances that would result in a lower milk price would hurt dairy farmers in Pennsylvania and would further cause a decline in the number of dairy farmers and cows.

An associate professor from Penn State University (PSU) testified regarding a study conducted by the witness to estimate the impacts of changing make allowances on class prices, blend prices, and 2006 and 2007 Federal order pool values. The witness did not testify either in support of or in opposition to any proposal at the hearing and did not testify as a representative of PSU. The witness explained the study relied on the manufacturing cost estimates of the CPDMP study to analyze six different make allowance scenarios. According to the witness, the weighted average make allowances contained in the CPDMP study were very similar to the make allowances used in the current Class III and Class IV product price formulas with the exception of dry whey.

The witness testified that of the six different make allowance scenarios analyzed in the witness' study only the scenario relying on the weighted average manufacturing cost of the low cost plants from the CPDMP study resulted in higher estimated uniform prices to producers. The remaining five scenarios resulted in lower estimated uniform prices, ranging from $1.26 per cwt lower (using the weighted average manufacturing costs of the high cost plants in the CPDMP study) to $0.02 per cwt lower using weighted average manufacturing costs of all plants in the CPDMP study for butter, cheese, NFDM, and the dry whey weighted average manufacturing costs plus $0.0256.

The witness was of the opinion that the current make allowances adequately cover manufacturing costs and allow processors to expand their plant capacities and production levels. The witness added that with current low prices, any increase in make allowances would financially harm dairy farmers.

A post-hearing brief submitted on behalf of NCI supported using the CPDMP study as a basis for calculating new make allowances. NCI was of the opinion that the CPDMP study is the only publicly available data that accurately represents costs of processing for manufacturing plants located outside California. NCI wrote that a marketing cost factor of $0.0015 per pound and an adjustment for the higher energy cost observed in 2005 should be included in any new make allowances proposed by the Department.

NCI was also of the opinion that the cheese manufacturing cost estimate of $0.2028 per pound for all 53 cheese plants should be used as the basis for determining the cheese make allowance. NCI asserted that the stratified cheese plant sample used in the CPDMP survey was weighted heavily towards large, low cost plants and as a result the weighted average manufacturing cost is not representative of the cost of making cheese throughout the country. Because CPDMP was unable to derive manufacturing cost estimates for butter, NDFM and dry whey, as CPDMP had for cheese, NCI wrote that relying on the manufacturing costs of the surveyed plants weighted average of those products as a basis for new make allowances. The NCI brief offered that make allowances be set no lower than the following: cheese—$0.2077 per pound, dry whey—$0.2032 per pound, butter—$0.1152 per pound and NFDM—$0.1508 per pound.

Post-hearing briefs submitted separately by Lactalis, Kraft, Grande, Saputo and Glanbia also supported the use of the CPDMP study as the basis for setting new make allowances. Each company expressed the opinion that any make allowances proposed by the Department should include a marketing cost factor of $0.0015 per pound and be adjusted for 2005 energy costs. They argued that the manufacturing cost estimate for the 53 cheese plants should be used as the basis for determining a new cheese make allowance because it accounts for the entire population of cheese plants and not solely the surveyed plants that are weighted towards large, low cost plants.

According to their briefs, the lack of plant data for butter, NFDM and dry whey, each of the companies supported the use of the CPDMP surveyed plant's weighted average manufacturing costs as the starting point for determining make allowances.

A post-hearing brief submitted on behalf of Leprino supported the use of the CPDMP study in determining make allowances for cheese and dry whey. Leprino was of the opinion that the CPDMP study accurately reflects the cheese manufacturing costs of both proprietary and cooperative-owned plants. Beginning with the CPDMP cheese manufacturing cost estimate of $0.2028 per pound, adding a $0.0034 per pound to adjust for 2005 energy costs, and a $0.0015 marking cost factor, Leprino proposed that the cheese make allowance be set no lower than $0.2077 per pound. Leprino was of the opinion that the CPDMP cheese sample-weighted average manufacturing cost should not be used because it over-represents large, low-cost cheese manufacturing plants.

Leprino was of the opinion that the dry whey make allowance should be set no lower than $0.2032 per pound. Leprino computed this make allowance by starting with the CPDMP dry whey sample weighted average cost of $0.1941 per pound, adding a $0.0076 to adjust for 2005 energy costs and a $0.0015 marketing cost factor. Leprino further argued that the CPDMP dry whey weighted average manufacturing cost is most likely skewed in over representing large, low-cost plants because the dry whey plants surveyed is a subset of the cheese plant survey which is skewed towards large low-cost plants. Leprino asserted that the Department would be justified in setting the dry whey make allowance higher than $0.2032 per pound because the CPDMP study does not provide dry whey cost estimates for all dry whey plants.

A post-hearing brief submitted on behalf of Agri-Mark, et al., offered varying combinations of the CDFA, RBCS and CPCMP study results to determine new make allowances. They emphasized that make allowances should be set at a level that would cover manufacturing costs for most plants. They are was of the opinion that the Department should consider the strengths and weaknesses of each manufacturing cost survey to determine what information should be relied upon in establishing new make allowances. They wrote that any new make allowances should be updated to reflect higher 2005 energy costs and that an adjustment factor of $0.0015 per pound be added to reflect marketing costs.

Although the CPDMP cheese plant survey is weighted heavily towards large, low-cost plants, Agri-Mark, et al., wrote that this information can be relied upon to make inferences about all cheese plants and is the best data available. By relying on the CPDMP survey of the average annual plant volume by region, and the manufacturing cost equation generated to determine manufacturing costs of all plants, Agri-Mark, et al., inferred that the average manufacturing cost per pound of cheese in various regions of the country should be varied and be as follows: Eastern—$0.2920, Upper Midwest—$0.2100 and Western—$0.1860. According to their brief, it was concluded that if the CPDMP surveyed plant's average manufacturing cost for cheese of $0.1638 is adopted, all average cost and higher than average cost plants in these regions would not be able to recover their manufacturing costs. The brief expressed the opinion that the manufacturing cost estimate for all cheese plants should be a starting point for updating the cheese make allowance. After incorporating a $0.0015 marketing cost factor and adjusting for 2005 energy costs, Agri-mark, et al., offered that the cheese make allowance be set no lower than $0.2077 per pound.

Agri-mark, et al., was of the opinion that because the CPDMP dry whey plants surveyed are a subset of the cheese plants surveyed, it would be appropriate to use the CPDMP sample average dry whey manufacturing cost of surveyed plants as a starting point for setting a new dry whey make allowance because as with the cheese plants surveyed, the dry whey plant surveys are also heavily weighted toward large, low-cost plants. The brief claimed that many small cheese plants incur transportation and loading costs for delivering dry whey to other plants for processing. The brief estimated this cost at $0.0249 per pound and that it be included in the manufacturing cost of producing dry whey. Including an adjustment factor to reflect higher energy costs, the brief offered that a new dry whey make allowance be set no lower than $0.2281 per pound.

The Agri-Mark, et al., brief said that using the CPDMP study for determining a butter make allowance would not be appropriate because the sample of the 4 plants surveyed only represent approximately 13 percent of the butter volume surveyed by NASS. They wrote also that the surveyed butter plants manufacturing costs are skewed because the 4 plants surveyed account for 75 percent of California's butter production. Instead, the brief offered using the weighted average manufacturing costs of the RBCS and CDFA study (after adjusting for inclusions of a marketing cost factor and a ROI factor to the RBCS study). After adjusting for higher 2005 energy costs, the brief offered that the butter make allowance be set no lower than $0.1554 per pound.

The Agri-Mark, et al., brief also argued that the CPDMP study should not be relied upon for determining a new NFDM make allowance because it also over-represents large, low-cost plants. The brief explained that because NFDM is a byproduct of the butter making process, the same method for computing the butter make allowance also should be applied in determining a make allowance for NFDM. Specifically, the brief offered that the CDFA medium-cost NFDM sub-group should be weighted with the RBCS NFDM weighted average manufacturing cost. After including an adjustment for higher 2005 energy costs and a marketing cost factor, the brief offered that the NFDM make allowance be set no lower than $0.1848 per pound.

The Agri-Mark, et al., brief maintained that lower producer prices resulting from higher make allowances should not be a factor in determining new make allowance levels. The brief expressed the opinion that if processing plants continue to close because they are unable to recoup their manufacturing costs, plants will cease operations and that lost market revenues would far outweigh producer revenue losses due to higher make allowances. In this regard, the brief stressed that the purpose of the Federal milk orders are to set minimum milk prices and other government programs such as the Price Support Program and the Milk Income Loss Program are designed to protect producer prices.

A brief submitted on behalf of O–AT–KA and Upstate Farms Cooperative, Inc. (O–AT–KA, et al.) expressed support for the brief submitted by Agri-Mark for the reconvened hearing. O–AT–KA, et al., was of the opinion that the CPDMP plants surveyed for butter and NFDM is too small and biased toward large, low-cost plants and do not accurately reflect the manufacturing costs of plants not surveyed throughout the country. The brief maintains that because not all surveyed plants had been given the opportunity to review their submitted data that cost errors, similar to those found by a NFDM plant that did review their submitted costs, could be contained in the study.

A post-hearing brief submitted on behalf of MMPA opposed the use of the CPDMP study in calculating new make allowances. MMPA was of the opinion

that some of the surveyed plants had difficulty accurately completing the survey because it was administered electronically and not by submission of cost information on paper. Therefore, MMPA offered that the study results may not accurately reflect current manufacturing costs. The brief said that new make allowances should be calculated relying on the RBCS and CDFA surveys and supported the specific make allowances offered by Agri-Mark. The brief expressed continued support to include a monthly energy cost adjustor as proposed by NMPF.

A post-hearing brief submitted on behalf of DFA proposed that only minimal adjustments be made to increase the current make allowances because of the impact higher make allowances have on reducing producer revenue. DFA wrote that because only a portion of manufactured dairy products are surveyed by NASS, those other plants producing products not surveyed by NASS have the ability to pass on higher processing costs to their customers. Their brief indicated support for a monthly energy cost adjustor.

A post-hearing brief submitted on behalf of Dairylea argued that instead of increasing make allowances, the Department should hold a hearing to address the price circularity issue inherent in the NASS price survey. In relating production cost increases for dairy farmers, Dairylea wrote that farm input costs are higher, but dairy farmers are not able to receive regulatory relief similar to what processors are seeking through higher make allowances. Dairylea estimated that the average cost of producing milk has increased by at least $1.00 per cwt since 2002 and 2003 and that during the middle of 2006 prices to dairy farmers declined approximately $2.00 per cwt.

Dairylea was of the opinion that the Federal milk order system was created to improve milk prices to farmers and to protect the viability of dairy farms. Dairylea argued that the law providing for milk orders does not support the lowering of blend prices to producers by the use of higher make allowances without simultaneously considering higher farm input costs borne by dairy farmers. Dairylea also was of the opinion that Class I and II prices should not be lowered due to higher make allowances for the Class III and Class IV product pricing formulas.

If the Department concludes that make allowances should be increased, Dairylea proposed that an increase should be reduced by 52 percent (to be reflective of the 2005 Federal order system average Class I and Class II utilization); and an emergency hearing be held to consider if Class I and Class II prices should not change resulting from changes to the make allowances. Only after such implementation preventing changes to Class I and Class II prices, the new make allowances should be restored to 100 percent of recommended increases.

A post-hearing brief submitted on behalf of Family Dairies opposed increasing all current make allowances. They contended that dairy farmers also have higher production costs but do not have the ability to appeal to the Government for regulatory relief. They asserted that if make allowances are increased, dairy farmer income will be reduced by $300 million in the first year. They also noted while manufacturers claim they have incurred extremely high energy costs, the cost of natural gas has declined significantly from its high in 2005.

Discussion and Findings

Discussion

At issue in this proceeding is whether the make allowance factors of the product price formulas used in setting Class III and Class IV milk prices should be changed and how they should be changed. In the context of this proceeding, make allowances reflect the cost that manufacturers incur in processing raw milk into cheese, butter, NFDM and dry whey. The Class III and Class IV milk prices are also used to compute component prices for butterfat, protein, nonfat solids, and other solids.[4]

As proposed by Agri-Mark, et al., revised make allowances would rely on the recent 2004 CDFA survey and the 2004 RBCS survey. The revised make allowances would be established by using the same methodology (a weighted average of the RBCS and CDFA manufacturing costs) used in establishing current make allowances (67 FR 67906, published November 7, 2002, and Final Rule, 68 FR 7063, published February 12, 2003). Agri-Mark, et al., contended that by substituting the original cost data with the most current data available from the 2004 RBCS and CDFA surveys, make allowances would reflect cost increases that manufacturers incur but cannot recover from the marketplace. Additionally, Agri-Mark, et al., proposed that a make allowance for dry whey would be based on the cost of manufacturing NFDM.

The Agri-Mark, et al., proposal was modified by NMPF to adjust Class III and Class IV pricing formulas by including a monthly energy adjustment based on monthly changes in the prices of industrial electricity and industrial natural gas. The monthly energy adjustments would be calculated as percentage changes in current month prices for industrial electricity and natural gas components from the 2004 Producer Price Index (PPI) for natural gas and electricity. The PPIs for natural gas and electricity items are published monthly by the U.S. Department of Labor's Bureau of Labor Statistics (*www.bls.gov.*) A separate modification offered by Agri-Mark, et al., would similarly account for changes in electricity and natural gas prices but do so on an annual basis. While the issues concerning how volatile input costs should be handled in the product price formulas have been raised in these modifications, the scope of this proceeding is limited to considering updating the costs associated with make allowances. In this regard, the broader consideration of using indices in accounting for energy price fluctuations would be more appropriately considered as part of a separate rulemaking to consider all aspects of the Class III and Class IV product price formulas.

Opponents to increasing make allowances include independent dairy farmers from the Northeast and Appalachian marketing areas, and cooperatives representing a significant volume of the milk marketed via Federal orders—DFA, Dairylea, SMI, Family Dairies, Select, Continental, Lone Star, and Zia. These cooperatives view increasing make allowances as a benefit for regulated handlers at the expense of dairy farmers and assert that there is no industry consensus to support increasing make allowances. It is notable that DFA is an owner and operator of manufacturing plants that produce cheese, dry whey, and NFDM. Select, a cooperative that is a part owner and supplier of two major cheese plants in the southwestern U.S., testified that their plants do not require increased make allowances to operate successfully. DFA, Dairylea, and SMI, also opposed increasing make allowances because doing so would result in lower Class I and Class II prices and lower dairy farmer income.

Independent dairy farmers who pool their milk on the Northeast and Appalachian orders oppose increasing make allowances under any circumstances. These dairy farmers who testified are of the opinion that increasing make allowances will lower milk prices received by dairy farmers who also are experiencing similar increases in their operating costs for

[4] Other solids are defined as nonfat solids less protein.

energy and other inputs. SMI similarly argues that dairy farmers who supply the high Class I utilization markets of the Southeast and Florida milk marketing areas will needlessly suffer reduced income. They argue that Class III and Class IV milk costs are essentially unrelated to their businesses as suppliers of milk for fluid uses.

Continental and Select oppose increasing make allowances without also considering potential changes in yield factors for cheese, NFDM, and dry whey that are an important part of the Class III and Class IV product pricing formulas. They argue that failure to simultaneously consider higher yields and productivity changes would essentially be the same as overstating manufacturing costs and would result in a financial windfall for the most efficient manufacturing plants. They also argue that if manufacturers are able to pay premiums for producer milk, then existing make allowances should be considered adequate in accounting for all manufacturing costs. This argument is countered by proponents who note that paying premiums is necessary to compete with Class I handlers for a milk supply. Proponents argue that paying such premiums requires make allowances be increased to recover these additional milk costs.

The argument that higher yield factors will offset lower Class III and Class IV milk prices and producer blend prices resulting from increased make allowances may be important. However, this proceeding was limited to make allowance factors only and as a result the record evidence on yield factors is limited. Consequently, yield factors may need to be addressed in the broader, more inclusive Class III and Class IV product price formula proceeding. Likewise, consideration of farm-to-plant loss as a component of the product price formulas may need to be considered but only in a separate proceeding of broader scope that considers the Class III and Class IV price formulas in their entirety. Most importantly, the scope of this proceeding has been limited to consideration of the cost elements comprising make allowances.

Three manufacturing cost surveys were considered in this proceeding to determine if make allowances for cheese, dry whey, nonfat dry milk, and butter should be changed and by what amounts. The CDFA 2004 manufacturing cost survey collects and reports the costs of producing these commodities for nearly all plants located in California. The RBCS survey of dairy manufacturing costs collects and reports a summary of the plant costs for certain plants of participating cooperatives located in areas regulated by the Federal milk order program. The CPDMP manufacturing cost study examines the processing costs of plants selectively sampled to be reflective of costs for plants of various sizes that are located in areas regulated by Federal milk marketing orders (FMMOs.)

The CDFA and RBCS surveys have been conducted for more than 20 years. The RBCS survey was designed and implemented to allow participating cooperatives to compare their operating costs to an average cost basis. It does not provide a comprehensive view of manufacturing costs across plants in the Federal order system nor exclusively relied upon to establish manufacturing allowances. The RBCS survey was used in combination with the CDFA cost survey results to establish current make allowances because at the time, no other cost information was available from which to assess manufacturing costs for FMMO plants.

The CPDMP study is based on a voluntary structured survey of participating manufacturing plants selected to represent a cross sectional view of manufacturing costs for cheese, dry whey, butter, and NFDM outside of California. The CPDMP study is a first time survey and study of plant manufacturing costs designed to be relied upon in establishing make allowances.

The CDFA survey collects and reports plant manufacturing costs from audited financial records provided voluntarily to establish aggregated costs by commodity type for plants located in California. This survey is a continuation of annual surveys whose purpose and design includes setting of manufacturing allowances by the State of California for their manufactured dairy products. The CDFA methodology is comprehensive, representing manufacturing cost data for almost all plants located in California and organizing that data into the well-defined categories that include high and low (and in some cases medium) cost plants. Total plant manufacturing cost categories include: processing labor costs, processing non-labor costs, packaging costs, other ingredient costs, general and administrative costs, and a return on investment (ROI) cost element. It includes data for both cooperative-owned and proprietary plants.

A total cost for each industry category (e.g., cheese) in the CDFA survey is reported as a weighted average for each of these cost elements by high or low (and medium for NFDM) cost plant sizes and a total weighted average for all plants. Where the collection and reporting of plant manufacturing costs for CDFA are in commodity categories for which five or fewer plants are surveyed, separate defined high and low cost plant calculations are omitted with only a weighted average manufacturing cost reported. This was the case for dry whey in the January 12, 2006, CDFA publication of costs and make allowances that are based on 2004 cost survey data. Because the CDFA survey comprehensively reports manufacturing costs for nearly all plants located in California producing the four commodities, there is no need to estimate costs of all plants from the cost data of surveyed plants.

The CDFA data specifically establishes that economies of scale are evident for California processing plants for all four commodity types. The data demonstrate that plant size is a major determinant of plant costs, with larger plants having significantly lower per unit costs of processing than smaller plants. A major difference between the RBCS survey and both the CDFA survey and the CPDMP study is that the RBCS survey does not demonstrate that larger plants have lower per unit costs when compared with smaller plants.

Demonstrable economies of scale as shown in the CDFA survey for California manufacturing plants and by the CPDMP study for manufacturing plants located outside of California meet the expectations of economic theory and provide evidence that the CDFA and CPDMP survey results are reasonable and comparable. The fact that the RBCS survey does not reveal plant size as an important determinant of processing costs supports concluding that the RBCS survey does not reasonably reflect costs across the four commodity plant types for plants located outside California. This also provides a basis to conclude that the RBCS survey costs are not comparable to costs measured and reported by the CDFA survey and CPDMP study. In addition, the RBCS survey costs do not conform to reasonable expectations of economic theory that predicts declining average costs where production volume increases directly with plant size.

The CDFA plant cost data, considered in isolation, have somewhat limited utility for considering manufacturing costs for plants located in all FMMO areas because all of the plants are located in California. This comprehensive collection and reporting of manufacturing costs includes costs experienced by plants in California for processing non-labor, processing labor, and packaging categories that do not necessarily reflect costs experienced by manufacturing plants located beyond

California. Because of the comprehensiveness of CDFA's coverage and California's importance to national dairy markets and dairy product manufacturing, the CDFA survey of plant manufacturing costs provides an important reference for considering and calibrating the costs of similarly-sized and operated plants located outside of California. For example, record evidence shows that California's NFDM production can account for more than half of all U.S. NFDM production.

According to the record, the RBCS survey is based on data provided on a voluntary basis by participating cooperatives but not audited as are CDFA survey data. The RBCS survey does not include manufacturing cost information from proprietary plants. The RBCS survey released in 2006 contained manufacturing costs for producing condensed and dry whey for the first time in the 20-year presentation of the manufacturing cost survey.

Other cost comparability differences between the three surveys include data on handling costs associated with dry whey and methodology differences in defining and establishing appropriate manufacturing costs for dry whey. The differences in costs collected and allocated are so significant between the CDFA and RBCS surveys that the proponents for increasing make allowances concluded that the dry whey manufacturing costs from either survey should not be relied on to establish a make allowance. In the CDFA survey, dry whey drying costs may be unreasonably high because California has only three dry whey processing plants where high cost plants appear to skew the costs dramatically. Alternatively, the CPDMP study reports a relatively large sample of 12 plants that provides a more reasonable estimate of dry whey processing costs for plants outside California.

The record reveals that balancing functions and balancing costs differ between California and non-California butter and NFDM plants contained in the CPDMP study and the RBCS cost survey. Plants producing butter and NFDM products in California that perform balancing functions are not explicitly identified as having disparate costs due to balancing compared to other similarly situated plants in California that do not perform market balancing. The CPDMP study does not explicitly allocate balancing costs either but the RBCS survey is largely represented by balancing plants. The CPDMP study noted that seasonal fluctuations in utilizing plant capacity affects costs, but these costs are not allocated separately as ''balancing cost'' line items. In addition, the cost of fuels (specifically natural gas and electricity) is not clearly represented in the RBCS survey compared with the CPDMP study or the CDFA survey. Record evidence reveals that an unknown portion of the RBCS fuels cost data is combined with water and sewer costs and not allocated separately. Accordingly, the record does not support concluding that the cost of fuels as reported in the RBCS survey reasonably represents the costs of fuels experienced by manufacturing plants.

The CPDMP study and the RBCS survey differ in how cost data was collected and verified. The CPDMP study for example, relied upon electronic data entry from a computerized data collection system that aggregated and produced reports detailing the cost information. RBCS collected plant costs through a mail-in survey form that was reviewed and aggregated by the RBCS coordinator. CPDMP followed its data collection with actual plant visits designed to give the researcher context within which to consider the reasonableness of data collected and cost allocations for each plant were surveyed. The CPDMP study, while not providing audited data, does provide improvement in data collection and data verification.

A comparison of the CPDMP study to the CDFA cost survey data does illustrate significant differences but the data are more similar than is a comparison of CDFA's survey data with the RBCS survey data. The CPDMP survey does not include dairy manufacturing plants located in California. It uses a cost accounting reporting format that is very similar to that used by CDFA. The record shows that the CPDMP survey differs from CDFA's in that CPDMP did not have audit authority to verify records and only a fraction of manufacturing plants outside of California participated in the survey. While CDFA's data represents the manufacturing costs of producing dairy products for almost all plants in California, the record indicates that the CPDMP study sampled the costs of 16 cheese plants, 12 dry whey plants, 8 NFDM plants, and 4 butter plants. However, unlike the RBCS survey, the CPDMP study data includes manufacturing costs of both proprietary and cooperative-owned plants for cheese and dry whey, demonstrates evidence of economies of scale, and better allocates fuel costs.

The CPDMP study presents the weighted average manufacturing costs for high and low cost plants in each of the four commodity product categories, as well as weighted average costs for high cost and low cost plants, in a format very similar to CDFA. The CPDMP study of surveyed plants consists of eight high cost and eight low cost cheddar cheese plants, six low cost and six high cost dry whey processing plants, four high cost and four low cost NFDM plants, and four butter plants. High and low cost plant categories could not be reported for the small sample of butter plants without risking disclosure of confidential business information of individual plants.

The CPDMP study sample of cheese plants is not a random sample. It is a *stratified* random sample where randomness only applies to strata (size related groupings) of the surveyed plants. The sample universe for cheese plants include only plants that chose to participate in the survey and represent processing volumes that fit the cross-sectional sample design. For cheese, a sample of 20 plants was planned but only 16 plants participated, with 5 plants from the largest plant size, 6 plants from medium sized plants and 5 plants representing smaller cheese plants. This sample design was intentionally biased to over-represent large, lower cost plants. The record shows that large plant costs otherwise would have been seriously underrepresented if the survey had relied on a truly random selection of cheese plants. Random selection of plants from the total number of plants that produce cheddar cheese would have over-represented small plants and been ''size-biased'' downward because of the relatively large number of small scale plants producing cheddar cheese outside of California. While the plants selected for inclusion in the survey changes the applicability of statistical methods, the record supports concluding that this stratified selection of cheese plants, according to size, is reasonable for cost data collection because record evidence shows that 48 percent of all American cheese produced outside of California is produced by these large, low-cost plants. The CPDMP survey design sought an additional four plants from the smaller-plant category but plants of that size did not participate in a manner meeting the survey time requirements.

Importantly, 7 of 16 cheese plants that participated in the CPDMP survey were proprietary plants and these plants also have an accompanying dry whey processing plant represented in the survey. Thus, 7 of the 12 dry whey plants for which data is reported in the CPDMP study are proprietary plants. Unlike the RBCS survey, the inclusion of proprietary plants in the CPDMP study more accurately represents cheese and dry whey manufacturing costs for

plants outside of California because large proprietary plants represent a preponderance of cheese volumes produced in all locations.

The record reveals that the CDFA, CPDMP, and RBCS surveys do not include a marketing cost recovery factor. However, record evidence provided by proponents indicates that a marketing factor is appropriate to account for sales costs incurred as part of the manufacturing process. The record supports concluding that a marketing cost recovery factor, as contained in the existing make allowances, should be continued to account for sales costs at processing plants. A fixed factor of $0.0015 will apply identically to the make allowances for cheese, dry whey, NFDM, and butter.

The methods and means used by CDFA and CPDMP cost data differ in accounting for ROI. CDFA uses detailed accounting records and depreciation schedules to compute a ROI cost factor for plants and equipment. The CPDMP study relies on plant estimates of the fair market value for plants and equipment used in product processing for its ROI estimate. From the record evidence it is reasonable to conclude that an ROI cost factor should be part of all make allowances even though the ROI value for each of the four commodity categories in the CPDMP study is different than the values included in the CDFA survey. The RBCS cost survey does not include a ROI cost category.

A reasonable conclusion finds that the CPDMP survey provides more comprehensive information on the cost of processing by manufacturing plants in the Federal milk order program than does the RBCS survey. The fact that economies of scale are evident in the CPDMP study is a marked improvement which can be used to support using these costs of processing dairy products over the RBCS survey costs. The inclusion of proprietary plant manufacturing costs, representing a preponderance of cheese processor volume outside of California, provides broader and improved information on the costs of processing because the RBCS survey is limited by design and purpose to survey costs of cooperative-owned plants. The CPDMP study was designed, in part, to consider the costs that should be relied upon in establishing make allowances used in Federal order product price formulas.

The format that the cost data is reported by the CPDMP study enables more direct comparisons with the CDFA survey than does the RBCS survey. The enhanced verification of plant manufacturing costs and cost allocations in the CPDMP study represents a significant improvement to the RBCS cost survey. The costs attributable to ROI, despite differences between the CPDMP study and CDFA's survey, is another improvement because this factor is not included in the RBCS survey. The record therefore supports finding that the CPDMP study is preferred to the RBCS survey for the purpose of determining make allowances for cheese, dry whey, NFDM and butter.

While CPDMP's study provides improved manufacturing cost data for plants in the Federal milk order program, combining it with the additional information available in the CDFA survey establishes a superior set of data on which to determine revised make allowances. Specifically, this tentative final decision finds agreement with the proponents of Proposal 1 that combining the CDFA survey with costs representative of Federal order manufacturing costs for cheese, NFDM, and butter (except dry whey) is the most reasonable approach for determining changes to the make allowances. CDFA survey data should be combined with the CPDMP study results because California's production volumes of cheese, dry whey, NFDM and butter are of such national significance it would be unreasonable to ignore California plant's manufacturing costs in the Class III and Class IV product price formulas.

CPDMP's data gathering was designed to collect average manufacturing costs from groups of dairy manufacturing plants so that representative average cost estimates could be used in developing make allowances. Butter manufacturing costs were estimated from 4 plants. NFDM costs were estimated from 8 plants reporting average costs for 4 high cost and 4 low cost plants. In the case of cheese, CPDMP used regression techniques to derive an average manufacturing cost that could be used to estimate the costs of cheese plants that were not surveyed. The record does not support a finding for using the estimation results reported by CPDMP that proponents for increasing make allowances have based their arguments because the CPDMP results are based on the estimation of an equation which generates an estimated cost curve based on the cost survey of 16 cheese plants.

CPDMP's estimated equation coupled with cheese production volume estimates from 53 plants yields a low manufacturing cost of $0.17 per pound and a high manufacturing cost of $1.17 per pound. The estimated low cost of $0.17 per pound is higher than the $0.1459 per pound average of the 8 low cost-plants of the study sample. Using the equation and the 53 plants' volumes yields a weighted average manufacturing cost of $0.2028 per pound which is 94.7 percent of the $0.2140 per pound average manufacturing cost of high cost cheese plants from the plant sample, and 23.8 percent higher than the weighted average cost of $0.1638 per pound for the survey sample of plants. These comparisons raise questions about the representativeness of the results of this simple regression analysis. However, the 16 plant sample observations are sufficient for estimating a representative average manufacturing cost for plants in both the high cost and low cost strata, and for estimating a weighted average cost across all sampled plants.

It is useful to consider the sample weighted average cost of $0.1638 per pound in terms of the 8 plant high-cost average of $0.2140 per pound and 8 plant low-cost average of $0.1459 per pound. The low-cost and high-cost production volume shares as provided in the record show about 74 percent of production volume is produced at the low average cost of $0.1459 per pound and about 26 percent of the volume is produced at the higher average cost of $0.2140 per pound. Based on the shape of the curve represented in the record, it appears that 74 percent is a conservative estimate of low-cost production volume.

In their post-hearing briefs proponents for raising the cheese make allowance seek to use this estimation as justification for increasing it to $0.2028 per pound or higher. Based on the preceding analysis, increasing the cheese make allowance from the current $0.1650 per pound to $0.2028 per pound is not reasonable.

Even if the methodology used to calculate the estimated make allowance of $0.2028 per pound of cheese was statistically acceptable, the Department would not use it as the new make allowance for cheese. The use of different methodologies to establish make allowances for different products likely would result in unintended consequences that could distort the competitive situation between cheese plants and butter-NFDM plants. CPDMP did not have similar population data available to do comparable regression analyses for butter, NFDM and dry whey. For cheese, the regression methodology resulted in a make allowance estimate that was $0.039 per pound higher than the weighted average cost of the sample. It is possible that if the regression methodology could be used for butter, NFDM and dry whey that estimated average make allowances

for those products also would be higher than the weighted average costs from the plant samples. Therefore, if comparable increases in make allowances would result for the other products, the use of this different methodology only for cheese could give cheese plants a $0.39 per cwt of milk advantage as it competes for a supply of milk.

The CPDMP study contains an addendum concerning the cost of natural gas and electricity in dairy manufacturing. This addendum uses a specific time period for estimating these costs for each of the four dairy commodity categories. The collection of cost data for manufacturing occurred during a 26 month period that does not correspond to the 12 month period for which these energy cost estimates were derived from data available from the Bureau of Labor Statistics. While proponents advance that this energy cost data should be included in the manufacturing costs of producing cheese, dry whey, NFDM, and butter, the periods for which the costs should be applied and whether these costs are already captured in the cost survey data of the CPDMP study are not clearly stated in the addendum. The volatility of energy costs, revealed by the record, is important in considering total manufacturing costs. As presented in the addendum to the CPDMP study, the energy cost information cannot be relied upon to consider changes to make allowances.

Findings

This tentative final decision finds that combining the weighted average manufacturing costs of the CDFA survey and CPDMP study for cheese, nonfat dry milk and butter into a single weighted average is appropriate for updating make allowances for those three products. The CPDMP study weighted average manufacturing cost of dry whey (without California) should be used for the dry whey make allowance. All four adopted make allowances include an additional factor of $0.0015 per pound to account for product marketing costs. The make allowances are weighted by the processing volumes reported in the 2005 NASS Dairy Product Summary and applied to the manufacturing costs of plants in California (for CDFA total average manufacturing costs) and those States outside of California (for CPDMP total average manufacturing costs), respectively.

This tentative final decision finds that the CPDMP survey of four butter plants is half of the survey size that would have been acceptable as representing the butter manufacturing costs for butter plants located outside of California. The eight butter plants appearing in the CDFA survey located in California provide a reasonable basis on which to reinforce and improve estimating the cost of manufacturing butter outside of California because no other better source of cost data is available on which such costs can be reasonably based. In this regard, there is merit that CDFA cost data accurately represents costs for butter plants outside of California and should be combined with CPDMP cost data on a weighted average basis to provide an updated make allowance for butter.

This tentative final decision finds agreement with proponents such as Kraft, Glanbia, Lactalis, Saputo, and Leprino, that the CPDMP study's weighted average manufacturing cost of dry whey plus a marketing cost factor of $0.0015 per pound best represents the cost of dry whey for plants outside of California. Three of CDFA's dry whey plants have a manufacturing cost variance so large that it would be unreasonable to combine the total weighted CDFA value with the 12 plant CPDMP sample. The make allowance adopted for dry whey plus a marketing factor is $0.1956 per pound.

This tentative final decision finds agreement with the Agri-Mark, et al., proponents' contention that medium-sized California NFDM plants are representative of Federal order NFDM plants. CDFA medium sized plant weighted total average manufacturing costs are combined with the CPDMP eight plant sample total weighted average manufacturing costs plus a marketing factor. The NFDM make allowance adopted is $0.1570 per pound.

The CDFA weighted average cost for cheese of $0.1769 is combined with the CPDMP total weighted average cost for cheese of $0.1638 plus a marketing factor to compute a cheese make allowance. The make allowance for cheese is weighted by the California and non-California volumes of American cheese. The cheese make allowance adopted is $0.1682 per pound.

The following table summarizes the proposed changes:

SUMMARY OF MAKE ALLOWANCE CHANGES

	Proposed	Current	Change
Cheese	$0.1682	$0.1650	$0.0032
Dry whey	0.1956	0.1590	0.0366
NFDM	0.1570	0.1400	0.0170
Butter	0.1202	0.1150	0.0052

2. Determining whether emergency marketing conditions exist that would warrant omission of a Recommended Decision and opportunity to file written exceptions

Evidence presented at the hearing and in post-hearing briefs establishes that current manufacturing allowances contained in the product price formulas do not reflect the current costs of manufacturing milk into cheese, butter, NFDM and dry whey. Data presented at the hearing demonstrates that manufacturing costs have increased since manufacturing allowances were last updated in 2003, relying upon 1998 manufacturing cost data. The record contains requests by numerous parties that the rule should be implemented on an emergency basis.

Consequently, it is determined that emergency marketing conditions exist that warrant omitting the issuance of a recommended decision. The record clearly establishes a basis as noted above for amending the orders on an interim basis. The opportunity to file written exceptions to the proposed amended orders remains.

In view of these findings, an interim final rule amending the orders will be issued as soon as the procedures to determine the approval of producers are completed.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the

extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Northeast and other marketing orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The interim marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The interim marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Interim Marketing Agreements and Interim Order Amending the Orders

Annexed hereto and made a part hereof are two documents—an Interim Marketing Agreement regulating the handling of milk and an Interim Order amending the orders regulating the handling of milk in the Northeast and other marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, that this entire tentative decision and the interim orders and the interim marketing agreements annexed hereto be published in the **Federal Register**.

Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that referenda be conducted and completed on or before the 30th day from the date this decision is published in the **Federal Register**, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the orders as amended and as hereby proposed to be amended, regulating the handling of milk in the Northeast and Mideast marketing areas is approved or favored by producers, as defined under the terms of the orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

The representative period for the conduct of such referenda is hereby determined to be July 2006.

The agents of the Secretary to conduct such referenda are hereby designated to be the respective market administrators of the aforesaid orders.

Determination of Producer Approval and Representative Period

The month of July 2006 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Appalachian, Florida, Southeast, Upper Midwest, Central, Pacific Northwest, Southwest and Arizona marketing areas is approved or favored by producers, as defined under the terms of the orders as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

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

Milk marketing orders.

Dated: November 17, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

Interim Order Amending the Orders Regulating the Handling of Milk in the Northeast and Other Marketing Areas

This interim order shall not become effective until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain 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 was held 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 (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Northeast and other marketing areas shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

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

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

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

1. Section 1000.50 is amended by:

a. Revising paragraph (l);

b. Revising paragraph (m);
c. Revising paragraph (n)(2);
d. Revising paragraph (n)(3)(i); and
e. Revising paragraph (o).
The revisions read as follows:

Section 1000.50 Class Prices, Component Prices, and Advanced Pricing Factors.

* * * * *

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month, less 12.02 cents, with the result multiplied by 1.20.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month, less 15.70 and multiplying the result by 0.99.

(n) * * *

(1) * * *

(2) Subtract 16.82 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.383;

(3) * * *

(i) Subtract 16.82 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.572; and

* * *

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus 19.56 cents, with the result multiplied by 1.03.

* * *

(q) * * *

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA Butter survey prices announced before the 24th day of the month, subtracting 12.02 cents from this average, and multiplying the result by 1.20.

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof, as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of § _____ to _____[5] all inclusive, of the order regulating the handling of milk in the _____[6] marketing area (7 CFR Part _____[7]) which is annexed hereto; and

II. The following provisions: § _____[8] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of _____[9], _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Department in accordance with Sec. 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest _____

[FR Doc. 06–9340 Filed 11–20–06; 3:01 pm]

BILLING CODE 3410–02–P

[5] First and last section of order.

[6] Name of order.

[7] Appropriate Part number.

[8] Next consecutive section number.

[9] Appropriate representative period for the order.

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–A76, et al.; DA–07–01]

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

7 CFR part	Marketing area	AO Nos.
1001	Northeast	AO–14–A76
1005	Appalachian	AO–388–A20
1006	Florida	AO–356–A41
1007	Southeast	AO–366–A49
1030	Upper Midwest	AO–361–A42
1032	Central	AO–313–A51
1033	Mideast	AO–166–A75
1124	Pacific Northwest	AO–368–A37
1126	Southwest	AO–231–A70
1131	Arizona	AO–271–A42

AGENCY: Agricultural Marketing Service, USDA.

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

SUMMARY: A national public hearing is being held to consider and take evidence on a proposal seeking to amend the Class I and Class II milk price formulas applicable to all Federal milk marketing orders. Evidence also will be taken at the hearing to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)).

DATES: The hearing will convene at 1 p.m., Monday, December 11, 2006.

ADDRESSES: The hearing will be held at the Sheraton Station Square Hotel, 300 West Station Square Drive, Pittsburgh, Pa. 15219. Telephone number: (412) 261–2000.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Associate Deputy Administrator for 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: *gino.tosi@usda.gov.*

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

SUPPLEMENTARY INFORMATION: 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 Sheraton Station Square Hotel, Pittsburgh, PA, beginning at 1 p.m. on Monday, December 11, 2006, 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.

Evidence will be taken at the hearing to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to any proposed amendments.

Also, since the proponent of the proposed amendment has requested that the hearing be held on an expedited basis, under the rules of practice and procedure (7 CFR 900.4(a)), it is determined that less than 15 days notice is reasonable under the circumstances.

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 more than 45.0 percent of total Federal milk marketing order producer deliveries during January 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. Minimum pricing should not raise barriers regarding the ability of small handlers, including milk manufacturers and processors, to compete in the marketplace. It is similarly expected that small producers would not experience any particular disadvantage compared to larger producers as a result of the proposed amendments.

The following economic analysis discusses impacts of the proposed amendments on market participants, including producers and milk manufacturers and processors. 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.

Preliminary Economic Analysis

In order to assess the impact of National Milk Producers Federation (NMPF) proposed changes to Federal order Class I and II pricing formulas, the Department has conducted an economic analysis. While the proposed changes have effects on Class I and II prices, they also have effects on the milk supply, product demand, and milk allocation. These dynamic effects impact all Federal order class prices.

Scope of Analysis

Impacts of increasing Class I and II price movers were measured as changes from the USDA Agricultural Baseline Projections to 2015 (OCE–2006–1, *http://www.usda.gov/oce/commodity/ag_baseline.htm*). The baseline projections are ''a Departmental consensus on a long-run scenario for the agricultural sector.'' Included is a national, annual projection of the supply-demand-price situation for milk. The USDA baseline and the model baseline assume: (1) The Milk Price Support Program (MPSP) will continue unchanged; (2) The Dairy Export

Incentive Program will be utilized to the maximum extent allowed beginning in the 2006/07 fiscal year; (3) The Milk Income Loss Contract (MILC) program will continue through September 2007; [1] and (4) The Federal Milk Marketing Order Program will continue unchanged. This analysis maintains the first three assumptions as unchanged. The only changes to the Federal Milk Marketing Order Program are those that are proposed by NMPF. Since the model is an annual model, a simplifying assumption is made that the proposed changes become effective January 1, 2007.

Demands for fluid milk and manufactured dairy products are functions of per capita consumption and population. Per capita consumption for the major milk and dairy products are estimated as functions of own prices, substitute prices, and income. Retail margins are assumed unchanged from the baseline. The demands for fluid milk and soft manufactured products are satisfied first by the eligible supply of milk. The milk supply for manufactured hard products is the volume of milk marketings remaining after satisfying the volumes demanded for fluid and soft manufactured products. Milk is manufactured into cheese, butter or nonfat dry milk (NFDM) according to returns to manufacturing in each class. Wholesale prices for cheese, butter, NFDM and dry whey reflect supply and demand for these products. These manufactured dairy product prices underlie the Federal order pricing system.

Discussion of Effects of NMPF Proposal on Federal Order Formulas

The NMPF proposal effectively would increase current Class I and II price movers by constant amounts in Federal order formulas. The Class I skim milk pricing factor would increase by $0.73 per hundredweight (cwt.). The Class I butterfat pricing factor would increase by an equivalent $0.0073 per pound. While the Class I skim milk and butterfat pricing factors would be increased by the same amount, the Class II skim milk and butterfat pricing factors would increase by different amounts. The Class II skim pricing factor would increase by $0.0074 per cwt., much smaller than the proposed Class I skim milk pricing factor. The Class II butterfat pricing factor would increase by $0.0163 per pound, an amount larger than the proposed Class I butterfat pricing factor increase.

The proposed increases to Class I and II movers have the same effect as increasing Class I and II differentials at all locations by the effective proposed changes. Although NMPF proposes butterfat and skim milk prices for Class I and II that differ from Class III and IV, the differences are by constant amounts. Class II prices at 3.5 percent butterfat would still change over time in lock step with Class IV advanced pricing factors as currently used in Federal order formulas. Class I prices at 3.5 percent butterfat would still change over time in lock step with the higher of Class III or IV advanced pricing factors as currently used in Federal order formulas.

Summary of Results for Proposed Changes to Class I and II Movers Combined

The impacts of the changes to the Class I and Class II formulas that are set forth in NMPF's proposal are summarized using annual and nine-year, 2007–2015, average changes from the model baseline (Table 1). This section discusses the model results of increasing both the Class I and Class II price movers together. The following section discusses the model results of proposed changes to Class I and II movers analyzed separately. The results presented for the Federal order system are in the context of the larger U.S. market. In particular, the Federal order price formulas use national manufactured dairy product prices.

Producers. Over the nine-year period, the average Federal order minimum blend price for milk at test increases $0.11 from a baseline level of $14.71 per cwt. The average U.S. all-milk price increases by about $0.06 from a baseline level of $14.79 per cwt. Federal order marketings increase by an average 144 million pounds annually due to the production increase in response to higher producer milk prices. Federal order milk cash receipts increase by an average $167 million annually from baseline receipts of $19,165 million. U.S. milk marketings increase by an average of 227 million pounds annually, yielding an average annual producer revenue increase of $146 million from an average baseline value of $28,396 million.

TABLE 1.—MODEL RESULTS FOR NATIONAL MILK PRODUCERS FEDERATION PROPOSED CLASS I AND CLASS II CHANGES

[Nine-year averages, 2007 through 2015]

	Units	Baseline	Class I movers increase	Class II movers increase	Class I and II movers increase [1]
Changes to Pricing Factors:					
Class I skim	$/cwt		0.7300	—	0.7300
Class I skim	$/cwt		—	0.0074	0.0074
Class I butterfat	$/pound		0.0073	—	0.0073
Class II butterfat	$/pound		—	0.0163	0.0163
F.O. Minimum Prices, 3.5% BF:					
Class I	$/cwt	16.46	0.60	−0.02	0.58
Class II	$/cwt	12.71	−0.13	0.04	−0.09
Class III	$/cwt	13.75	−0.13	−0.02	−0.15
Class IV	$/cwt	12.01	−0.13	−0.02	−0.15
Blend	$/cwt	14.37	0.12	0.00	0.12
Average Class Butterfat Test:					
Class I	% of milk	2.04	0.00	0.00	0.00
Class II	% of milk	8.16	0.00	0.00	0.00
Class III	% of milk	3.49	0.00	0.00	0.00
Class IV	% of milk	4.37	−0.03	0.00	−0.03
F.O. Minimum Prices at Test:					
Class I	$/cwt	14.10	0.65	−0.01	0.64
Class II	$/cwt	20.34	−0.28	0.09	−0.19

[1] Dairy producers are not eligible to choose September 2007 as a month for which MILC payments are to be applied. This provision was included so that it would not be necessary to include MILC payments in the Federal budget for fiscal year 2007–08.

TABLE 1.—MODEL RESULTS FOR NATIONAL MILK PRODUCERS FEDERATION PROPOSED CLASS I AND CLASS II CHANGES—Continued

[Nine-year averages, 2007 through 2015]

	Units	Baseline	Class I movers increase	Class II movers increase	Class I and II movers increase [1]
Class III	$/cwt	13.73	−0.13	−0.02	−0.15
Class IV	$/cwt	13.42	−0.21	−0.02	−0.23
Blend	$/cwt	14.71	0.12	0.00	0.11
Product Prices:					
Cheddar	$/pound	1.4594	−0.0112	−0.0019	−0.0131
Butter	$/pound	1.5325	−0.0275	−0.0051	−0.0327
Nonfat dry milk (NFDM)	$/pound	0.8444	−0.0018	0.0001	−0.0017
Whey	$/pound	0.2750	−0.0015	−0.0002	−0.0017
Mozzarella	$/pound	1.7915	−0.0071	−0.0012	−0.0083
Retail ice cream	$/half gal	3.8555	−0.0230	0.0075	−0.0156
CPI, other dairy products	index value	121.4	−0.5	0.1	−0.3
Retail fluid milk [2]	$/gal	.....	0.0560	−0.0011	0.0549
Federal Order Component Prices:					
Protein	$/pound	2.3797	−0.0013	0.0004	−0.0009
Class III and IV butterfat	$/pound	1.7010	−0.0330	−0.0062	−0.0392
Class I butterfat	$/pound	1.7010	−0.0257	−0.0062	−0.0319
Class II butterfat	$/pound	1.7010	−0.0330	0.0101	−0.0229
Other solids	$/pound	0.1195	−0.0015	−0.0002	−0.0018
Nonfat solids	$/pound	0.6973	−0.0018	0.0001	−0.0017
Class I skim price	$/cwt	10.7921	0.7169	0.0000	0.7169
Class II skim price	$/cwt	6.9758	−0.0159	0.0083	−0.0076
Class III skim price	$/cwt	8.0821	−0.0131	0.0000	−0.0131
Class IV skim price	$/cwt	6.2758	−0.0159	0.0009	−0.0150
Federal Order Class Uses:					
Class I	mil. pounds	45,875	−70	1	−68
Class II	mil. pounds	17,489	63	−20	43
Class III	mil. pounds	51,152	30	4	34
Class IV	mil. pounds	15,694	144	−9	135
Total F.O. Marketings	mil. pounds	130,211	167	−24	144
Federal Order Cash Receipts:					
Class I	mil. $	6,470	288	−6	282
Class II	mil. $	3,561	−37	12	−25
Class III	mil. $	7,026	−61	−10	−71
Class IV	mil. $	2,108	−14	−4	−18
Total	mil. $	19,165	176	−8	167
All Milk Price	$/cwt	14.79	0.07	−0.01	0.06
U.S. class use: [3]					
Class I	mil. pounds	55,674	−85	2	−83
Class II	mil. pounds	20,455	74	−24	50
Class III	mil. pounds	93,173	55	7	63
Class IV	mil. pounds	22,911	210	−13	197
Milk Cows	1000s	8,890	8	−1	7
Yield per Cow	pounds	21,668	9	−1	8
U.S. Marketings [4]	mil. pounds	191,855	254	−27	227
Government removals of NFDM:					
Quantities	mil. pounds	290	13	−1	12
Outlays [5]	mil. $	.....	10	−1	10
U.S. Producer Revenue [6]	mil. $	28,396	158	−21	146

[1] Separate effects of increasing Class I and II movers do not necessarily add up to the combined effects due to differences in the dynamics over time.

[2] Retail fluid milk porices are not projected in the model. Projected impacts are calculated by multiplying the Class I price per pound at test by 8.62 pounds of milk per gallon.

[3] Total U.S. class use does not add to U.S. Marketings due to the presence of imported ingredients.

[4] U.S. Marketings differs from U.S. milk production due to farm use of milk.

[5] MPSP outlays are not projected in the model. For this table, outlays are computed by multiplying NDM net removal quantities by the NDM support price of $0.80. No attempt is made to estimate changes in storage, handling, transportation, processing, and

[6] U.S. Producer Revenue includes MILC payments for 2007.

Milk Manufacturers and Processors. Increasing Federal order Class I and II movers as proposed has the combined effect of increasing Class I prices and decreasing prices for the manufacturing milk classes. The retail price of fluid milk increases by $0.0549 per gallon. Since milk is less scarce due to increases in milk production, and reductions in Class I use, more milk moves into manufactured uses. As a result dairy product prices decrease to clear markets of production increases. Over the nine-year projection period, wholesale dairy product prices decrease as follows: $0.0131 per pound for cheddar cheese, $0.0327 for butter, $0.0017 for NFDM, $0.0017 for dry whey, and $0.0083 for mozzarella. The retail price for ice cream decreases by $0.0156 per half-gallon. The CPI for

other dairy products decreases by a value of 0.3. Most Federal order component prices decrease on average over the nine-year projection period: $0.0009 per pound for protein, $0.0017 for nonfat solids, and $0.0018 for other solids.

The average Class III and IV butterfat price decreases by an average $0.0392 per pound over the nine-year projection period. The average Class I butterfat price decreases by an average $0.0319. The difference between the Class III and IV and Class I butterfat prices is $0.0073, the effective proposed formula change. The Class I butterfat price decreases because the proposed increase in the Class I butterfat pricing factor is not enough to offset the butter price decrease. The average Class II butterfat price decreases by $0.0229 per pound over the nine-year projection period. The difference between the Class IV butterfat price and the Class II butterfat price is $0.0163, the effective proposed formula change. The Class II butterfat price decreases because the proposed increase in the Class II butterfat pricing factor is not enough to offset the butter price decrease.

The average Class III and IV skim milk prices decrease by an average $0.0131 and $0.0150 per cwt. respectively over the nine-year projection period. The average Class I skim milk price increases by an average $0.7169. The difference between the Class III and Class I average skim milk prices is $0.7300, the effective proposed formula change. The Class I skim milk price increases because the proposed formula change for the Class I skim milk pricing factor more than offsets the price decreases in the component prices used in pricing Class I and III. The average Class II skim milk price decreases by $0.0076 per cwt. over the nine-year projection period. The difference between the Class IV skim price and the Class II skim price is $0.0074, the effective proposed formula change. The Class II skim milk price decreases because the proposed formula change for the Class II skim milk pricing factor is not enough to offset the price decreases in the component prices used in pricing Class II and IV.

There are notable differences between changes in Federal order class prices at 3.5 percent butterfat and changes in Federal order class prices at class butterfat percentages. Butterfat tests for the four Federal order milk classes differ from one class to another due to the mix of products within each class. Butterfat proportions are higher for Class II and IV milk than for Class I and III milk. Differences between prices at test and prices at 3.5 percent butterfat are greatest for Class II. The lower butterfat price plays a greater role in the Class II price at test because of the higher average fat content of the products in the class. While the Class II price at 3.5 percent butterfat decreases by an average $0.09 per cwt., the Class II price at test decreases by an average $0.19 per cwt.

Consumers. The expected $0.64 per cwt increase in the minimum nine-year average Class I price at test results in an average $0.0549 per gallon increase in the price of fluid milk for consumers. Consumers decrease consumption of fluid milk products, resulting in a decrease of 68 million pounds in Federal order Class I marketings. Consumers increase consumption of manufactured dairy products in response to lower dairy product prices. The manufacturing Federal order class marketings increase as follows: 43 million pounds for Class II, 34 million pounds for Class III, and 135 million pounds for Class IV. U.S. class marketing increase as follows: 50 million pounds for Class II, 63 million pounds for Class III, and 193 million pounds for Class IV.

Government Outlays. In 2007, with higher Class I prices, MILC payments decrease by $82 million below the baseline level of $190 million. This impact rounds to approximately $0.04 per cwt. averaged over all of the milk production.

With the proposed increases to Federal order Class I and II pricing factors, milk production increases, dairy product prices decrease, and government removals increase relative to baseline levels. Over the projection period, government removals of NFDM increase by an annual average of 12 million pounds per year. Government outlays related to government removals increase by an average of $10 million over the projection period.

Contrasting Effects of Increasing Class I and II Movers

Effects of increasing Class I price movers differ significantly from effects of increasing Class II price movers. The differences are mainly due to the differences in price elasticity of demand [2] of fluid milk versus Class II products. Model parameters indicate that fluid milk has a very inelastic demand price elasticity of −0.05. Class II products are much more price elastic with respect to demand. Model parameters indicate that frozen Class II products and other Class II products have demand price elasticities of −0.50 and −1.18 respectively. To examine these effects, model scenarios were run to examine the effects of proposed changes to Class I and Class II movers separately.

Effects of Changes to Class I Movers: Increasing Class I movers as proposed by NMPF results in higher Federal order Class I pool receipts of $288 million. Federal order Class I producer revenue increases because the increase in the Class I price at test ($0.65 per cwt.) more than offsets the decrease in Class I use (70 million pounds) that results from the higher price. With the proposed increases in Class I movers, the average Federal order blend price at test increases by $0.12 per cwt., the average all-milk price increases by $0.07 per cwt., and producer revenues increase by $158 million.

Effects of Changes to Class II Movers: With the proposed increases in Class II movers, Federal order Class II use decreases by 20 million pounds. As Class II use decreases, relatively more milk is allocated to other products, lowering their prices. Product prices decrease for cheddar cheese ($0.0019 per pound), butter ($0.0051 per pound), and fluid milk (0.0011 per gallon). Since these demands have relatively low price elasticities, consumption does not increase very much for these products. Although Federal order Class II receipts increase by $12 million, the increase is not enough to offset decreases in cash receipts for the other classes, and total Federal order class receipts fall by $8 million. The average reduction in the Federal order blend price at test rounds to zero. The all-milk price decreases by $0.01, and average U.S. producer revenue decreases by $21 million.

Detailed Analysis Information

A complete Preliminary Economic Analysis, NMPF Proposed Changes to Class I and II Mover, is available at *http://www.ams.usda.gov/dairy/hearings.htm.* For further information contact Howard McDowell, Senior Economist, USDA/AMS/Dairy Programs, Office of the Chief Economist, Room 2753, South Building, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–7091, e-mail address *howard.mcdowell@usda.gov.*

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,

[2] Price elasticity of demand is the percentage change in consumption corresponding to a 1 percent change in price.

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.

The proposed amendments, as set forth below, have not received the approval of the Department.

Proposed by National Milk Producers Federation (NMPF):

Proposal 1

Proposal 1 would change how the Class I skim milk price is determined for setting and moving Class I prices. Proposal 1 continues to essentially use the higher of the current advance Class III or advance Class IV skim milk price per hundredweight (cwt) in setting and moving Class I prices, but adds an adjustment factor of $0.73. The $0.73 per cwt factor is intended to reflect the increases in costs associated with supplying the Class I market. The proposal seeks to accomplish this objective by replacing the current Class I price mover (where all prices are U.S. average prices as reported by the National Agricultural Statistical Service (NASS)) with the higher of:

a. Nonfat dry milk price × 8.9 − $0.52; or

b. Cheese price × 10.0 + Dry whey price × 6.1 − Butter Price × 3.9 − 1.44.

Proposal 1 would eliminate direct reference to the advanced Class III and Class IV skim milk prices in the formula for determining the Class I skim milk price. While the make allowance factors used in determining Class III and Class IV formulas are under consideration for change in a separate rulemaking proceeding, the formulas above would be changed to reflect any future amendments made to product make allowances or product yield factors for cheese, nonfat dry milk, butter and dry whey as the result of formal rulemaking. The proposed formulas are based on current make allowances used in determining Class III and Class IV prices. The $0.52 and $1.44 factors presented in the above formulas are not revised make allowance factors. They represent the mathematical simplification of adjusting current advanced Class III and Class IV prices by a factor of $0.73.

Proposals 2 and 3

In order to use the simplified formulas in Proposal 1, the proposed use of an *advanced cheese skim milk price* per cwt, an *advanced butter-powder skim milk price* per cwt and an *advanced butterfat price* per pound would be used to replace the current advance Class III and Class IV skim milk prices per cwt. Additionally, the proposed advanced butterfat price per pound would be determined differently than it is currently.

Proposal 2 would change the current advanced Class III skim milk pricing factor per cwt to an *advanced cheese skim milk price* per cwt factor. The cheese skim price per cwt would be determined by:

a. Multiplying the weighted average of the 2 most recent NASS average weekly prices for block and barrel cheese by 10; multiplying the weighted average of the 2 most recent NASS average weekly survey prices for dry whey announced before the 24th day of the month times 6.1;

b. Multiplying the weighted average of the 2 most recent NASS weekly survey prices for butter announced before the 24th day of the month times 3.9;

c. Adding the amounts computed in a. above; and subtracting the butter price per pound in b. above; and

d. Subtracting $1.44.

e. The *advanced butterfat price* per pound would be determined by multiplying the weighted average of the 2 most recent NASS survey prices for butter by 1.20; and from this product subtracting $0.1307.

Proposal 3 would change referring to the current advanced Class IV skim milk pricing factor per cwt to a *butter-powder skim milk price* per cwt. The advanced butter powder skim milk price (nonfat dry milk) per cwt would be determined by:

a. Multiplying the weighted average of the 2 most recent NASS weekly survey prices for nonfat dry milk announced before the 24th day of the month by 8.9; and

b. From the product subtracting $0.52.

Proposal 4

This proposal would change the way the Class II milk price is computed without noticeably changing the level of pricing. While the skim portion of milk used in Class II would continue to be announced in advance, it is proposed to be computed by:

a. Multiplying the weighted average of the 2 most recent NASS survey prices for nonfat dry milk per pound announced before the 24th day of the month by 8.9; and

b. From the product subtracting $0.54.

Proposal 5

This proposal would change how the current Class II butterfat price is determined. As proposed the Class II butterfat price per pound would be the NASS AA Butter survey price reported by the Department for the month multiplied by 1.2; and from the product subtracting $0.1147. (Instead of adding $0.70 to the butterfat price (the current Class II differential), this proposal would add $1.53 per cwt).

The five aforementioned proposals would modify the current provisions of all Federal milk marketing orders as follows:

1. Amend § 1000.50 by:

a. Revising paragraph (e)

b. Revising paragraph (g); and

c. Revising paragraph (q) (1) (2) (3)

The revisions and additions would read as follows:

Section 1000.50 Class Prices, Component Prices, and Advanced Pricing Factors.

* * * * *

(e) *Class II skim milk price.* The Class II skim milk price per hundredweight shall be the weighted average of the 2 most recent U.S. average weekly survey NASS nonfat dry milk prices announced before the 24th day of the month, times 8.9, then subtracting from this product $0.54.

(g) *Class II butterfat price.* The Class II butterfat price per pound, rounded to the nearest one hundredth cent, shall be the U.S. average NASS AA butter survey price reported by the Department for the month, multiplied by 1.20, then subtracting from this product $0.1147. * * *

(q) * * *

(1) An advanced cheese skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Following the procedure set forth in paragraph (n)(1) of this section, but using the weighted average of the 2 most recent NASS

U.S. average weekly survey prices announced before the 24th day of the month, multiply the resulting cheese price by 10.

(ii) Multiply the weighted average of the 2 most recent NASS U.S. average weekly survey dry whey prices announced before the 24th day of the month by 6.1.

(iii) Multiply the weighted average of the 2 most recent NASS U.S. average weekly survey butter prices announced before the 24th day of the month by 3.9.

(iv) Add the amounts computed in paragraphs (q)(1)(i) and (ii), subtract the amount in paragraph (q)(1)(iii), and subtract $1.44.

(2) An advanced butter-powder skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Multiply the weighted average of the 2 most recent NASS U.S. average weekly survey prices for nonfat dry milk announced before the 24th day of the month by 8.9; and

(ii) From the amount computed in paragraph (q)(2)(i) subtract $0.52.

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA butter survey prices announced before the 24th day of the month, multiplying the result by 1.20, then subtracting $0.1307.

* * * * *

Proposed by Dairy Programs, Agricultural Marketing Service:

Proposal No. 6

For all Federal Milk Marketing Orders, make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this 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 continues to read as follows:

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

Copies of this 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 1083, 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: November 17, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–9341 Filed 11–20–06; 3:01 pm]

BILLING CODE 3410–02–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

10 CFR Part 1304

Implementation of Privacy Act of 1974

AGENCY: U.S. Nuclear Waste Technical Review Board.

ACTION: Proposed rule

SUMMARY: The U.S. Nuclear Waste Technical Review Board (Board) is proposing to implement a set of procedural regulations under the Privacy Act of 1974, Public Law 93–579, 5 U.S.C. 552a. The proposed regulations have been written to conform to the statutory provisions of the Act. They are intended to expedite the processing of Privacy Act requests received by the Board and to ensure the proper dissemination of information to the public.

DATES: Comments on the proposed rule should be submitted no later than January 15, 2007.

ADDRESSES: Comments on the proposed rule may be submitted in the following ways:

- *By assessing the Federal eRulemaking Portal: www.regulations.gov*; follow the instructions for submitting comments.
- *By internet:* Using the ''Contact NWTRB'' icon at the bottom of the Board's Home page on the Web site at *http://www.nwtrb.gov.*
- *By Fax:* at 703–235–4495.
- *By Mail or Hand Delivery to:* Joyce M. Dory, Director of Administration, U.S. Nuclear Waste Technical Review Board, 2300 Clarendon Blvd., Suite 1300, Arlington, VA 22201.

Comments submitted on the proposed Privacy Act regulation should be clearly identified.

FOR FURTHER INFORMATION CONTACT: Victoria Reich, 703–235–4473.

SUPPLEMENTARY INFORMATION: The proposed rule is intended to set forth the procedures to be used by members of the public when requesting records from the Board under the Privacy Act of 1974. It also establishes time frames for responses, a fee schedule for copying records, and charges for obtaining information, when applicable.

A copy of this document may be obtained from the Board by written request to the U.S. Nuclear Waste Technical Review Board; 2300 Clarendon Blvd., Suite 1300; Arlington, VA 22201; or by calling 703–235–4473. A copy of this document also will be posted on the Board's Web site at *http://www.nwrtrb.gov*.

All written comments received on this document by January 15, 2007, will be fully considered before publication of the final rule. Any information considered confidential must be so identified and submitted in writing. Comments submitted anonymously will not be considered. However, name and/or address may be withheld on request.

Executive Order 12866

The proposed regulation does not meet the criteria for a significant regulatory action under Executive Order 12866. Therefore, review by the Office of Management and Budget is not required.

Regulatory Flexibility Act

The proposed rule adds Privacy Act regulations to 10 CFR part 1304 and will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The rule imposes no additional recording and recordkeeping requirements and is therefore exempt from the requirements of the Paperwork Reduction Act.

List of Subjects in 10 CFR Part 1304

Administrative practice and procedure, Privacy, Reporting and recordkeeping requirements.

The Board proposes to add part 1304 to Title 10 of the Code of Federal Regulations to read as follows:

PART 1304—PRIVACY ACT OF 1974

1304.101 Purpose and scope.
1304.102 Definitions.
1304.103 Privacy Act inquiries.
1304.104 Privacy Act records maintained by the Board.
1304.105 Requests for access to records.
1304.106 Processing of requests.
1304.107 Fees.
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Authority: 5 U.S.C. 552a(f).

Source: 56 FR 47144, Sept. 18, 1991, unless otherwise noted.

§ 1304.101 Purpose and Scope.

This part sets forth the policies and procedures of the U.S. Nuclear Waste Technical Review Board (Board) regarding access to systems of records maintained by the Board under the Privacy Act of 1974, Public Law 93–579, 5 U.S.C. 552a. The provisions in the Act shall take precedence over any part of the Board's regulations in conflict with the Act. These regulations establish procedures by which an individual may exercise the rights granted by the Privacy Act to determine whether a Board system contains a record pertaining to him or her; to gain access to such records; and to request correction or amendment of such records. These regulations also set identification requirements and prescribe fees to be charged for copying records.

§ 1304.102 Definitions.

The terms used in these regulations are defined in the Privacy Act of 1974, 5 U.S.C. 552a. In addition, as used in this part:

(a) *Agency* means any executive department, military department, government corporation, or other establishment in this executive branch of the Federal Government, including the Executive Office of the President or any independent regulatory agency;

(b) *Individual* means any citizen of the United States or an alien lawfully admitted for permanent residence;

(c) *Maintain* means to collect, use, store, or disseminate records as well as any combination of these recordkeeping functions. The term also includes exercise of control over, and therefore responsibility and accountability and accountability for, systems of records;

(d) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Board and contains the individual's name or other identifying information, such as a number or symbol assigned to the individual or his or her fingerprint, voice print, or photograph. The term includes, but is not limited to, information regarding an individual's education, financial transactions, medical history, and criminal or employment history;

(e) *System of records* means a group of records under the control of the Board from which information is retrievable by use of the name of the individual or by some number, symbol, or other identifying particular assigned to the individual;

(f) *Routine use* means, with respect to the disclosure of a record, the use of a record for a purpose that is compatible with the purpose for which it was collected;

(g) *Designated Privacy Act Officer* means the person named by the Board to administer the Board's activities in regard to the regulations in this part. The Privacy Act Officer also shall be the following:

(1) The Board officer having custody of, or responsibility for, agency records in the possession of the Board.

(2) The Board officer having responsibility for authorizing or denying production of records from requests filed under the Privacy Act.

(h) *Executive Director* means the chief operating officer of the Board;

(i) *Member* means an individual appointed to serve on the Board by the President of the United States;

(j) *Days* means standard working days, excluding weekends and Federal holidays; and

(k) *Act* refers to the Privacy Act of 1974.

§ 1304.103 Privacy Act inquiries.

(a) *Requests regarding the contents of record systems.* Any person wanting to know whether the Board's systems of records contains a record pertaining to him or her may file a request in person or in writing, via the internet, or by telephone.

(b) *Requests in person* may be submitted at the Board's headquarters located at 2300 Clarendon Blvd., Suite 1300; Arlington, VA. Requests should be marked ''Privacy Act Request'' on each page of the request and on the front of the envelope and directed to the Privacy Act Officer.

(c) *Requests in writing* may be sent to: Privacy Act Officer, U.S. Nuclear Waste Technical Review Board, 2300 Clarendon Blvd., Suite 1300, Arlington, VA 22201.

''Privacy Act Request'' should be written on the envelope and each page of the request.

(d) *Requests via the Internet* may be made on the Board's Web site at *www.nwtrb.gov*, using the ''Contact NWTRB'' icon on the bottom of the Home page. The words ''Privacy Act'' should appear on the subject line.

(e) *Telephone requests* may be made by calling the Board's Privacy Act Officer at 703–235–4473.

§ 1304.104 Privacy Act records maintained by the Board.

(a) The Board shall maintain only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by Executive Order of the President. In addition, the Board shall maintain all records that are used in making determinations about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to that individual in the making of any determination about him or her. However, the Board shall not be required to update retired records.

(b) The Board shall not maintain any record about any individual with respect to or describing how such individual exercises rights guaranteed by the First Amendment of the Constitution of the United States, unless expressly authorized by statute or by the subject individual, or unless pertinent to and within the scope of an authorized law enforcement activity.

§ 1304.105 Requests for access to records.

(a) All requests for records should include the following information:

(1) Full name, address, and telephone number of requester.

(2) The system of records containing the desired information.

(3) Any other information that the requester believes would help locate the record.

(b) *Requests in writing.* A person may request access to his or her own records in writing by addressing a letter to: Privacy Act Officer; U.S. Unclear Waste Technical Review Board; 2300 Clarendon Blvd., Suite 1300, Arlington, VA 22201.

(c) *Requests via the Internet.* Internet requests should be transmitted through the Board's Web site at *http://www.nwtrb.gov*, using the ''Contact NWTRB'' icon on the bottom on the main page. The words ''Privacy Act'' should appear on the subject line.

(d) *Requests in person.* Any person may examine and request copies of his or her own records on the Board's premises. The requester should contact the Board's offices at least one week before the desired appointment date. This request may be made to the Privacy Act Officer in writing, via the Internet, or by calling 703–235–4473.

(e) Before viewing the records, proof of identification, must by provided. The identification should be a valid copy of one of the following:

A government ID,
A driver's license,
A passport, or
Other current identification that contains both an address and a picture of the requester.

§ 1304.106 Processing of requests.

Upon receipt of a request for information, the Privacy Act Officer will ascertain.

Whether the records identified by the requester exist, and
Whether they are subject to any exemption under § 1304.115 below.

If the records exist and are not subject to exemption, the Privacy Act Officer will provide the information.

(a) *Requests in writing, including those sent by e-mail, via the Web site, or by Fax.* Within five working days of receiving the request the Privacy Act Officer will acknowledge its receipt and will advise the requester of any additional information that may be needed. Within 15 working days of receiving the request, the Privacy Act Officer will send the requested information or will explain to the requester why additional time is needed for a response.

(b) *Requests in person or by telephone.* Within 15 days of the initial request, the Privacy Act Officer will contact the requestor and arrange an appointment at a mutually agreeable time when the records can be examined. The requester may be accompanied by one person. The requestor should inform the Privacy Act Officer that a second individual will be present and must sign a statement authorizing disclosure of the records to that person. The statement will be kept with the requester's records. At the appointment, the requester will be asked to present identification as stated in § 1304.105.

(c) *Excluded information.* If a request is received for information compiled in reasonable anticipation of litigation, the Privacy Act Officer will inform the requester that the information is not subject to release under the Privacy Act (see 5 U.S.C. 552a(d)(5)).

§ 1304.107 Fees.

A fee will not be charged for searching, reviewing, or making corrections to records. A fee for copying will be assessed at the same rate established for Freedom of Information Act requests. Duplication fees for paper copies of a record will be 10 cents per page for black and white and 20 cents per page for color. For all other forms of duplication, the Board will charge the direct costs of producing the copy. However, the first 100 pages of black-and-white copying or its equivalent will be free of charge.

§ 1304.108 Appealing denials of access.

If access to records is denied by the Privacy Act Officer, the requester may file an appeal in writing. The appeal should be directed to Executive Director; U.S. Nuclear Waste Technical Review Board, 2300 Clarendon Blvd., Suite 1300, Arlington, VA 22201. The appeal letter must:

Specify the denied records that are still sought; and
State why denial by the Privacy Act Officer is erroneous.

The Executive Director or his or her designee will respond to such appeals within 20 working days of the receipt of the appeal letter in the Board offices. The appeal determination will explain the basis of the decision to deny or grant the appeal.

§ 1304.109 Requests for correction of records.

(a) *Correction requests.* Any person is entitled to request correction of his or her record(s) covered under the Act. The request must be made in writing and should be addressed to Privacy Act Officer, U.S. Nuclear Waste Technical Review Board, 2300 Clarendon Blvd., Suite 1300, Arlington, VA 22201. The letter should clearly identify the corrections desired. In most circumstances, an edited copy of the record will be acceptable for this purpose.

(b) *Initial response.* Receipt of a correction request will be acknowledged by the Privacy Act Officer in writing within five working days. The Privacy Act Officer will endeavor to provide a letter to the requester within 20 working days stating whether the request for correction has been granted or denied. If the Privacy Act Officer denies any part of the correction request, the reasons for the denial will be provided to the requester.

§ 1304.110 Disclosure of records to third parties.

(a) The Board will not disclose any record that is contained in a system of records to any person or agency, except with a written request by or with the prior written consent of the individual whose record is requested, unless disclosure of the record is:

(1) Required by an employee or agent of the Board in the performance of his/her official duties.

(2) Required under the provisions of the Freedom of Information Act (5 U.S.C. 552). Records required to be made available by the Freedom of Information Act will be released in response to a request in accordance with the Board's regulation published at 10 CFR part 1303.

(3) For a routine use as published in the annual notice in the **Federal Register.**

(4) To the Census Bureau for planning or carrying out a census, survey, or related activities pursuant to the provisions of Title 13 of the United States of Code.

(5) To a recipient who has provided the Board with adequate advance written assurance that the record will be used solely as a statistical research or reporting record and that the record is to be transferred in a form that is not individually identifiable.

(6) To the National Archives and Records Administration as a record that has sufficient historical or other value to warrant its continued preservation by the United States government, or for evaluation by the Archivist of the United States, or his or her designee, to determine whether the record has such value.

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Board for such records specifying the particular part desired and the law enforcement activity for which the record is sought. The Board also may disclose such a record to a law enforcement agency on its own initiative in situations in which criminal conduct is suspected, provided that such disclosure has been established as a routine use, or in situations in which the misconduct is directly related to the purpose for which the record is maintained.

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual.

(9) To either House of Congress, or, to the extent of matters within its

jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or subcommittee of any such joint committee.

(10) To the Comptroller General, or any of his or her authorized representatives, in the course of the performance of official duties of the Government Accountability Office.

(11) Pursuant to an order of a court of competent jurisdiction. In the event that any record is disclosed under such compulsory legal process, the Board shall make reasonable efforts to notify the subject individual after the process becomes a matter of public record.

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

(b) Before disseminating any record about any individual to any person other than a Board employee, the Board shall make reasonable efforts to ensure that the records are, or at the time they were collected, were accurate, complete, timely, and relevant. This paragraph (b) does not apply to disseminations made pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552) and paragraph (a)(2) of this section.

§ 1304.111 Maintaining records of disclosures.

(a) The Board shall maintain a log containing the date, nature, and purposes of each disclosure of a record to any person or agency. Such accounting also shall contain the name and address of the person or agency to whom or to which each disclosure was made. This log will not include disclosures made to Board employees or agents in the course of their official duties or pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552).

(b) The Board shall retain the accounting of each disclosure for at least five years after the accounting is made or for the life of the record that was disclosed, whichever is longer.

(c) The Board shall make the accounting of disclosures of a record pertaining to an individual available to that individual at his or her request. Such a request should be made in accordance with the procedures set forth in § 1304.105. This paragraph (c) does not apply to disclosures made for law enforcement purposes under 5 U.S.C. 552a(b)(7) and § 1304.110(a)(7).

§ 1304.112 Notification of systems of Privacy Act records.

(a) *Public Notice.* On November 22, 1996, the Board published a notice of its systems of records in the **Federal Register** (Vol. 61, Number 227, pages 59472–59473). It is updating and republishing the notice in this issue of the **Federal Register**. The Board periodically reviews its systems of records and will publish information about any significant additions or changes to those systems. Information about systems of records maintained by other agencies that are in the temporary custody of the Board will not be published. In addition, the Office of the Federal Register biennially compiles and publishes all systems of records maintained by all federal agencies, including the Board.

(b) At least 30 days before publishing additions or changes to the Board's systems of records, the Board will publish a notice of intent to amend, providing the public with an opportunity to comment on the proposed amendments to its systems of records.

§ 1304.113 Privacy Act training.

(a) The Board shall ensure that all persons involved in the design, development, operation, or maintenance of any Board systems are informed of all requirements necessary to protect the privacy of individuals. The Board shall ensure that all employees having access to records receive adequate training in their protection and that records have adequate and proper storage with sufficient security to ensure their privacy.

(b) All employees shall be informed of the civil remedies provided under 5 U.S.C. 552a(g)(1) and other implications of the Privacy Act and of the fact that the Board may be subject to civil remedies for failure to comply with the provisions of the Privacy Act and the regulations in this part.

§ 1304.114 Responsibility for maintaining adequate safeguards.

The Board has the responsibility for maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems. These security safeguards shall apply to all systems in which identifiable personal data are processed or maintained, including all reports and output from such systems that contain identifiable personal information. Such safeguards must be sufficient to prevent negligent, accidental, or unintentional disclosure, modification, or destruction of any personal records or data; must minimize, to the extent practicable, the risk that skilled technicians or knowledgeable persons could improperly obtain access to modify or destroy such records or data; and shall further ensure against such casual entry by unskilled persons without official reasons for access to such records or data.

(a) *Manual systems.* (1) Records contained in a system of records as defined in this part may be used, held, or stored only where facilities are adequate to prevent unauthorized access by persons within or outside the Board.

(2) Access to and use of a system or records shall be permitted only to persons whose duties require such access to the information for routine uses or for such other uses as may be provided in this part.

(3) Other than for access by employees or agents of the Board, access to records within a system of records shall be permitted only to the individual to whom the record pertains or upon his or her written request.

(4) The Board shall ensure that all persons whose duties require access to and use of records contained in a system of records are adequately trained to protect the security and privacy of such records.

(5) The disposal and destruction of identifiable personal data records shall be done by shredding and in accordance with rules promulgated by the Archivist of the United States.

(b) *Automated systems.* (1) Identifiable personal information may be processed, stored, or maintained by automated data systems only where facilities or conditions are adequate to prevent unauthorized access to such systems in any form.

(2) Access to and use of identifiable personal data associated with automated data systems shall be limited to those persons whose duties require such access. Proper control of personal data in any form associated with automated data systems shall be maintained at all times, including maintenance of accountability records showing disposition of input and output documents.

(3) All persons whose duties require access to processing and maintenance of identifiable personal data and automated systems shall be adequately trained in the security and privacy of personal data.

(4) The disposal and disposition of identifiable personal data and automated systems shall be done by shredding, burning, or, in the case of electronic records, by degaussing or by overwriting with the appropriate security software, in accordance with regulations of the Archivist of the United States or other appropriate authority.

§ 1304.115 Systems of records covered by exemptions.

The Board currently has no exempt systems of records.

§ 1304.116 Mailing lists.

The Board shall not sell or rent an individual's name and/or address unless such action is specifically authorized by law. This section shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

Dated: November 17, 2006.

William D. Barnard,

Executive Director, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 06–9346 Filed 11–21–06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26134; Directorate Identifier 2006–CE–56–AD]

RIN 2120–AA64

Airworthiness Directives; EXTRA Flugzeugproduktions-und Vertriebs-GmbH Models EA–300, EA–300S, EA–300L, and EA–300/200 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2002–21–11, which applies to certain EXTRA Flugzeugbau GmbH (EXTRA) Model EA–300S airplanes. AD 2002–21–11 currently requires you to inspect, using a fluorescent dye check penetrant method, the upper longeron at the horizontal stabilizer attachment for cracks, repair any cracks found, and modify the horizontal stabilizer. That AD also requires a limit on operation to the Normal category until the initial inspection and modification on airplanes with less than 200 hours time-in-service (TIS) is done. Since we issued AD 2002–21–11, cracks have been found on Models EA–300L and EA–300/200 airplanes. Consequently, this proposed AD adds airplanes to the applicability and requires you to inspect and modify the upper longeron at the horizontal stabilizer attachment. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are proposing this AD to detect and correct cracks in the upper longeron at the horizontal stabilizer attachment, which could result in structural failure of the aft fuselage. This failure could lead to loss of control.

DATES: We must receive comments on this proposed AD by December 22, 2006.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* (202) 493–2251.
- *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.

For service information identified in this proposed AD, contact EXTRA Flugzeugproduktions-und Vertriebs-GmbH, Schwarze Heide 21, D–46569 Huenxe, Germany; fax: (+49)–2858–9137–42.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2006–26134; Directorate Identifier 2006-CE–56-AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to http://dms.dot.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this proposed AD.

Discussion

Fatigue cracks at the horizontal stabilizer attachment were found on EXTRA Model EA–300S airplanes. These airplanes are utilized in aerobatic maneuvers, and the stress in the area of the horizontal stabilizer can lead to cracks in this area, as well as in the upper longerons and diagonal braces.

This condition caused us to issue AD 2002–21–11, Amendment 39–12917 (67 FR 65479, October 25, 2002). AD 2002–21–11 currently requires the following on certain EXTRA Model EA–300S airplanes:

- For all affected airplanes: an inspection of the upper longeron at the horizontal stabilizer attachment for cracks using a fluorescent dye check penetrant method, repair of any cracks found, and modification of the horizontal stabilizer; and
- On airplanes with less than 200 hours time-in-service as of December 17, 2002 (the effective date of AD 2002–21–11): a limit on operation to the Normal category until the initial inspection and modification is done.

The European Aviation Safety Agency (EASA), which is the aviation authority for the European Union (EU), notified FAA of the need to supersede AD 2002–21–11 to address an unsafe condition that may exist or could develop on certain EXTRA Models EA–300, EA–300S, EA–300L, and EA–300/200 airplanes. EASA reports that while doing the inspections specified in Part I of EXTRA Service Bulletin No. 300–2–95, Issue: D, on the entire fleet of EA–300 series airplanes, cracks were found on Model EA–300L airplanes. Recent inspections revealed cracks found on Model EA–300/200 airplanes.

This condition, if not corrected, could lead to structural failure of the aft fuselage with consequent loss of control.

Relevant Service Information

We have reviewed EXTRA Service Bulletin No. 300–2–95, Issue: F, Dated: July 10, 2006.

The service information describes procedures for:

- Inspecting the upper longeron at the horizontal stabilizer attachment for cracks;
- Reinforcing the upper longeron in the area of the horizontal stabilizer attachment; and
- Installing V-tubes to reinforce fuselage frame underneath the horizontal stabilizer attachment bracket.

European Authority Aviation Information

EASA classified this service bulletin as mandatory and issued AD No.

2006–0281, dated September 14, 2006, to ensure the continued airworthiness of these airplanes in Germany.

These EXTRA Models EA–300, EA–300S, EA–300L, and EA–300/200 airplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, EASA has kept us informed of the situation described above.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we have examined EASA's findings, evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design that are certificated for operation in the United States.

This proposed AD would supersede AD 2002–21–11 with a new AD that would incorporate the actions in the previously-referenced service information. This proposed AD would require you to use the service information described previously to perform these actions.

Differences Between the European Authority AD, the Service Bulletin, and This Proposed AD

EASA AD No. 2006–0281, dated September 14, 2006, and EXTRA Service Bulletin No. 300–2–95, Issue: F, Dated: July 10, 2006, allow 50-hour repetitive inspections of the horizontal stabilizer attachment with the option of installing the modification kits as a terminating action for the repetitive inspections for certain affected airplanes. This AD does not allow continued repetitive inspections.

The FAA has determined that long-term continued operational safety will be better assured by design changes that remove the source of the problem rather than by repetitive inspections or other special procedures.

Costs of Compliance

We estimate that this proposed AD would affect 134 airplanes in the U.S. registry.

We estimate the following costs to do the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
24 work-hours × $80 per hour = $1,920	Not applicable	$1,920	$1,920 × 134 = $257,280

We estimate the following costs to do the proposed modifications:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
40 work-hours × $80 per hour = $3,200	$200	$3,200 + $200 = $3,400	$3,400 × 134 = $455,600

For airplanes still covered under warranty, the manufacturer will provide warranty credit for up to 35 work-hours for the inspection and modification work, as stated on page 8 of EXTRA Service Bulletin No. 300–2–95, Issue: F, Dated: July 10, 2006.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–21–11, Amendment 39–12917 (67

FR 65479, October 25, 2002) and adding the following new AD:

EXTRA Flugzeugproduktions-und Vertriebs-GMBH: Docket No. FAA–2006–26134; Directorate Identifier 2006–CE–56–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by December 22, 2006.

Affected ADs

(b) This AD supersedes AD 2002–21–11, Amendment 39–12917.

Applicability

(c) This AD applies to the following airplanes that are certificated in any category:

Models	Serial numbers
EA–300	01 through 62.
EA–300L	01 through 71, 73 through 77, 79 through 83, 85 through 89, 91, and 92.
EA–300S	01 through 29.
EA–300/200 ..	01 through 31 and 1032 through 1039.

Unsafe Condition

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to detect and correct cracks in the upper longeron at the horizontal stabilizer attachment, which could result in structural failure of the aft fuselage. This failure could lead to loss of control.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Inspect, using a fluorescent dye penetrant method, the upper longeron at the horizontal stabilizer attachment for cracks, as applicable. You may take "unless already done" credit for the inspections if you previously used Extra Service Bulletin No. 300–2–95 (pages 2–6 at Issue: C, dated July 15, 1998; and pages 1 and 7 through 11 at Issue: D, dated January 30, 2001).	(i) For Models EA–300S airplanes: Upon accumulating 250 hours time-in-service (TIS) after December 17, 2002 (the effective date of AD 2002–21–11) or within the next 50 hours TIS after the effective date of this AD, whichever occurs first. (ii) For Models EA–300, EA–300L, and EA–300/200 airplanes: Within the next 50 hours TIS after the effective date of this AD. (iii) For all affected airplanes: If the modifications specified in Part II and Part III of EXTRA Service Bulletin No. 300–2–95, Issue: F, Dated: July 10, 2006, have already been incorporated, no further action is required.	Follow Part I of EXTRA Service Bulletin No. 300–2–95, Issue: F, Dated: July 10, 2006.
(2) If cracks are found during the inspection required in paragraph (e)(1) of this AD in areas A, B, and C (as shown in Figure 1 of EXTRA Service Bulletin No. 300–2–95, Issue: F, Dated: July 10, 2006), weld the crack and modify the upper longeron at the horizontal stabilizer attachment by installing the applicable modification kit (or FAA-approved equivalent parts).	For all affected airplanes: Before further flight after the inspection required in paragraph (e)(1) of this AD where cracks are found, unless already done.	Follow Part II of EXTRA Service Bulletin No. 300–2–95, Issue: F, Dated: July 10, 2006.
(3) If no cracks are found during the inspection required in paragraph (e)(1) of this AD, modify the upper longeron at the horizontal stabilizer attachment by installing the applicable modification kit (or FAA-approved equivalent parts).	For all affected airplanes: Within the next 100 hours TIS after the effective date of this AD, unless already done.	Follow Part II of EXTRA Service Bulletin No. 300–2–95, Issue: F, Dated: July 10, 2006.
(4) For Models EA–300S and EA–300L airplanes only: Reinforce the fuselage frame underneath the horizontal stabilizer main spar attachment bracket by installing the applicable modification kit (or FAA-approved equivalent parts).	(i) For Model EA–300S: Within the next 200 hours TIS after December 17, 2002 (the effective date of AD 2002–21–11) or within the next 100 hours TIS after the effective date of this AD, whichever occurs first, unless already done. (ii) For Model EA–300L: Within the next 100 hours TIS after the effective date of this AD, unless already done.	Follow Part III of EXTRA Service Bulletin No. 300–2–95, Issue: F, Dated: July 10, 2006.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Standards Office, Small Airplane Directorate, FAA, ATTN: Karl Schletzbaum, Aerospace Engineer, 901 Locust, Room 301, Kansas City, MO 64106; telephone: (816) 329–4146; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(g) AMOCs approved for AD 2002–21–11 are [PK1]approved for this AD.

Related Information

(h) The European Aviation Safety Agency (EASA) AD No. 2006–0281, dated September 14, 2006, also addresses the subject of this AD. To get copies of the service information referenced in this AD, contact EXTRA Flugzeugproduktions-und Vertriebs-GmbH, Schwarze Heide 21, D–46569 Huenxe, Germany; fax: (+49)–2858–9137–42. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*. The docket number is Docket No. FAA–2006–26134; Directorate Identifier 2006–CE–56–AD.

Issued in Kansas City, Missouri, on November 15, 2006.

Steve Thompson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–19762 Filed 11–21–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26378; Directorate Identifier 2006–NM–230–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B16 (CL–604) Airplanes and Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Bombardier Model CL–600–2B16 (CL–604) airplanes and Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. These models may be referred to by their marketing designations as RJ100, RJ200, RJ440, CRJ100, CRJ200, CRJ440, and CL–65. The existing AD currently requires revising the Emergency Procedures section of the airplane flight manual (AFM) to advise the flightcrew of additional procedures to follow in the event of stabilizer trim runaway. The existing AD also requires revising the Abnormal Procedures section of the AFM to advise the flightcrew of procedures to follow in the event of MACH TRIM, STAB TRIM, and horizontal stabilizer trim malfunctions. The existing AD also requires revising the Normal section of the AFM to require a review of the location of certain circuit breakers and a functional check of the stabilizer trim system. The existing AD also requires installing circuit breaker identification collars and provides an optional terminating action for the requirements of the AD. This proposed AD would require doing the previously optional terminating action (installation of a new horizontal stabilizer trim control unit). This proposed AD results from a determination that the terminating action is necessary to address uncommanded horizontal stabilizer trim motion. We are proposing this AD to prevent horizontal stabilizer trim uncommanded motion, which could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by December 22, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- 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.

Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Daniel Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2006–26378; Directorate Identifier 2006–NM–230–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

On October 13, 2006, we issued AD 2006–22–06, amendment 39–14803 (71 FR 63219, October 30, 2006), for certain Bombardier Model CL–600–2B16 (CL–604) airplanes and Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. That AD requires revising the Emergency Procedures section of the airplane flight manual (AFM) to advise the flightcrew of additional procedures to follow in the event of stabilizer trim runaway. That AD also requires revising the Abnormal Procedures section of the AFM to advise the flightcrew of procedures to follow in the event of MACH TRIM, STAB TRIM, and horizontal stabilizer trim malfunctions. That AD also requires revising the Normal section of the AFM to require a review of the location of certain circuit breakers and a functional check of the stabilizer trim system. That AD also requires installing circuit breaker identification collars and provides an optional terminating action for the requirements of the AD. That AD resulted from reports of uncommanded horizontal stabilizer trim motion. We issued that AD to ensure that the flightcrew is advised of appropriate procedures to follow in the event of uncommanded movement or stabilizer trim runaway. Failure to follow these procedures could result in excessive uncommanded movement of the horizontal stabilizer trim actuator (HSTA) and loss of ability to use trim switches to override uncommanded movement or yoke disconnect switches to disconnect the HSTA, which could result in reduction of or loss of pitch control and consequent reduced controllability of the airplane.

Actions Since Existing AD Was Issued

The preamble to AD 2006–22–06 explains that we consider the requirements of that AD ''interim

action'' and that we were considering further rulemaking. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination. The optional terminating action specified in AD 2006–22–06 (installation of a new, improved horizontal stabilizer trim control unit (HSTCU)) is necessary to address the identified unsafe condition.

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, mandated the terminating action and issued Canadian airworthiness directives CF–2006–20R1, dated October 4, 2006, and CF–2006–21R1, dated October 3, 2006, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 2006–22–06 and would continue to require revising the Emergency, Normal, and Abnormal Procedures sections of the AFM and installing circuit breaker identification collars. This proposed AD would also require doing the terminating action (installation of a new HSTCU).

Difference Between Canadian Airworthiness Directives and Proposed AD

Although Canadian airworthiness directives CF–2006–20R1 and CF–2006–21R1 recommend accomplishing the terminating action within 12 months, this proposed AD would require accomplishment within 9 months in order to match the date the actions required by the Canadian airworthiness directives must be completed. We find that 9 months is an appropriate compliance time to complete the terminating action. This has been coordinated with TCCA.

Change to Existing AD

This proposed AD would retain only certain requirements of AD 2006–22–06. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2006–22–06	Corresponding requirement in this proposed AD
Paragraph (h)	Paragraph (f).
Paragraph (i)	Paragraph (g).
Paragraph (j)	Paragraph (h).
Paragraph (k)	Paragraph (i).
Paragraph (l)	Paragraph (j).
Paragraph (m)	Paragraph (l).
Paragraph (n)	Paragraph (m).
Paragraph (o)	Paragraph (k).

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate per hour is $80.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AFM Revisions and Installation of Circuit Breaker Collars (required by AD 2006–22–06).	2	$3	$163	875	$142,625.
Installation of HSTCU (new proposed action).	11	Between $2,530 and $3,995.	Between $3,410 and $4,875.	875	Between $2,983,750 and $4,265,625.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13

by removing amendment 39–14803 (71 FR 63219, October 30, 2006) and adding the following new airworthiness directive (AD):

Bombardier, Inc. (Formerly Canadair):
Docket No. FAA–2006–26378;
Directorate Identifier 2006–NM–230–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by December 22, 2006.

Affected ADs

(b) This AD supersedes AD 2006–22–06.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B16 (CL–604) airplanes, serial numbers 5301 through 5665 inclusive; and Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 through 7990 inclusive and 8000 through 8066 inclusive; certificated in any category.

Note 1: The Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes may be referred to by their marketing designations as RJ100, RJ200, RJ440, CRJ100, CRJ200, CRJ440, and CL–65.

Unsafe Condition

(d) This AD results from reports of uncommanded horizontal stabilizer trim motion. We are issuing this AD to prevent horizontal stabilizer trim uncommanded motion, which could result in reduced controllability of the airplane.

Compliance

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

Restatement of Certain Requirements of AD 2006–22–06

Airplane Flight Manual (AFM) Revisions

(f) Within 14 days after November 14, 2006 (the effective date of AD 2006–22–06), make the applicable AFM revisions specified in paragraph (f)(1) or (f)(2) of this AD by incorporating the applicable Canadair (Bombardier) temporary revisions (TRs) identified in Table 1 of this AD into the applicable AFM.

(1) For Model CL–600–2B16 (CL–604) airplanes: Revise the Emergency and Abnormal Procedures sections of the AFM to advise the flightcrew of additional procedures to follow in the event of stabilizer trim runaway and to advise the flightcrew of revised procedures to follow in the event of MACH TRIM, STAB TRIM, and horizontal stabilizer trim malfunctions.

(2) For Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes: Revise the Emergency and Abnormal Procedures sections of the AFM to advise the flightcrew of revised procedures to follow in the event of stabilizer trim runaway and in the event of MACH TRIM, STAB TRIM, and horizontal stabilizer trim malfunctions.

TABLE 1.—TRS

For Bombardier Model—	Use—	Dated—	To the—
CL–600–2B16 (CL–604) airplanes	Canadair Challenger TR 604/21–1.	October 3, 2006	Canadair Challenger CL–604 AFM, PSP 604–1.
CL–600–2B19 (Regional Jet Series 100 & 440) airplanes.	Canadair Regional Jet TR RJ/152–5.	October 3, 2006	Canadair Regional Jet AFM, CSP A–012.

(g) When the applicable TR specified in paragraph (f) of this AD has been included in the general revisions of the applicable AFM, those general revisions may be inserted into the AFM and the applicable TR may be removed, provided the relevant information in the general revisions is identical to that in the TR.

Installation of Circuit Breaker Identification Collars

(h) Within 14 days after November 14, 2006, install circuit breaker identification collars in accordance with Bombardier Modification Summary Package IS601R27410051, Revision C, dated September 29, 2006 (for Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes); or the Accomplishment Instructions of Bombardier Alert Service Bulletin A604–27–029, dated September 28, 2006 (for Model CL–600–2B16 (CL–604) airplanes); as applicable.

Additional AFM Revision

(i) For Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes: Within 14 days after November 14, 2006, revise the Normal section of the Canadair Regional Jet AFM, CSP A–012, to include the statement specified in Figure 1 of this AD. This may be done by inserting a copy of Figure 1 of this AD into the AFM.

"Prior to the flightcrew's first flight of the day, do the following actions:

1. Review the location of the STAB CH1 HSTCU and STAB CH2 HSTCU circuit breakers.
2. Complete a functional check of the stabilizer trim system as detailed below.

Control Wheel Stab Trim Disconnect Check

Control Wheel Stab Trim Disconnect switches . . . . . Check	• Make sure STAB TRIM caution message is out.
	• Activate the pilot's Control Wheel Stab Trim Disconnect switch and make sure the STAB TRIM caution message comes on.
NOTE During ground testing only, do not activate the Control Wheel Stab Trim Disconnect switch if the horizontal stabilizer trim is in motion.	• Engage the STAB TRIM switches and make sure the STAB TRIM caution message is out.
	• Activate the co-pilot's Control Wheel Stab Trim Disconnect switch and make sure the STAB TRIM caution message comes on.
	• Engage the STAB TRIM and MACH TRIM switches and make sure the STAB TRIM and MACH TRIM caution messages are out."

Figure 1

Note 2: When a statement identical to that in paragraph (i) of this AD has been included in the general revisions of the applicable AFM, those general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(j) For Model CL–600–2B16 (CL–604) airplanes: Within 14 days after November 14, 2006, revise the Normal section of the Canadair Challenger CL–604 AFM, PSP 604–1, to include the following statement. This may be done by inserting a copy of this AD into the AFM.

"Prior to the flightcrew's first flight of the day, do the following actions:

1. Review the location of the STAB CH1 HSTCU and STAB CH2 HSTCU circuit breakers.

2. Check the stabilizer trim system as detailed in CL–604 AFM 'Normal Procedures' section titled 'Flight Controls Trim Systems, Before Flight—First Flight of the Day.' "

Note 3: When a statement identical to that in paragraph (j) of this AD has been included in the general revisions of the applicable AFM, those general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Previous Actions Accomplished According to Modification Summary Package

(k) Actions accomplished before November 14, 2006, in accordance with Bombardier Modification Summary Package IS601R27410051, Revision A, dated September 18, 2006; or Revision B, dated September 27, 2006; are considered acceptable for compliance with the action specified in paragraph (h) of this AD, provided that the circuit breaker collars meet the color requirements of Bombardier Modification Summary Package IS601R27410051, Revision C, dated September 29, 2006.

New Requirements of This AD

Terminating Action—Installation of New, Improved Part

(l) Within 9 months after the effective date of this AD, install horizontal stabilizer trim control unit (HSTCU), part number (P/N) 601R92301–15 (vendor P/N 7060–10) or higher dash number, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A604–27–029, dated September 28, 2006 (for Model CL–600–2B16 (CL–604) airplanes); or Bombardier Service Bulletin 601R–27–147, dated September 28, 2006 (for Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes); as applicable. After doing the installation, the AFM revisions required by paragraph (f) of this AD may be removed from the applicable AFM, and the circuit breaker identification collars required by paragraph (h) of this AD may be removed. After doing the installation, the AFM revision required by paragraphs (i) and (j) of this AD may also be removed from the AFM but operators should note that the functional check of the stabilizer trim system on the airplane's first flight of the day, as described in the AFM, must still be done.

Note 4: Bombardier Service Bulletin 601R–27–147, dated September 28, 2006, refers to Sagem Service Bulletin HSTCU–27–011, dated September 22, 2006, as an additional source of service information for accomplishment of the installation.

Service Bulletin Exception

(m) Although Bombardier Alert Service Bulletin A604–27–029, dated September 28, 2006, specifies to return certain parts to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Related Information

(o) Canadian airworthiness directives CF–2006–20R1, dated October 4, 2006, and CF–2006–21R1, dated October 3, 2006, also address the subject of this AD.

Issued in Renton, Washington, on November 6, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–19798 Filed 11–21–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26236; Directorate Identifier 2006–CE–66–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Models TB 20 and TB 21 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as reports of interference between the wing spar lower boom and the wheel fairing attaching screw. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 22, 2006.

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

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *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: http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. The streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–26236; Directorate Identifier 2006–CE–66–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2006–0123, dated May 16, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified

products. The MCAI states there are reports of interference between the wing spar lower boom and the wheel fairing attaching screw causing an unsafe condition. The interference could, if left uncorrected, reduce the fatigue life of the wing spar with potentially catastrophic results. The MCAI requires inspections and repairs as necessary to correct this unsafe condition. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

EADS SOCATA has issued TB Aircraft Mandatory Service Bulletin SB 10–148, ATA No. 57, dated December 2005. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the proposed AD. These requirements, if ultimately adopted, will take precedence over the actions copied from the MCAI.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 270 products of U.S. registry. We also estimate that it would take about 15 work-hours per product to comply with the proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $15,000 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $4,374,000, or $16,200 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

SOCATA—Groupe Aerospatiale: Docket No. FAA–2006–26236; Directorate Identifier 2006–CE–66–AD.

Comments Due Date

(a) We must receive comments by December 22, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to SOCATA Models TB 20 and TB 21 airplanes, serial numbers 1 through 9999 without repair REP 20.031 implemented on both sides, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states there are reports of interference between the wing spar lower boom and the wheel fairing attaching screw causing an unsafe condition. The interference could, if left uncorrected, reduce the fatigue life of the wing spar with potentially catastrophic results. The MCAI requires inspections and repairs as necessary to correct this unsafe condition.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) Within the next 100 hours time-in-service or 12 months after the effective date of this AD, whichever occurs first, perform an inspection of the wing spar lower boom and repair it as necessary, in accordance with the accomplishment instructions of the EADS SOCATA TB Aircraft Mandatory Service Bulletin SB 10–148, ATA No. 57, dated December 2005.

(2) If defect dimensions exceed the acceptable values given in the EADS SOCATA TB Aircraft Mandatory Service Bulletin SB 10–148, ATA No. 57, dated December 2005, or if the defect is not located in areas depicted in figure 2 of the EADS SOCATA TB Aircraft Mandatory Service Bulletin SB 10–148, ATA No. 57, dated December 2005, then the Type 1 or Type 2 repair solutions are not applicable. A written report shall be sent to the manufacturer as mentioned in section A.5 of the EADS

SOCATA TB Aircraft Mandatory Service Bulletin SB 10–148, ATA No. 57, dated December 2005. In this case, all flight is prohibited until EADS SOCATA provides a repair solution or otherwise agrees to further flight.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(f) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(g) Refer to European Aviation Safety Agency (EASA) Airworthiness Directive No.: 2006–0123, dated May 16, 2006; and EADS SOCATA TB Aircraft Mandatory Service Bulletin SB 10–148, ATA No. 57, dated December 2005, for related information.

Issued in Kansas City, Missouri, on November 14, 2006.

Steven W. Thompson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–19801 Filed 11–21–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–140379–02; REG–142599–02]

RIN 1545–BC07; 1545–BB23

General Allocation and Accounting Regulations Under Section 141; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on Tuesday, September 26, 2006 (71 FR 56072) relating to the allocation of, and accounting for, tax-exempt bond proceeds for purposes of the private activity bond restrictions that apply under section 141 of the Internal Revenue Code (Code) and that apply in modified form to qualified 501(c)(3) bonds under section 145 of the Code.

FOR FURTHER INFORMATION CONTACT: Johanna Som Som de Cerff (202) 622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing (REG–140379–02; REG–142599–02) that is the subject of these corrections are under section 141 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of pubic hearing (REG–140379–02; REG–142599–02) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking and notice of public hearing (REG–140379–02; REG–142599–02) that was the subject of FR Doc. 06–8202 is corrected as follows:

1. On page 56074, column 1, in the preamble under the paragraph heading, ''Explanation of Provisions'', first paragraph of the column, line 5 from the bottom of the paragraph, the language ''uses, for example, governmental use and'' is corrected to read ''uses, that is, governmental use and''.

§ 1.141–6 [Corrected]

2. On page 56080, column 3, § 1.141–6(d)(4)(i), line 18, the language ''in this paragraph (d)(4)(ii) of this'' is corrected to read ''in paragraph (d)(4)(ii) of this''.

La Nita VanDyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Office of Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E6–19789 Filed 11–21–06; 8:45 am]

BILLING CODE 4830–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2005–5]

Retransmission of Digital Broadcast Signals Pursuant to the Cable Statutory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Inquiry.

SUMMARY: The Copyright Office is extending the time in which reply comments can be filed in response to its Notice of Inquiry regarding the retransmission of digital television broadcast signals by cable operators under the Copyright Act.

DATES: Reply Comments are due no later than December 18, 2006.

ADDRESSES: If hand delivered by a private party, an original and five copies of a comment or reply comment should be brought to Library of Congress, U.S. Copyright Office, 2221 S. Clark Street, 11th Floor, Arlington, Va. 22202, between 8:30 a.m. and 5 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office.

If delivered by a commercial courier, an original and five copies of a comment or reply comment must be delivered to the Congressional Courier Acceptance Site (''CCAS'') located at 2nd and D Streets, NE, Washington, D.C. between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, LM 430, James Madison Building, 101 Independence Avenue, SE, Washington, DC. Please note that CCAS will not accept delivery by means of overnight delivery services such as Federal Express, United Parcel Service or DHL.

If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment or reply comment should be addressed to U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ben Golant, Senior Attorney, and Tanya M. Sandros, Associate General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On September 20, 2006, the Copyright Office initiated a proceeding to address

several issues associated with the secondary retransmission of digital television broadcast signals by cable operators under Section 111 of the Copyright Act. 71 FR 54948 (Sept. 20, 2006). The Copyright Office sought comment on matters raised by the Motion Picture Association of America and Joint Sports Claimants in their Petition for Rulemaking regarding the simultaneous retransmission of digital and analog broadcast signals as well as the secondary retransmission of multiple streams of digital broadcast content. The Notice of Inquiry also sought comment on cable operator marketing and sales practices and equipment issues associated with the retransmission of digital broadcast signals that may result in possible changes to the Copyright Office's existing rules and the cable statements of account forms.

Given the complexity of the issues raised in the Notice of Inquiry, and to provide the public with adequate time to respond to the comments filed in this proceeding, the Office has decided to extend the deadline for filing reply comments by a period of 14 days, making them due on December 18, 2006.

Dated: November 17 , 2006

Tanya Sandros,

Associate General Counsel,

U.S. Copyright Office.

[FR Doc. E6–19794 Filed 11–21–06; 8:45 am]

BILLING CODE 1410–30–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 01–92; DA 06–2294]

Missoula Intercarrier Compensation Reform Plan Phantom Traffic Proposal

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on a proposed process to address phantom traffic issues and a related proposal for the creation and exchange of call detail records filed by the Supporters of the Missoula Plan, an intercarrier compensation reform plan filed July 24, 2006 by the National Association of Regulatory Utility Commissioners' Task Force on Intercarrier Compensation (the NARUC Task Force).

DATES: Comments due on or before December 7, 2006, reply comments due on or before December 22, 2006.

ADDRESSES: You may submit comments, identified by CC Docket No. 01–92, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Agency Web Site: http://www.fcc.gov*. Follow the instructions for submitting comments on the Electronic Comment Filing System (ECFS) / *http://www.fcc.gov/cgb/ecfs/*.
- *E-mail:* To *randy.clarke@fcc.gov*. Include CC Docket No. 01–92 in the subject line of the message.
- *Fax:* To the attention of Randy Clarke at 202–418–1567. Include CC Docket No. 01–92 on the cover page.
- *Mail:* Parties should send a copy of their filings to Randy Clarke, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A360, 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Instructions: All submissions received must include the agency name and docket number. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs/*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Comment Filing Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530, or Randy Clarke, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1587.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 01–92, DA No. 06–2294, released November 8, 2006. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, Portals II, 445 12th St. SW., Room CY–A257, Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. By the Public Notice, the Commission seeks comment on a proposal to address phantom traffic issues and a related proposal for the creation and exchange of call detail records. These proposals were contained in a written *ex parte* filed November 6, 2006 by the Supporters of the Missoula Plan, an intercarrier compensation reform plan filed July 24, 2006 by the NARUC Task Force. Supporters of the Missoula Plan include AT&T, BellSouth Corp., Cingular Wireless, Global Crossing, Level 3 Communications, and 336 members of the Rural Alliance, among others. According to its supporters, the original Missoula Plan sets forth a Comprehensive Solution for Phantom Traffic. As part of that solution, the Plan called ''for the filing of an industry proposal for a uniform process for the creation and exchange of call detail records.'' It also called ''for the filing of a process to be used in the interim until the uniform process can be implemented fully.'' The supporters of the Missoula Plan state that the November 6, 2006 *ex parte* filing meets these requirements.

Interested parties may file comments on or before December 7, 2006 and reply comments on or before December 22, 2006. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of the proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case, CC Docket No. 01–92. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail

(although we continue to experience delays in receiving U.S. Postal Service mail). Parties are strongly encouraged to file comments electronically using the Commission's ECFS.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Randy Clarke, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A266, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *Randy.Clarke@fcc.gov*. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com*.

Documents in CC Docket No. 01–92 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com*.

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte rules.* 47 CFR 1.1200 *et seq.* Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. 47 CFR 1.1206(b)(2). Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

Authority: 47 U.S.C. 152, 153, 154, 155.

Federal Communications Commission.

Thomas J. Navin,

Chief, Wireline Competition Bureau.

[FR Doc. E6–19657 Filed 11–21–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 17

[WT Docket No. 03–187; FCC 06–164]

Effect of Communications Towers on Migratory Birds

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on whether the Commission should adopt measures to reduce migratory bird collisions with communications towers. The document is intended to develop the record in the Commission's August 2003 Migratory Bird Notice of Inquiry. Depending on the comments it receives in response to the document, the Commission may adopt substantive or procedural changes to its rules.

DATES: Comments are due on or before January 22, 2007, reply comments are due on or before February 20, 2007.

ADDRESSES: You may submit comments, identified by WT Docket No. 03–187, FCC 06–164, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *E-mail: ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Mail:* Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- *Hand Delivery/Courier:* 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.
- *Accessible Formats:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) for filing comments either by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

Instructions: All submissions received must include the agency name and docket number for this rulemaking, WT Docket No. 03–187. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs/,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Louis Peraertz, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, (202) 418–1879.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking in WT Docket No. 03–187, FCC 06–164, adopted November 3, 2006, and released November 7, 2006. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis

1. *Introduction.* We seek comment on the extent of any effect of communications towers on migratory birds and whether any such effect warrants regulations specifically designed to protect migratory birds. First, we request comment on the legal framework governing the Commission's obligations in this area, and in particular the threshold necessary to demonstrate an environmental problem that would authorize or require that the Commission take action. We then examine particular steps the Commission might take if there is probative evidence of a sufficient

environmental effect to warrant Commission action. With regard to any newly constructed or modified communications tower that must be registered and meet lighting specifications under part 17 of the commission's rules, we tentatively conclude that medium intensity white strobe lights for nighttime conspicuity is to be considered the preferred system over red obstruction lighting systems to the maximum extent possible without compromising aircraft navigation safety. We seek comment on this tentative conclusion and on issues related to its implementation. We also seek comment on whether, based on the scientific or technical evidence before us concerning the impact that communications towers may have on migratory birds, we should adopt any additional requirements based on other characteristics of communications facilities, including the use of guy wires, tower height, the location of the tower, and the possibility of collocation. Finally, we request comment on whether to add an additional criterion for requiring an environmental assessment (EA) to section 1.1307(a) of the commission's rules.

2. *Legal Framework.* The National Environmental Policy Act (NEPA) requires Federal agencies to analyze the impact of their proposed major Federal actions on the quality of the human environment. 42 U.S.C. 4332(2)(C). The Council on Environmental Quality (CEQ)'s regulations define the ''human environment'' to include the natural and physical environment and the relationship of people with that environment. 47 CFR 1508.14. The Endangered Species Act (ESA) requires Federal agencies to ''insure that any action authorized, funded, or carried out by such agency * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species * * * determined * * * to be critical. * * *'' 16 U.S.C. 1536(a)(2). Some, but not all, species of migratory birds are protected under the ESA. In adopting its environmental rules, the Commission in accordance with its public interest responsibilities under the Communications Act, previously has determined that construction of communications towers requires compliance with environmental responsibilities under NEPA and the ESA. Moreover, although under our present rules we do not routinely require environmental processing with respect to migratory birds, the Commission has considered the impact of individual proposed actions on migratory birds as part of its overall responsibility under NEPA. In order to fulfill its obligations under NEPA and the ESA, the Commission has promulgated rules to address such issues. We tentatively conclude that the obligation under NEPA to identify and take into account the environmental effects of actions that we undertake or authorize may provide a basis for the Commission to make the requisite public interest determination under the Communications Act to support the promulgation of regulations specifically for the protection of migratory birds, provided that there is probative evidence that communications towers are adversely affecting migratory birds.

3. We also seek comment on what constitutes a significant effect on the human environment under NEPA in the context of effects on migratory birds. For example, does the death of some number of individual birds, without more, constitute a significant environmental impact? Must the overall population of birds as a whole or of particular species be negatively impacted before any obligation under NEPA is triggered? And if so, what size of population, either in migratory birds as a whole or in a particular species, is sufficient to trigger any legal obligation by the Commission? Can the Commission rely upon anecdotal evidence of bird kills at individual towers or must it have broader studies before taking action specifically for the protection of migratory birds? Must the Commission consider whether collisions with communications towers interrupt avian movement, and thereby result in declines in species beyond the direct losses due to collisions? Also, what is the relevance, if any, of other causes of avian mortality, such as buildings, transmission lines, and vehicles? How do the answers to these questions affect the Commission's authority, or obligation, to take action in this matter?

4. Apart from any possible obligation under NEPA and ESA, the Migratory Bird Treaty Act (MBTA) provides that it is unlawful to ''pursue, hunt, take, capture, kill, attempt to take, capture or kill * * * any migratory bird'' unless permitted by the United States Fish and Wildlife Service (FWS). 16 U.S.C. 703, 704(a). Courts have rendered differing decisions regarding the scope of the MBTA's applicability to Federal agencies. The Commission, however, has indicated that ''it is not clear'' whether the MBTA applies to the Commission's actions. Petition by Forest Conservation Council, American Bird Conservancy and Friends of the Earth for National Environmental Policy Act Compliance, *Memorandum Opinion and Order,* 21 FCC Rcd 4462, 4469 n.42 (2006); County of Leelanau, Michigan, *Memorandum Opinion and Order,* 9 FCC Rcd 6901, 6903 para. 8 (1994). Nonetheless, some commenters argue that under the MBTA, a party may be liable for any unintentional, incidental death of a migratory bird, such as through a collision with a communications tower. Others contend that the MBTA has a narrower purpose to prohibit only intentional kills of migratory birds, such as by hunting or through a program to control migratory bird population. We seek comment on the nature and scope of the Commission's responsibilities, if any, under this statute. We also seek comment on whether the MBTA gives the Commission (or any agency other than the Department of the Interior) any authority to promulgate regulations to enforce its terms. If the Commission has statutory authority to issue regulations to enforce the MBTA, how could the Commission draft such regulations in a manner that does not impede our responsibility under the Communications Act to ensure the construction of communications towers that are necessary to meet the communications service needs of our nation? We seek comment on these questions.

5. *Possible Need for Commission Action.* In the *Notice of Inquiry* (*NOI*) in this proceeding, the Commission sought comments supported by evidence concerning whether communications towers have any significant impact on migratory birds. In the Matter of Effects of Communications Towers on Migratory Birds, *Notice of Inquiry,* WT Docket No. 03–187, 18 FCC Rcd 16938 (2003). In response, the Commission received a myriad of comments reflecting widely divergent views as to the degree to which communications towers cause migratory bird mortality. FWS estimates that the number of migratory birds killed by communications towers could range from 4 to 50 million per year. In light of these widely divergent views, we seek further comment supported by evidence regarding the number of migratory birds killed annually by communications towers. Where possible, commenters are encouraged to support their estimates with scientifically reviewed studies.

6. Understanding the scope of any problem involving communications towers and migratory birds is essential to devising meaningful solutions consistent with our responsibilities under the Communications Act and

other Federal statutes. In particular, we seek comment on whether the evidence concerning the impact of communications towers on migratory bird mortality is sufficient to justify and/or authorize Commission action under the legal standards discussed in response to the questions posed above. Assuming sufficient evidence is developed regarding this issue, we may have a basis to take some of the suggested actions discussed below.

7. *Possible Commission Actions. Lighting requirements.* We tentatively conclude that for any newly constructed or modified communications tower that must meet lighting specifications under part 17 of the Commission's rules, medium intensity white strobe lights for nighttime conspicuity is to be considered the preferred system over red obstruction lighting systems to the maximum extent possible without compromising aircraft navigation safety. We request comment on this tentative conclusion, and on specific ways in which the Commission could implement this conclusion in our policies and rules. We also invite comments on the possible use and benefits of other lighting systems, such as red strobe or red blinking incandescent lights, and on other related issues.

8. Several commenting parties have submitted studies indicating that certain lighting requirements may reduce the likelihood of bird collisions with tower structures. In their joint comments filed in response to the *NOI,* the American Bird Conservancy, Forest Conservation Council, and Friends of the Earth argue that ''the best science available indicates that particularly in poor visibility weather conditions at night, lights on towers (especially solid state red lights) disrupt a neo-tropical migratory bird's celestial navigation system and perhaps its magnetic navigation system.'' FWS similarly asserts that lighting appears to be a ''key attractant for night migrating songbirds, especially on nights with poor visibility,'' although it adds that further research is needed on the extent to which lighting contributes to migratory bird collisions with communications towers. Subsequently, interim reports of studies being conducted at public safety towers in Michigan were entered into the record. Those interim reports indicate that comparable numbers of bird carcasses were found when only red strobe or only white strobe lights were used, irrespective of the towers' heights and the presence of guy wires. The interim reports also indicate more bird carcasses were found at towers using red steady lights with red strobe lights than at towers using only red strobe, white strobe, or red blinking incandescent lights.

9. Section 303(q) of the Communications Act of 1934, as amended, vests in the Commission the authority to require painting and/or lighting of antenna structures which may constitute a hazard to air navigation. 47 U.S.C. 303(q). Part 17 of the Commission's rules sets forth procedures for implementing this authority. 47 CFR Part 17. Specifically, if a proposed construction or modification of a communications tower would be more than 60.96 meters (200 feet) in height above ground level (AGL), or meet certain other conditions detailed in section 17.7 of our rules (such as proximity to an airport), our rules (as well as the Federal Aviation Administration's (FAA) rules) require the entity proposing such construction or modification to notify the FAA. 47 CFR 17.7; 14 CFR 77.13. If the FAA determines, in accordance with its applicable Advisory Circular(s), that the construction or alteration is one for which lighting or marking is necessary for aircraft navigation safety, the FAA sends an acknowledgement to the antenna structure owner that contains a statement to that effect and information on how the structure should be marked and lighted. 14 CFR 77.19. This acknowledgment is the FAA's determination of ''no hazard,'' meaning that the FAA has determined that the structure will pose no hazard to aircraft so long as it is marked and/or lighted in accordance with the FAA's specifications. The antenna structure owner must register the structure with the Commission prior to construction by submitting FCC Form 854 together with the FAA's ''no hazard'' determination. 47 CFR 17.4(b). Unless the Commission specifies otherwise, the FAA's specifications for marking and/or lighting on the antenna structure are then made part of the owner's FCC antenna structure registration, and the owner is required to maintain the marking and/or lighting in accordance with those specifications. 47 CFR 17.23. The FAA's current standards pertaining to tower lighting specifications to promote aviation safety are set forth in Advisory Circular 70/7460–1K (''Obstruction Marking and Lighting''). The FAA's recommendations can vary depending on characteristics of the tower, terrain, and location, and may permit antenna structure owners to choose among different types of lighting systems, including red steady (red solid state), red strobe interspersed with red steady, or white lights.

10. In April 2004, in response to a request by the American Bird Conservancy to minimize mortality to migratory birds, the FAA issued an internal memorandum providing guidance on the FAA's issuance of lighting recommendations set forth in Advisory Circular 70/7460–1K. Specifically, as interim guidance, the FAA's Program Director for Air Traffic Airspace Management directs Regional Air Traffic Division Managers that use of medium intensity white strobe lights for nighttime conspicuity is to be considered the preferred system over red obstruction lighting systems when feasible and to the maximum extent possible in cases in which aviation safety would not be compromised. The memorandum references the *NOI* and notes that the Commission may later provide some guidance on what, if any, then existing standards regarding the effects of communications towers on migratory birds were in need of review and study. The memorandum also states that, from a safety perspective, the standards and guidance set forth in the existing Advisory Circular 70/7460–1 continue to be necessary to appropriately light obstacles and to avoid creating hazardous conditions for pilots. Finally, in accordance with that Advisory Circular, the memorandum points out that the use of white lights for nighttime conspicuity within three nautical miles of an airport or in populated urban areas is discouraged as a lighting recommendation. In their joint comments on a 2004 report prepared by the Commission's environmental consultant, Avatar Environmental, LLC (Avatar Report), the American Bird Conservancy, Forest Conservation Council, Humane Society, and Defenders of Wildlife urge the Commission to adopt the FAA's preference for white strobe lighting as set forth in the April 2004 memorandum.

11. We tentatively conclude that under the Commission's part 17 rules, consistent with the FAA's memorandum, the use of medium intensity white strobe lights for nighttime conspicuity is to be considered the preferred lighting system over red obstruction lighting systems to the maximum extent possible without compromising aircraft navigation safety. We base this tentative conclusion on the FAA's recommendation of such lighting where it will not compromise aircraft navigation safety, the evidence suggesting that white strobe lights may create less of a hazard to migratory birds, and the absence of record evidence that use of white strobe

lighting would have an adverse impact on communications facilities deployment. We seek comment on this tentative conclusion, including whether its implementation would result in reducing the incidence of migratory bird mortality associated with communications towers as well as any burdens such a requirement would impose on tower owners, or on the public, and whether alternatives may be available or preferable. We also seek comment on our statutory authority to implement this tentative conclusion.

12. In the event we adopt our tentative conclusion, we seek comment specifically on how best to implement this policy. For instance, should we revise section 17.23 of the Commission's rules (*see* 47 CFR 17.23) to establish that, unless otherwise specified by the Commission, each new or altered registered antenna structure must use medium intensity white strobe lights for nighttime conspicuity if the FAA determines that the use of such lights would not impair the safety of air navigation and recommends their use? We note that section 17.23 of our rules currently references two FAA Advisory Circulars (AC 70/7460–1J, as revised in 1996, and AC 150/5345–43E, as revised in 1995). Given that one of these Advisory Circulars (AC 70/7460–1J) subsequently has been updated with a newer version (AC 70/7460–1K), we seek comment on how we should revise section 17.23. We further invite comment on whether any rule revisions we may adopt should be written in such a manner as to accommodate later changes in the FAA Advisory Circulars without a future change in our rules. We also ask for comment on whether, to the extent we determine to adopt additional lighting guidance in our rules, revisions to other provisions of part 17 or elsewhere in our rules are necessary. We encourage commenters to suggest specific language and discuss its benefits and drawbacks.

13. In addition, we invite commenters to consider the possible use and benefits of lighting systems other than red steady and medium intensity white strobe. We note that the FAA Advisory Circular pertaining to tower lighting does not currently permit the use of red strobe or red blinking incandescent lights without the use of red steady lights. FAA AC 70/7460–1K at 13–14. The American Bird Conservancy, however, has recently argued that recent and past research, including the preliminary results from the Michigan study, suggests that ''the critical element in lighting towers and other structures is to use strobe lighting for night time conspicuity exclusively, and not to use red steady burning lights.'' Thus, noting that the FAA does not recommend the use of white strobe lights under some circumstances, the American Bird Conservancy now asserts that either white or red strobe lighting is desirable. We seek comment on the significance of the existing research, and whether, given the FAA's existing Advisory Circular, we should modify our proposed rule to account for the possible use of red strobe lights or red blinking lights without red steady lights. If the final results of the Michigan study are consistent with the preliminary results and are borne out by a final report, would the results provide sufficient scientific basis on which to conclude that use of red strobe or red blinking lights might reduce bird mortality levels to the same or similar degree as white strobe lights? We also seek comment on whether there are other studies that have been designed to assess the different effects on avian mortality of these different lighting systems and whether there is a need for any further studies. If other studies exist, what are their results? Do they support the adoption of our tentative conclusion regarding the use of white strobe lights? Or, would the studies support giving tower registrants the option of using red strobe or red blinking incandescent lights as an alternative to white strobe lights, to the extent consistent with aircraft navigation safety and endorsed by the FAA?

14. We also seek comment regarding the economic, environmental, and any other costs of a requirement to use white strobe lights when compared with other lighting alternatives. In particular, what would be the specific economic impact on licensees and tower owners and constructors, including small businesses, of adopting such a requirement? What are the comparative costs and longevity of white strobe lighting systems versus the other lighting systems identified in this section? What other factors are relevant to assess the impact that requiring medium intensity white strobe lighting would have on licensees and towers owners and constructors? To the extent white strobe lighting would increase the cost of constructing or maintaining towers, we further seek comment on the effect this would have on communications service deployment, homeland security, and public safety.

15. We also note that section 1.1307(a)(8) provides that construction of antenna towers and/or supporting structures that are to be equipped with high intensity white lights, which are to be located in residential neighborhoods, is an action that may significantly affect the environment and thus requires the preparation of an EA by the applicant. 47 CFR 1.1307(a)(8). Further, the April 2004 FAA memorandum notes that in accordance with the Advisory Circular, the use of white lights for nighttime conspicuity within three nautical miles of an airport or in populated urban areas is discouraged as a lighting recommendation. We invite comment supported by evidence on whether medium intensity white strobe lighting would impose an environmental impact on neighboring residents or have other adverse consequences, and if so, how we should weigh these competing public interest considerations in determining whether to adopt any guidance relating to tower lighting.

16. Finally, we seek comment on what, if any, action we should take regarding the lighting of existing towers. We invite comment on both the benefits and costs of any such action. We note that this may also require modifying licenses pursuant to section 316 of the Communications Act (47 U.S.C. 316), as well as the approval of the FAA and the re-issuance of any no-hazard determinations. Considering the costs and benefits and the need for the FAA to approve changes, if we were to take any action regarding existing towers, how should such a requirement be implemented? Should we require medium intensity white strobe lights when the red obstruction lights burn out and need to be replaced? Would such an approach be consistent with the FAA's applicable Advisory Circular? Should we seek a transition of all existing towers to medium intensity white strobe lights, to the extent permitted by the FAA, within a specific time frame, such as five years from the date of adoption of the tentative conclusion as a rule? We seek comment on these questions, as well as upon other alternatives to our proposed rule.

17. *Use of Guy Wires.* We next seek comment on whether we should adopt any requirements governing the use of guy wires because of the potential impact posed to migratory birds. In its September 2004 report, Avatar concluded that, based on the studies it analyzed, it appears that ''[t]owers with guy wires are at higher risk [to birds] than self-supporting towers.'' Avatar also stated, however, that at the time of its report there were ''[n]o specific studies comparing avian collisions between guyed and self-supporting structures.'' In their joint comments, American Bird Conservancy, Forest Conservation Council, the Humane Society, and Friends of the Earth assert that birds are killed not only by colliding with towers but also by flying

into guy wires that support the towers. The interim reports on the Michigan towers, presented subsequent to the Avatar report, suggest that towers with guy wires had more avian mortality than towers of similar height with no guy wires.

18. In light of this record, we request comment on several questions relevant to whether these concerns are significant enough to justify the Commission's adoption of rules relating to the use of guy wires. In addressing these questions, commenters should also comment on whether, to the extent we adopt our tentative conclusion regarding tower lighting, there might still be a need to adopt requirements regarding the use of guy wires.

19. First, we seek comment on whether the scientific record supports limiting the use of guy wires. Are there additional scientific studies that illuminate the relationship between avian mortality and the use of guy wires? If so, how conclusive are those studies, and what do they show? To the extent it can be shown that guy wires do increase the number of migratory bird collisions with communications towers, is the increase in the number of collisions also related to the type of lighting used, such that the number of collisions would be mitigated if we were to adopt our tentative conclusion that medium intensity white strobe lights for nighttime conspicuity is to be considered the preferred lighting system over red obstruction lighting systems?

20. We also request information on engineering and economic factors relevant to the use of guy wires. Is there a height threshold above which guy wires are generally necessary, and if so, what is that height? Does the calculus vary depending on soil conditions or other factors? To what extent are towers utilizing guy wires necessary to the provision of various licensed services, and what economic factors may affect the decision whether to use guy wires?

21. We also request comment on any additional consequences that may result from regulation relating to guy wires. For instance, if we were to limit the use of guy wires, what would be the impact on tower construction and the deployment of communications services generally? Would tower constructors need to erect towers of the same height but with a larger physical footprint, a greater number of shorter towers to provide equivalent service, or some combination thereof? To what extent would either non-guyed tower designs or greater proliferation of towers result in creating additional adverse impact on environmental matters that do not pertain to migratory birds, such as historic properties, wetlands, or endangered species?

22. We ask commenters to address how we might balance these various scientific, engineering, economic, and other factors, in determining what, if any, standards should govern the use of guy wires. We encourage commenters to suggest specific tests for when the use of guy wires may be suspect, and to justify those tests based on objective evidence. Commenters should also address how any standards should be implemented. For example, if we adopt standards regarding the use of guy wires, should we mandate that all towers, or all towers meeting certain criteria, meet those standards without exception? Alternatively, should we permit towers with guy wires upon filing of an EA and issuance of a Finding of No Significant Impact, or upon certification that no reasonable alternative (*e.g.*, use of non-guyed towers or collocation) was available? We seek comment regarding both the benefits and the costs of these and alternative regimes.

23. We specifically seek comment on whether to adopt requirements relating to marking of guy wires. Avatar reported that one of the ''most effective ways to reduce avian mortality is to mark [wires] to make them more visible,'' and that the effectiveness of methods that mark overhead electric power lines and target certain species of birds is well documented. Therefore, Avatar concluded that wire marking ''may increase guy wire visibility thereby reducing the collision risk for some birds,'' and discussed several currently available devices such as bird flight diverters. Avatar also explained, however, that ''from an engineering perspective,'' wire marking is not ''always a good solution'' because devices ''that physically enlarge the wire commonly act as wind-catching objects and may increase the risk of wire breaks due to line tension, vibration, and stress loads.''

24. We seek comment on the effectiveness of wire markings in mitigating migratory bird collisions with communications towers. In particular, we invite information about past or ongoing scientific studies into the effectiveness of wire markings on communications towers. To the extent studies have been conducted on other types of structures, how relevant are they to communications towers? Commenters who advocate a marking requirement should address which types of marking devices are most effective, and how they should be used. We also invite comment regarding the engineering feasibility and financial cost of marking requirements, for both existing and new towers. If the Commission were to adopt a wire marking requirement, how could we do so in a manner that imposes minimal burdens on license applicants and communications tower owners and constructors?

25. *Tower Height.* We seek comment on whether to adopt any requirements relating to the height of communications towers in order to minimize the impact of such towers on migratory birds. Avatar found that ''all other things being equal, taller towers with lights tend to represent more of a hazard to birds than shorter, unlit, towers.'' FWS's voluntary guidelines recommend that communications towers be shorter than 200 feet if possible to avoid, in most instances, the requirement that the towers have aviation safety lights. Conservation groups argue that the Commission should restrict the heights of communications towers because doing so would minimize the presence of two features that are most harmful to birds, lights and guy wires.

26. We request comment regarding the relevant costs and benefits of adopting any requirements relating to tower height. For example, would limitations on tower height hinder the deployment of certain types of services, including public safety communications? Would such requirements adversely affect the availability of service in certain geographic locations, such as rural areas? Would requirements governing tower height lead to a greater number of towers, and if so, to what extent would this impact historic properties, wetlands, endangered species, or other environmental values? We welcome specific information regarding any such disadvantages of rules relating to tower height, as well as the benefits. We also ask commenters to address whether, to the extent we adopt our tentative conclusion regarding tower lighting, there would be a need to adopt any requirements relating to tower height.

27. We also seek comment on how any requirements relating to tower height should be implemented. In particular, we ask commenters that advocate height regulations to consider what tower height should trigger any rules. Should we regulate towers over 200 feet in order to minimize the use of lights? Is there some other threshold above which towers are more likely to have a significant effect on migratory birds? Finally, we seek comment on what procedural requirements we should apply to towers that exceed any specified height threshold, such as a certification of need or requirement to file an EA.

28. *Tower Location.* We seek comment on whether towers located in certain areas might cause a sufficient environmental impact on migratory birds such that, when considered with other relevant factors, some Commission action might be justified. In the *NOI*, the Commission requested scientific research and other data ''concerning the impact on migratory birds of communications towers located in or near specific habitats, such as wetlands.'' The *NOI* asked whether ''towers on ridges, mountains, or other high ground have a differential impact on migratory bird populations.'' The NOI also sought comment on the impact on migratory birds of towers located in areas with a high incidence of fog, low clouds, or similar obscuration, or in proximity to coastlines and major bird corridors. In response to the NOI, some commenters presented arguments and rationales why communications towers should not be sited in certain locations such as migratory bird habitats or in migration corridors on ridgelines. Although Avatar noted some degree of confidence within the scientific community that the ''greatest bird mortality tends to occur on nights with low visibility conditions, especially fog, low cloud ceiling, or other overcast conditions,'' it reached no similar findings with regard to the effect that locating towers on ridges, or in wetlands, might have on avian mortality. In addition, Land Protection Partners discussed a ''multi-modal research study in New Hampshire'' that it claimed ''revealed the effect of topography of the Appalachian Mountains on migratory birds, including neo-tropical migrants.'' We seek information on whether there are additional scientific studies that have examined the effect that locating communications towers in different areas, with different weather conditions, might have on avian mortality and, if so, what if any requirements we should adopt on the basis of such studies.

29. *Collocation.* We request comment on whether the Commission should adopt additional requirements to promote collocation. We note that FWS, American Bird Conservancy, and several other commenters argue that the Commission should strongly encourage license applicants to collocate their antennas on existing structures to the extent possible. We seek comment and information relevant to whether we should adopt policies that would promote more extensive use of collocation. If we do adopt regulations to promote collocation, we seek comment on what form those regulations should take. Possibilities could include, for example, a requirement to certify that collocation opportunities are unavailable and/or describe collocation alternatives that the licensee explored. We ask commenters to discuss the benefits and costs of these and alternative forms of regulation, including burdens on small businesses and possible impacts on the delivery of public safety and homeland security services. We also ask commenters to assess the need for such regulation to the extent we adopt our tentative conclusion that the use of medium intensity white strobe lights for nighttime conspicuity is to be considered the preferred lighting system over red obstruction lighting systems.

30. Section 1.1307. We seek comment as to whether to amend section 1.1307(a) of the commission's rules to routinely require environmental processing with respect to migratory birds. Section 1.1307(a) currently identifies eight different criteria that, if present, establish that a proposed facilities construction ''may significantly affect the environment'' and therefore requires preparation of an EA. 47 CFR 1.1307(a)(1) through (8). The American Bird Conservancy, Forest Conservation Council, Friends of the Earth, and the Humane Society argue that, considering the evidence of mass bird mortalities at communications towers, the Commission should also expressly require an EA for proposed facilities that would have potential effects on migratory birds. We note that the Commission's rules already provide for consideration of factors not identified in section 1.1307(a), including those that pertain to a facility's effect on migratory birds, to the extent the Commission independently determines that there may be a significant environmental effect in a particular case. 47 CFR 1.1307(c), (d).

31. We seek comment regarding the appropriate methodology for making such a determination, as well as the level of probative evidence necessary to support such a determination. We note, for example, that Avatar found in its 2004 report that there were no studies to date that ''demonstrate[d] an unambiguous relationship between avian collisions with communication towers and population decline of migratory bird species.'' Is the current state of scientific evidence insufficient to require routine assessment of such an effect? Or, to the contrary, is the evidence of specific incidents of bird collisions with towers, such as extrapolations that estimate the total number of these collisions, sufficient to support a required assessment for some or all towers? Are there other factors the Commission should consider in determining the proper treatment of the effect on migratory birds under the Commission's environmental rules?

32. We also seek comment, if we adopt an EA requirement for effects on migratory birds, on the types of towers to which such a requirement should apply. One possible approach might be to require an EA addressing this factor for all new tower construction. We seek comment as to whether the scientific evidence would support a general requirement of this sort, as well as the burdens it would impose on applicants. We also ask commenters to consider whether such a broadly applicable procedural requirement would reduce the incentive for companies to choose sites and designs that may be less likely to affect migratory birds. Another possibility could be to require an EA if a proposed construction ''might affect migratory birds.'' Commenters discussing this approach should address how such a broadly worded requirement might be administered, and how it could be enforced.

33. An alternative to these general approaches may be to require an EA only for proposed towers that exhibit certain characteristics that render them more likely to harm migratory birds. For example, as suggested in the discussion above, we might require an EA only for towers that use certain lighting systems, or that require guy wires, or that exceed a specified height. We seek comment as to whether the evidence supports such criteria, and if so where the thresholds should be set. Are there any additional factors that should be considered in triggering an EA requirement, such as the area of the country in which the tower would be located, the local topography, or prevailing weather conditions? We encourage commenters to set forth specific proposals and to address all relevant considerations, including the scientific support for particular criteria; the effect of any such EA requirement on the deployment of wireless services, on homeland security, and on public safety; and the Commission's ability to administer any particular proposal if adopted. Commenters should also address both the effectiveness and the burdens of various approaches, including the impacts on small businesses.

34. *Other Possible Actions.* Finally, we seek comment on whether there are other possible substantive or procedural measures the Commission could take to minimize migratory bird collisions that are not discussed above. For any such possible measure, we request any available information and scientific

research to support the effectiveness of such a measure at minimizing migratory bird collisions. We also request comment on the best way to implement such a measure so as to eliminate the imposition of any unnecessary costs on affected entities, including small businesses.

Procedural Matters

Ex Parte—Permit But Disclose Proceeding

35. This is a permit-but-disclose notice and comment rulemaking proceeding. *See Generally,* 47 CFR 1.1202, 1.1203, 1.1206. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's Rules.

Initial Regulatory Flexibility Act Analysis

36. As required by the Regulatory Flexibility Act (*see* 5 U.S.C. 603), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this document. The IRFA is set forth in section III below. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to the NPRM as set forth below in subsection D, and have a separate and distinct heading designating them as responses to the IRFA.

Initial Paperwork Reduction Act of 1995 Analysis

37. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198. *See* 44 U.S.C. 3506(c)(4).

Comment Period and Procedures

38. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

39. Electronic Filers. Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.

40. ECFS filers. If multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

41. Paper Filers. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

42. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

43. Availability of documents. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and on the Commission's Internet Home Page: *http://www.fcc.gov.* Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail at the following e-mail address: *http://www.bcpiweb.com.*

44. People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Initial Regulatory Flexibility Analysis

Need for, and Objectives of, the Proposed Rules

45. The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to establish procedures that will enable them to analyze any potential environmental impact of actions that they undertake or authorize. *See* 5 U.S.C. 601(6). The Endangered Species Act (ESA) prohibits the taking of any endangered or threatened species by any person unless authorized by the U.S. Fish & Wildlife Service (FWS). 16 U.S.C. 1538(a)(1)(B). The Commission has implemented regulations to comply with NEPA and ESA in part 1, subpart I of its rules. 47 CFR 1.1301 *et seq.* In response to the Commission's August 2003 Notice of Inquiry in this proceeding (In the Matter of Effects of Communications Towers on Migratory Birds, *Notice of Inquiry,* WT Docket No. 03–187, 18 FCC Rcd 16938 (2003)), FWS and several other parties filed comments in which they argued that the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 701) would prohibit the unintentional and incidental take of even one migratory bird that died by colliding with a communications tower. These commenters also asserted that there have been several reports of mass migratory bird mortalities at communications towers. FWS estimates that the number of migratory birds killed each year due to collisions with communications towers could range from 4 to 50 million.

46. In the NPRM, we seek comment on whether to amend the Commission's rules to reduce the impact of communications towers on migratory birds in accordance with these Federal statutes and in light of the concerns expressed in the *NOI* record. We

tentatively conclude that any newly constructed or modified communications tower, which under part 17 of the Commission's rules must be registered with the Commission and comply with lighting specifications, should be required to use medium intensity white strobe lights rather than red obstruction lighting for nighttime conspicuity so long as the Federal Aviation Administration (FAA) determines that the use of such lights on that particular communications tower does not impair aviation safety. We also seek comment on whether we should adopt regulations with regard to: (1) The use of guy wires; (2) height of communications towers; (3) the location of towers; and (4) collocation of antennas on existing structures. Finally, we seek comment on whether we should amend commission rule 1.1307 (47 CFR 1.307) to include potential impact on migratory birds as a criterion that requires the filing of an Environmental Assessment (EA).

Legal Basis

47. We tentatively conclude that we have authority under sections 1, 4(i), 303(q) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 303(q), 303(r), and under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, to adopt the proposals set forth in the NPRM.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

48. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Small Business Act, 5 U.S.C. 632 (1996). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4).

49. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. See SBA, Programs and Services, SBA Pamphlet No. CO–0028, at page 40 (July 2002). A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). Nationwide, as of 2002, there were approximately 1.6 million small organizations. Independent Sector, The New Nonprofit Almanac & Desk Reference (2002). The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' 5 U.S.C. 601(5). Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 272, table 415. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small. The changes and additions to the commission's rules adopted in the NPRM are of general applicability to all FCC licensed entities of any size that use a communications tower. Accordingly, this NPRM provides a general analysis of the impact of the proposals on small businesses rather than a service by service analysis.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

50. The NPRM solicits comment on one tentative conclusion and on five other potential areas of modification to the Commission's regulations regarding the siting and construction of communications towers so as to reduce the incidence of migratory bird collisions. The NPRM seeks comment on its tentative conclusion that, under the commission's part 17 rules, the use of medium intensity white strobe lights for nighttime conspicuity is to be considered the preferred lighting system over red obstruction lighting systems to the maximum extent possible without compromising aircraft navigation safety. The NPRM also requests comment on whether we should impose regulations relating to the use of guy wires on communications towers, the height of communications towers, the location of communications towers, and collocation of new antennas on existing structures. Finally, the NPRM seeks comment as to whether the Commission should amend section 1.1307(a) of our rules to expand the circumstances under which an EA is required. Depending on the rules that are adopted, it is possible that compliance may involve new recordkeeping or reporting requirements.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

51. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

52. The NPRM seeks comment on its tentative conclusion that, under the Commission's part 17 rules, the use of medium intensity white strobe lights for nighttime conspicuity is to be considered the preferred lighting system over red obstruction lighting systems to the maximum extent possible without compromising aircraft navigation safety. We seek comment on the effect that such a requirement, or alternative rules, might have on small entities. The NPRM also requests comment on whether it should impose regulations relating to the use of guy wires on communications towers, the height of communications towers, the location of communications towers, or collocation of new antennas on existing structures. For each of these areas, we seek comment about the burdens that regulation would impose on small entities and how the Commission could impose such regulations while minimizing the burdens on small entities. Are there any alternatives the Commission could implement that could achieve the Commission's goals while at the same time minimizing the burdens on small entities? We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

53. None.

Ordering Clauses

54. Accordingly, it is ordered that, pursuant to sections 1, 4(i), 303(q), 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i),

303(q), 303(r), and the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, this Notice of Proposed Rulemaking is hereby adopted.

55. It is further ordered that pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 22, 2007 and reply comments on or before February 20, 2007.

56. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–19742 Filed 11–21–06; 8:45 am]

BILLING CODE 6712–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Part 719

RIN 0412–AA58

Mentor-Protégé Program

AGENCY: U.S. Agency for International Development (USAID).

ACTION: Proposed rulemaking.

SUMMARY: The United States Agency for International Development (USAID) is proposing to amend its acquisition regulations to formally encourage USAID prime contractors to assist small disadvantaged firms certified by the Small Business Administration under Section 8(a) of the Small Business Act, other small disadvantaged business, Historically Black Colleges and Universities and other minority institutions of higher learning, and women-owned small business in enhancing their capabilities to perform contracts and subcontracts for USAID and other Federal agencies. The program seeks to provide a Mentor-Protégé Program that assists qualified small business to receive developmental assistance from USAID prime contractors in order to increase the base of small business eligible to perform USAID contracts and subcontracts. The program also seeks to foster long-term business relationships between USAID prime contractors and small business entities and minority institutions of higher learning and to increase the overall number of small business entities and minority institutions that receive USAID grants, cooperative agreements, contracts, and subcontract awards.

DATES: Written comments on the proposed rulemaking must be received on or before December 8, 2006.

ADDRESSES: Submit comments, identified by the title of the proposed action, Regulatory Information Number (RIN), your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Accepted methods of submission include the following: Federal eRulemaking portal: *http://www.regulations.gov.* Follow the instructions for submitting comments; facsimile: 202–216–3056; mail: addressed to, Rockfeler P. Herisse, Ph.D. U.S. Agency for International Development, Attn. Mentor-Protégé Rulemaking, Office of Small and Disadvantaged Business Utilization, 1300 Pennsylvania Avenue, NW, Washington, DC 20523–7800, and E-mail: *rherisse@usaid.gov.* All comments will be made available for public review without change, including any personal information provided, from three (3) days after receipt to finalization of action *http://www.usaid.gov/policy/regulations/index.html.*

With respect to proposed reporting requirements and the Paperwork Reduction Act, comments should be addressed to Office of Information and Regulatory Affairs, NEOB—Rm. 10202, 725 17th Street, NW., Washington DC 20503 Rm. 10202, or to Beverly Johnson, Office of Administrative Services, Information and Records Division, 1300 Pennsylvania Ave, NW., Washington, DC 20523 (202)-712–1365 or by e-mail to *bjohnson@usaid.gov.*

FOR FURTHER INFORMATION CONTACT: Tracy A. Scrivner, Mentor-Protégé Rulemaking, Office of Small and Disadvantaged Business Utilization, U.S. Agency for International Development, 1300 Pennsylvania Avenue, NW., Washington, DC 20523, (202) 712–4983 or by e-mail to *tscrivner@usaid.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Section By Section Analysis
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act.
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12612
F. Review Under the Unfunded Mandates Reform Act of 1995

I. Background

On December 8, 1995, the Office of Small and Disadvantaged Business Utilization (OSDBU) commissioned a thorough assessment of existing Mentor-Protégé programs and the feasibility of such a program for USAID. The assessment concluded that opportunities exist in such programs to actually encourage meaningful and successful business development between Mentors and Protégés. Mentor-Protégé arrangements represent opportunities for creating access for small and disadvantaged business to USAID contracts and awards. Both OSDBU and the Office of Acquisition and Assistance (OAA) believe that Mentor-Protégé programs will afford small and disadvantaged business opportunities to develop their capacity and competencies. Review and analysis of existing Mentor-Protégé programs in the private and public sector conclude that they are effective against the problems related to small business and minority sub-contracting.

This program is similar to those established by other federal agencies such as the Department of State, Department of Energy and the Environmental Protection Agency. An assessment of the best practices in Mentor-Protégé programs identified certain clear benefits for all parties involved. A successful Program can enable USAID to receive a lower price offer from less expensive Mentor-Protégé teams. USAID acknowledges that a structured Mentor-Protégé Program provides an opportunity for dual benefits where small and disadvantaged business are developed to become prime contractors and technically capable sub-contractors. More importantly, the Program provides a degree of confidence to Program Officers that the Mentor firm stands behind the work of the Protégé firm. Therefore, risks associated with the performance of the small and disadvantaged business are mitigated.

II. Section-by-Section Analysis

This rulemaking proposes to add a new Subpart 273 and amend Part 719 of the AIDAR to provide a Mentor-Protégé Program that assists qualified small business to receive developmental assistance from USAID prime contractors in order to increase the base of small business eligible to perform on USAID grants, contracts and subcontracts.

Proposed sections 719.273–2 and 719.273–4 define which types of entities are eligible to participate as Protégé in the Program. Those entities would

include Historically Black Colleges and Universities and other minority institutions of higher learning in addition to 8(a) firms, other small disadvantaged business, and women-owned small business. Proposed section 719.273–3 provides the USAID's Mentor-Protégé Program policy. Costs incurred by a Mentor to provide developmental assistance are not chargeable to the contract but can be used to offset subcontract goals to the extent that they are incurred during the performance of a contract identified in the Mentor-Protégé Agreement, and have not been credited or reimbursed by the Government. This is an exception to the general rule that USAID will not reimburse Mentors for providing developmental assistance to Protégés, which is set out in proposed section 719.273–3(b). Proposed section 719.273–4 outlines requirements for Mentor eligibility.

Proposed section 719.273–3 states the incentives for Mentoring firms. Proposed section 719.273–4 outlines Protégé eligibility requirements. Proposed section 719.273–5 provides that selection of a Protégé is solely at the discretion of the proposed Mentor. Section 719.273–6 describes the process by which USAID contractors may seek to participate in this program as Mentors.

Proposed section 719.273–7 provides the minimum requirements of a proposed Mentor-Protégé agreement. Proposed section 719.273–8 describes forms of developmental assistance. Proposed section 719.273–7 describes the review process leading to USAID's approval of a proposed Mentor-Protégé agreement. Proposed section 719.273–10 describes the various reports that this program requires. Proposed section 719.273–11 provides for the inclusion of a provision discussing the Mentor-Protégé program in all solicitations exceeding $550,000 ($1,000,000 for construction) that offer subcontracting opportunities. Proposed section 752.219–XX provides for the inclusion of a provision discussing the establishment of the Mentor-Protégé Program.

III. Procedural Requirements

A. Review Under Executive Order 12866

This proposed rule has been determined to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, this proposed rule was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) Write regulations to minimize litigation; and (3) Provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the subject law's preemptive effect, if any; (2) Clearly specifies any effect on existing Federal law or regulation; (3) Provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) Specifies the retroactive effect, if any; (5) Adequately defines key terms; and (6) Addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. USAID has completed the required review and determined that these proposed regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, that requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and that is likely to have significant economic impact on a substantial number of small entities. The entities to which this rulemaking would apply are large business and small business firms that receive a form of incentive for assuming the role of Mentor to 8(a) firms, other small disadvantaged business, small women-owned business, Historically Black Colleges and Universities, and other minority institutions of higher education. It is the expectation that at such time as this rule is finalized, those Protégé entities would directly benefit from the forms of Mentoring described in this proposed rule. USAID believes there would not be an adverse economic impact on small contractors or subcontractors, but requests comment from the public on other possible impacts this rule may have on small entities. Comments will be used as a factual basis upon which USAID would certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Review Under the Paperwork Reduction Act

This proposed rule would require USAID contractors serving as Mentors to submit an application (see proposed Sec. 719.273–7) and annual progress reports to the USAID Mentor-Protégé Program Manager at USAID Headquarters (see proposed Sec. 719.273–10). The information in the reports is necessary to determine the value of the developmental assistance and if the schedules and developmental assistance levels contained in Mentor-Protégé Agreements are being met. Performance under the Agreements is the basis for providing proper recognition to Mentor firms. The proposed collection of information has been submitted to the Office of Management and Budget for review and approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* USAID estimates the number of respondent Mentor firms to be 30 and the number of hours required for recordkeeping and preparation of the reports to be approximately 12 hours per respondent annually. The total annual burden hour from compliance is expected to be 360 hours (30×12 hours per year). The collection of information contained in this proposed rule is considered the least burdensome for meeting the requirements and objectives of the USAID Mentor-Protégé Program.

USAID invites public comments concerning: (1) The need for the reporting requirement; (2) the accuracy of USAID's estimate of the reporting burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents. Send comments regarding this proposed collection of information to the contact persons named in the address section of this notice.

E. Review Under Executive Order 12612

Executive Order 12612, (52 FR 41685, October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any

substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This proposed rule merely describes the USAID Mentor-Protégé Program. States would not be directly subject to this rule, since they are not among the class of entities described as Mentors or Protégés. USAID has determined that this proposed rule would not have a substantial direct effect on the institutional interests or traditional functions of the States.

F. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a federal mandate with costs to State, local or tribal governments, or to the private sector of $100 million or more. This proposed rulemaking would only affect private sector entities, and the impact is less than $100 million.

List of Subjects in 48 CFR Part 719

Government procurement.

For the reasons set out in the preamble, USAID proposes to amend 48 CFR chapter 7 as set forth below:

PART 719—SMALL BUSINESS PROGRAMS

1. The authority citation for part 719 is revised to read as follows:

Authority: 42 U.S.C. 7254, 40 U.S.C. 486(c), 42 U.S.C. 2201.

2. A new subpart 719.273 is added as follows:

Subpart 719.273—The U.S. Agency for International Development Mentor-Protégé Program

719.273–1 Purpose.
719.273–2 Definitions.
719.273–3 Incentives for Prime Contractor Participation.
719.273–4 Eligibility of Mentor and Protégé Firms.
719.273–5 Selection of Protégé Firms.
719.273–6 Application Process.
719.273–7 OSDBU Review of Application.
719.273–8 Developmental Assistance.
719.273–9 Obligations Under the Mentor-Protégé Program.
719.273–10 Internal Controls.
719.273–11 Solicitation Provision and Contract Clause.

Subpart 719.273—The United States Agency for International Development (USAID) Mentor-Protégé Program

719.273–1 Purpose.

The USAID Mentor-Protégé Program is designed to motivate and encourage firms and institutions of higher education to provide business development assistance to small business and institutions of higher of higher education in the United States that either historically or currently have ethnic minority student enrollments of more than 25 percent. These institutions are commonly known as Minority Institutions or referred to in this document as Minority Serving Institutions (MSIs). The term ''small business'' includes small business, small disadvantaged business certified by the Small Business Administration under Section 8(a) of the Small Business Act, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business. The Mentor-Protégé Program is also designed to improve the performance of USAID contractors and subcontractors by providing developmental assistance to Protégé entities, fostering the establishment of long-term business relationships between small business and prime contractors and between institutions of higher education with MSIs, and increasing the overall number of small business and MSIs that receive USAID contract and subcontract awards. For purposes of the Small Business Act, a Protégé firm is not considered an affiliate of a Mentor firm solely because the Protégé firm is receiving developmental assistance from said Mentor firm under the Program. A firm's status as a Protégé under a USAID contract shall not have an effect on the firm's eligibility to seek other prime contracts or subcontracts. Mentors may have multiple Protégés. However, USAID reserves the right to limit the total number of Protégés participating under the Mentor-Protégé Program.

719.273–2 Definitions.

(a) Throughout, the term ''small business'' includes all categories of small firms on whose behalf OSDBU is chartered to advocate, including small business, small and disadvantaged business, women-owned small business, veteran-owned and service-disabled veteran-owned small business and small business located in HUBZones, as those terms are defined in FAR 2.101.

(b) The term ''MSIs'' applies to Historically Black Colleges and Universities (HBCUs), Hispanic Serving Institutions (HSIs) and Tribal Colleges and Universities (TCUs). Here the term is used interchangeably with the term Minority Institution as defined in FAR 2.101.

(c) A ''Mentor'' is a prime contractor that elects to promote and develop small business subcontractors by providing developmental assistance designed to enhance the business success of the Protégé. An institution of higher education may also enter into Mentor-Protégé Agreement as a Mentor with a small business or a MSI Protégé.

(d) ''Program'' refers to the USAID Mentor-Protégé Program as described in this Chapter.

(e) ''Protégé'' means a small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business or service-disabled veteran-owned small business that is the recipient of developmental assistance pursuant to a Mentor-Protégé Agreement. A MSI can also enter into a Mentor-Protégé Arrangement with a business entity.

719.273–3 Incentives for Prime Contractor Participation.

(a) Under the Small Business Act, 15 U.S.C. 637(d)(4)(E), USAID is authorized to provide appropriate incentives to encourage subcontracting opportunities for small business consistent with the efficient and economical performance of the contract. This authority is limited to negotiated procurements. FAR 19.202–1 provides additional guidance.

(b) Costs incurred by a Mentor to provide developmental assistance as described below in 719.273–8 can be used to offset established sub-contracting requirements, to the extent that those costs are incurred during the performance of a contract identified in the Mentor-Protégé Agreement, and have not been previously credited or reimbursed by the Government.

(c) In addition to paragraph (b) of this section, contracting officers may give Mentors evaluation credit under FAR 15.101–1 considerations for subcontracts awarded pursuant to their Mentor-Protégé Agreements and their subcontracting plans. Therefore:

(1) Contracting officers may evaluate subcontracting plans containing Mentor-Protégé arrangements more favorably than subcontracting plans without Mentor-Protégé Agreements.

(2) Contracting officers may assess the prime contractor's compliance with the subcontracting plans submitted in previous contracts as a factor in evaluating past performance under FAR 15.305(a)(2)(v) and determining contractor responsibility 19.705–5(a)(1).

(d) *OSDBU Mentoring Award.* A non-monetary award will be presented

annually to the Mentoring firm providing the most effective developmental support of a Protégé. The Mentor-Protégé Program Manager will recommend an award winner to the Director of the Office of Small and Disadvantaged Business Utilization (OSDBU).

(e) *OSDBU Mentor-Protégé Annual Conference*. At the conclusion of each year in the Mentor-Protégé Program, Mentor firms will be invited to brief contracting officers, program leaders, office directors and other guests on Program progress.

719.273–4 Eligibility of Mentor and Protégé Firms.

Eligible business entities approved as Mentors may enter into agreements (hereafter referred to as ''Mentor-Protégé Agreement'' or ''Agreement'' and explained in 719.273–6) with eligible Protégés. Mentors provide appropriate developmental assistance to enhance the capabilities of Protégés to perform as contractors and/or subcontractors. Eligible small business entities capable of providing developmental assistance may be approved as Mentors. Protégés may participate in the Program in pursuit of a prime contract or as subcontractors under the Mentor's prime contract with USAID.

(a) *Eligibility*. A Mentor:

(1) May be either a large or small business entity;

(2) Must be eligible for award of Government contracts;

(3) Must be able to provide developmental assistance that will enhance the ability of Protégés to perform as prime contractors or subcontractors; and

(4) Will be encouraged to enter into arrangements with entities with which it has established business relationships.

(b) *Eligibility*. (1) A Protégé:

(i) Must be a small business, HUBZone, small disadvantaged business, women-owned small business, veteran-owned small business, small disadvantaged veteran-owned small business (as those terms are defined in FAR 2.101) or a Minority Serving Institution (MSI) (as defined in 719.273–2);

(ii) Must be small as determined by NAICS code for the services or supplies to be provided by the Protégé to the Mentor; and

(iii) Eligible for award of government contracts.

(2) A Protégé firm may self-certify to a Mentor firm that it meets the requirements set forth in paragraph (b) of this section. Mentors may rely in good faith on written representations by potential Protégés that they meet the specified eligibility requirements. Small disadvantaged business status eligibility and documentation requirements are determined according to FAR 19.304. HUBZone status eligibility and documentation requirements are determined according to FAR 19.1303.

(c) Protégés may have multiple Mentors. Protégés participating in Mentor-Protégé programs in addition to USAID's Program should maintain a system for preparing separate reports of Mentoring activity so that results of the USAID Program can be reported separately from any other agency program.

719.273–5 Selection of Protégé Firms.

(a) Mentor firms will be solely responsible for selecting Protégé firms. Mentors are encouraged to select from a broad base of MSIs and small business including small business, small disadvantaged business, women-owned small business, veteran-owned small business, service-disabled veteran-owned small business, and HUBZone firms whose core competencies support USAID's mission.

(b) Mentors may have multiple Protégés. However, USAID reserves the right to limit the total number of Protégés participating under each Mentor firm for the Mentor-Protégé Program.

(c) The selection of Protégé firms by Mentor firms may not be protested, except that any protest regarding the size or eligibility status of an entity selected by a Mentor shall be handled in accordance with the Federal Acquisition Regulation (FAR) and the Small Business Administration regulations.

719.273–6 Application Process.

Entities interested in becoming a Mentor firm must apply in writing to the USAID Office of Small and Disadvantaged Business Utilization (OSDBU) by submitting form AID XXXX (OMB Approval number xxxx____). The application shall contain the Mentor-Protégé Agreement and shall be evaluated for approval. Evaluations will consider the nature and extent of technical and managerial support as well as any proposed financial assistance in the form of equity investment, loans, joint-venture, and traditional subcontracting support. The Mentor-Protégé Agreement must contain:

(a) Names, addresses, phone numbers, and e-mail addresses (if available) of Mentor and Protégé firm(s) and a point of contact for both Mentor and Protégé;

(b) A description of the developmental assistance that will be provided by the Mentor to the Protégé, including a description of the work or product contracted for (if any), a schedule for providing assistance, and criteria for evaluation of the Protégé's developmental success.

(c) A listing of the number and types of subcontracts to be awarded to the Protégé;

(d) Duration of the Agreement, including rights and responsibilities of both parties (Mentor and Protégé);

(e) Termination procedures, including procedures for the parties' voluntary withdrawal from the Program. The Agreement shall require the Mentor or the Protégé to notify the other firm in writing at least 30 days in advance of its intent to voluntarily terminate the Agreement;

(f) Procedures requiring the parties to notify OSDBU immediately upon receipt of termination notice from the other party;

(g) A plan for accomplishing the work or product contracted for should the Agreement be terminated; and

(h) Other terms and conditions, as appropriate.

719.273–7 OSDBU Review of Application.

(a) OSDBU will review the information to establish the Mentor and Protégé eligibility and to ensure that the information that is in Section 719.273–6 is included. If the application relates to a specific contract, then OSDBU will consult with the responsible contracting officer on the adequacy of the proposed Agreement, as appropriate. OSDBU will complete its review no later than 30 calendar days after receipt of the application or after consultation with the contracting officer, whichever is later. Application for and enrollment into the Program are free and open to the public.

(b) After OSDBU completes its review and provides written approval, the Mentor may execute the Agreement and implement the developmental assistance as provided under the Agreement. OSDBU will provide a copy of the Mentor-Protégé Agreement to the USAID contracting officer for any USAID contracts affected by the Agreement.

(c) The Agreement defines the relationship between the Mentor and Protégé firms only. The Agreement itself does not create any privity of contract or contractual relationship between the Mentor and USAID nor the Protégé and USAID.

(1) If the Mentor responding to a solicitation wishes to receive credit for an approved program arrangement, then

the contracting officer must add the approved Mentor-Protégé Agreement to the subcontracting plan of any affected contract. OSDBU will notify the contracting officer of any changes to the Agreement, particularly if either party terminates the Agreement or OSDBU rescinds its approval of the Agreement per section 719.273–10.

(2) If the application is disapproved, the Mentor may provide additional information for reconsideration. OSDBU will complete review of any supplemental material no later than 30 days after its receipt. Upon finding deficiencies that USAID considers correctable, OSDBU will notify the Mentor and Protégé and request correction of deficiencies to be provided within 15 days.

719.273–8 Developmental Assistance.

The forms of developmental assistance a Mentor can provide to a Protégé include and are not limited to the following:

(a) Guidance relating to—

(1) Financial management;

(2) Organizational management;

(3) Overall business management/planning;

(4) Business development; and

(5) Technical assistance.

(b) Loans;

(c) Rent-free use of facilities and/or equipment;

(d) Property;

(e) Temporary assignment of personnel to a Protégé for training; and

(f) Any other types of permissible, mutually beneficial assistance.

719.273–9 Obligations Under the Mentor-Protégé Program.

(a) A Mentor or Protégé may voluntarily withdraw from the Program. However, in no event shall such withdrawal impact the contractual requirements under any prime contract.

(b) Mentor and Protégé entities shall submit to the USAID Office of Small and Disadvantaged Business Utilization (OSDBU) annual reports on progress under the Mentor-Protégé Agreement. Mentors required to submit Small Business Subcontracting Plan reports (in accordance with FAR 52.219–9) may submit the Mentor-Protégé reports as part of their subcontracting reporting obligations. USAID will evaluate annual reports by considering the following:

(1) Specific actions taken by the Mentor during the evaluation period to increase the participation of their Protégé(s) as suppliers to the Federal Government and to commercial entities;

(2) Specific actions taken by the Mentor during the evaluation period to develop technical and administrative expertise of a Protégé as defined in the Agreement;

(3) The extent to which the Protégé has met the developmental objectives in the Agreement;

(4) The extent to which the Mentor's participation in the Mentor-Protégé Program impacted the Protégé'(s) ability to receive contract(s) and subcontract(s) from private firms and Federal agencies other than USAID; and, if deemed necessary.

(5) Input from the Protégé on the nature of the developmental assistance provided by the Mentor.

(c) OSDBU will submit annual reports to the relevant contracting officer regarding participating prime contractor(s)' performance in the Program.

(d) Mentor and Protégé firms shall submit an evaluation to OSDBU at the conclusion of the mutually agreed upon Program period, the conclusion of the contract, or the voluntary withdrawal by either party from the Program, whichever comes first.

719.273–10 Internal Controls.

(a) OSDBU will oversee the Program and will work in concert with the Mentor-Protégé Program Manager and relevant contracting officers to achieve Program objectives. OSDBU will establish internal controls as checks and balances applicable to the Program. These controls will include:

(1) Reviewing and evaluating Mentor applications for validity of the provided information;

(2) Reviewing annual progress reports submitted by Mentors and Protégés on Protégé development to measure Protégé progress against the plan submitted in the approved Agreement; and

(3) Reviewing and evaluating financial reports and invoices submitted by the Mentor to verify that USAID is not charged by the Mentor for providing developmental assistance to the Protégé.

(b) USAID may rescind approval of an existing Mentor-Protégé Agreement if it determines that such action is in USAID's best interest. The rescission shall be in writing and sent to the Mentor and Protégé after approval by the Director of OSDBU. Rescission of an Agreement does not change the terms of any subcontract between the Mentor and the Protégé.

719.273–11 Solicitation Provision and Contract Clause.

(a) The Contracting Officer shall insert the provision at AIDAR 752.219–70 in all unrestricted solicitations exceeding $550,000 ($1,000,000 for construction) that offer subcontracting opportunities.

(b) The Contracting Officer shall insert the clause at AIDAR 752.219–71 in all contracts where the prime contractor has signed a Mentor-Protégé Agreement with USAID.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for part 752 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 566673; 3 CFR, 1979 Comp., p. 435.

4. Add section 752.219–270 to read as follows:

752.219–270 USAID Mentor-Protégé Program (XXXX 2007)

As prescribed in AIDAR 719.273–11(a), insert the following provision:

USAID Mentor-Protégé Program

(a) Large and small business are encouraged to participate in the USAID Mentor-Protégé Program (the ''Program''). Mentor firms provide eligible small business Protégés with developmental assistance to enhance their business capabilities and ability to obtain Federal contracts.

(b) Mentor firms are large prime contractors or eligible small business capable of providing developmental assistance. Protégé firms can be either small business, as defined in 13 CFR Parts 121, 124, and 126 or MSIs.

(c) Developmental assistance is technical, managerial, financial, and other mutually beneficial assistance that aids Protégés. The costs for developmental assistance are not chargeable to the contract. Firms interested in participating in the Program are encouraged to contact the USAID OSDBU (202–712–1500) for more information.

(End of provision)

5. Add section 752.219–271 to read as follows:

752.219–71 Mentor Requirements and Evaluation (XXXX 2007)

As prescribed in AIDAR 719.273–11(b), insert the following clause:

Mentor Requirements and Evaluation

(a) Mentor and Protégé firms shall submit an evaluation of the overall experience in the Program to OSDBU at the conclusion of the mutually agreed upon Program period, the conclusion of the contract, or the voluntary withdrawal by either party from the Program, whichever occurs first. At the conclusion of each year in the Mentor-Protégé Program, the Mentor and Protégé will formally brief the USAID Mentor-Protégé Program Manager regarding Program accomplishments under their Mentor-Protégé Agreement.

(b) Mentor or Protégé shall notify OSDBU in writing, at least 30 calendar days in advance of the effective date of the firm's withdrawal from the Program.

(End of clause)

Dated: November 9, 2006.

Marilyn Marton,

Director, Office of Small and Disadvantaged Business Utilization (OSDBU).

[FR Doc. E6–19707 Filed 11–21–06; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 604

[Docket No. FTA–2005–22657]

RIN 2132–AA85

Charter Service Negotiated Rulemaking Advisory Committee

AGENCY: Federal Transmit Administration (FTA), DOT.

ACTION: Notice of meeting location and time of the meeting.

SUMMARY: This notice lists the location and time of the next Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC) meeting.

DATES: *Effective Date:* November 22, 2006.

FOR FURTHER INFORMATION CONTACT: Elizabeth Martineau, Attorney-Advisor, Office of the Chief Counsel, Federal Transmit Administration, 202–366–1936 (*elizabeth.martineau@dot.gov*). Her mailing address at the Federal Transmit Administration at 400 Seventh Street, SW., Room 9316, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Meeting Location

The Residence Inn Marriott, 550 Army Navy Drive, Arlington, VA 22202.

Meeting Time

December 6th, 9 a.m.–4:30 p.m.
December 7th, 8:30 a.m.–4 p.m.

Issued this 16th day of November, 2006, in Washington, DC.

James S. Simpson,

Administrator.

[FR Doc. 06–9364 Filed 11–21–06; 8:45am]

BILLING CODE 4910–57–M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 801

Public Availability of Information

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Notice of proposed rulemaking.

SUMMARY: The NTSB is proposing to amend 49 *Code of Federal Regulations* (CFR) Part 801, ''Public Availability of Information,'' to include updated information regarding the availability of NTSB records. This amendment updates the NTSB regulations that implement the Freedom of Information Act (FOIA) and Privacy Act, notifies the public of changes in the NTSB's Freedom of Information Act processing procedures and, in general, advises the public on the availability of information from NTSB accident investigations.

DATES: Submit comments on or before December 22, 2006.

ADDRESSES: Mail comments concerning this proposed rule to Gary L. Halbert, General Counsel, National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594–2000.

FOR FURTHER INFORMATION CONTACT: Gary L. Halbert, (202) 314–6080.

SUPPLEMENTARY INFORMATION:

Proposed Revision to § 801.1, Applicability

The NTSB seeks to amend § 801.1 in order to clarify the NTSB's implementation of the provisions of the Freedom of Information Act, and update the relevant statutory citations.

Proposed Revision to § 801.2, Policy

The NTSB seeks to amend § 801.2 in order to emphasize that persons seeking information from the NTSB need not submit a request under the FOIA, but instead should first search for information that is publicly available. Although the NTSB makes ''public dockets'' of investigative information available to the public at the conclusion of each investigation, the NTSB still receives hundreds of FOIA requests each year for the same or similar information. Many FOIA requesters find that the information they receive from the NTSB, beyond that already in the public docket, is not helpful to them. Section 801.2 emphasizes this point and encourages requesters to obtain the public docket of investigative information before they consider submitting a FOIA request.

Proposed Revision to § 801.3, Definitions

The NTSB seeks to amend § 801.3 in order to update existing definitions, and in order to include definitions for the terms, ''public docket'' and ''non-docket,'' which are unique to the NTSB.

Proposed Revision to § 801.10, General

The NTSB seeks to amend § 801.10 to replace references to ''Director, Bureau of Administration'' with ''Chief, Records Management Division.'' The NTSB no longer has a Director, Bureau of Administration.

In addition, the NTSB seeks to amend § 801.10 in order to update the deadline by which the NTSB must respond to requests for information under the FOIA; Congress amended the FOIA in 1996 to expand the response deadline from 10 working days to 20 working days. 5 U.S.C. 552(a)(6)(A)(i). The NTSB's proposed amendment to § 801.10(b) reflects this change. In updating this provision, however, the NTSB notes that the FOIA does not require an agency to search for records, meet time deadlines, or release any records until the agency has received a FOIA request. A request for information under the FOIA must comply with published regulations before an agency is required to consider it a proper FOIA request.

The NTSB also seeks to amend § 801.10 to notify persons seeking information that the NTSB will deny requests for information related to an ongoing investigation, in accordance with the exemptions of the FOIA.

The other proposed amendments to § 801.10 clarify the general requirements for submitting a FOIA request to the NTSB.

Proposed Revision to § 801.11, Segregability of Records

The NTSB seeks to amend § 801.11 in order to update the title of the NTSB employee who makes a segregability determination. The amendments also clarify the NTSB's practice of segregating exempt portions of a record from non-exempt portions via redaction, when possible.

Proposed Revision to § 801.12, Protection of Records

The NTSB seeks to amend § 801.12 in order to provide a cross-reference to another relevant section within this title, and to add to a quotation of 18 U.S.C. 641. In general, the NTSB intends to retain the majority of this section as the NTSB originally enacted it, in order to cite the specific penalties that a person will encounter if they attempt to steal, alter, mutilate, obliterate, or destroy an agency record.

Proposed Addition of § 801.20, Processing of Records

The NTSB seeks to add § 801.20 to this part, in order to notify persons seeking information concerning the NTSB FOIA Office's ''tracking'' system for processing requests. This system allows the NTSB to process requests more efficiently; rather than allowing a complex, broad request to inhibit the processing of simpler requests, the

NTSB places each request on an appropriate ''track'' and processes them on a ''first-in, first-out'' basis. This process is consistent with the courts' interpretations of the processing requirements of the FOIA. *See*, *e.g.*, *Open Am.* v. *Watergate*, 547 F.2d 605, 616 (D.C. Cir. 1976).

The addition of § 801.20 also addresses expedited processing. This proposed text regarding the expedition of certain requests states that requesters must demonstrate a ''compelling need'' for the information, in accordance with the FOIA. 5 U.S.C. 552(a)(6)(E). Requesters may show a ''compelling need'' in one of two ways: By establishing that his or her failure to obtain the records quickly ''could reasonably be expected to pose an imminent threat to the life or physical safety of an individual''; or, if the requester is a ''person primarily engaged in disseminating information,'' by demonstrating that an ''urgency to inform the public concerning actual or alleged federal government activity'' exists. *Id.* Section 552(a)(6)(E)(v).

Proposed Revision to § 801.21, Initial Determination

The NTSB seeks to amend § 801.21 in order to update the title of the NTSB employee who makes an initial determination regarding the release of records within the scope of each request. The proposed amendments to § 801.21 also update the time limit for the NTSB's response to requests from 10 days to 20 days, in accordance with the existing version of the FOIA. 5 U.S.C. 552(a)(6)(A)(i).

Proposed Revision to § 801.22, Final Determination

The NTSB seeks to amend § 801.22 in order to set forth a time limit in which a requester may appeal the initial determination of the NTSB FOIA Officer. The proposed amendments to § 801.22 also clarify that the NTSB's Managing Director will determine whether to grant or deny the appeal.

Proposed Revisions to § 801.23, Extension

The NTSB seeks to amend § 801.23 in order to include certain minor technical amendments.

Proposed Revisions to § 801.30, Records From Accident Investigations

The NTSB seeks to amend § 801.30 in order to simplify the process by which investigative records become publicly available. Section 801.30 now encompasses all types of investigations, and describes what types of records are available for inspection and duplication.

Proposed Revisions to § 801.31, Public Hearings Regarding Investigations

The NTSB seeks to amend § 801.31 to reflect a reorganization of §§ 801.30–801.33, and to encompass hearings on all types of investigations. The NTSB also seeks to change the approximate time period in which transcripts and other records from the hearing become available.

Proposed Revisions to § 801.32, Accident Reports

The NTSB seeks to amend § 801.32 to reflect a reorganization of §§ 801.30–801.33, and to include a citation to the section of the NTSB's enabling statute that addresses accident reports. The NTSB also seeks to amend these sections to include a reference to the NTSB public Web site, *http://www.ntsb.gov.*

Proposed Deletion of §§ 801.33–801.36

The NTSB seeks to delete §§ 801.33–801.36, which address accident reports according to the mode of transportation at issue. The NTSB's current practice of issuing accident reports in accordance with 49 U.S.C. 1131(e) does not significantly vary depending on the mode of transportation; therefore, the NTSB seeks to consolidate and simplify the mode-specific sections regarding accident reports and hearings.

Proposed Revision to § 801.40, the Board's Rules

The NTSB seeks to amend § 801.40 to correct the citation in which the NTSB's rules are located in the Code of Federal Regulations.

Proposed Deletion of § 801.41, Transportation Safety Recommendations

The NTSB seeks to delete the text of § 801.41. Previously, this section stated that the NTSB publishes transportation safety recommendations in the **Federal Register**. The NTSB's statute no longer requires the NTSB to publish safety recommendations in the **Federal Register**; as such, the NTSB does not distribute safety recommendations via the **Federal Register**.

Proposed Deletion of § 801.42, Indexes to Aviation and Maritime Enforcement Cases

The NTSB no longer maintains the indexes described in § 801.42. Instead, the NTSB maintains an index of enforcement decisions on the NTSB Web site. Therefore, the NTSB seeks to delete § 801.42.

Proposed Revision to § 801.43, Administrative Staff Manuals and Instructions and Indexes That Affect the Public

The NTSB no longer maintains an updated index of staff manuals in the NTSB FOIA Reading Room. Therefore, the NTSB seeks to delete § 801.43.

Proposed Revision to § 801.44, Reports to Congress

The NTSB seeks to amend § 801.44 in order to update the citation to the section of the NTSB's statute that requires the NTSB to submit an annual report to Congress, and to include a reference to the NTSB's public Web site, which contains the NTSB's annual report to Congress.

Proposed Revision to § 801.45, Other Records

The NTSB seeks to delete the text of § 801.45, because the NTSB makes records regarding each investigation available to the public in the form of ''public dockets,'' as described in § 801.10.

Proposed Revision to § 801.46, Special Document Services

The NTSB seeks to amend § 801.46 to include minor technical amendments.

Proposed Revision to § 801.50, General

The NTSB seeks to amend § 801.50 to include minor technical amendments, and to clarify that the NTSB may choose to make a discretionary release of a record that may be exempt under the FOIA. Such discretionary releases do not create any right enforceable in court, and depend upon the circumstances surrounding the record at issue.

Proposed Revision to § 801.51, National Defense and Foreign Policy Secrets

The NTSB seeks to amend § 801.51 to include minor technical amendments, and to update the relevant citations regarding the release of classified records.

Proposed Revision to § 801.52, Internal Personnel Rules and Practices of the NTSB

The NTSB seeks to amend § 801.52 to clarify which records are exempt from disclosure pursuant to Exemption 2.

Proposed Revision to § 801.53, Records Exempt by Statute From Disclosure

The NTSB seeks to amend § 801.53 to include minor technical amendments. The NTSB also notes that the NTSB's enabling statute prohibits the NTSB from releasing certain records; therefore, the NTSB encourages requesters to review the NTSB's statute before

submitting a request under the FOIA. See 49 U.S.C. 1114 and 1136(d)(2).

Proposed Revision to § 801.54, Trade Secrets and Commercial or Financial Information

The NTSB seeks to amend § 801.54, which implements Exemption 4 of the FOIA, in order to correlate with the enumerated exemptions of the FOIA. Previously, the text of this section existed as § 801.59.

Proposed Revision to § 801.55, Interagency and Intra-Agency Exchanges

The NTSB seeks to amend § 801.55 to include minor technical amendments.

Proposed Revision to § 801.56, Unwarranted Invasion of Personal Privacy

The NTSB seeks to amend § 801.56 to include minor technical amendments.

Proposed Revision to § 801.57, Records Compiled for Law Enforcement Purposes

The NTSB seeks to amend § 801.57 to include minor technical amendments. The NTSB also notes that courts have recently broadened the application of Exemption 7 to include records regarding the enforcement of regulations of a civil nature. As such, Exemption 7(A) applies to withhold records related to a pending civil investigation.

Proposed Revision to § 801.58, Records for Regulation of Financial Institutions

The NTSB seeks to amend § 801.58 to include minor technical amendments.

Proposed Revision to § 801.59, Geological Records

The NTSB seeks to amend § 801.59 to include minor technical amendments.

Proposed Addition of Subpart G, Fee Schedule

The NTSB seeks to add §§ 801.60 and 801.61 within a new subpart, entitled ''Fee Schedule.''

Proposed Addition of § 801.60, Fee Schedule

The NTSB seeks to delete the Appendix containing the NTSB Fee Schedule for FOIA requests that accompanies these regulations, and instead place the fee schedule in a new section, § 801.60. The NTSB proposes significant changes to the fee schedule in accordance with case law developments and guidance from the Department of Justice and Office of Management and Budget regarding such fees. Although the NTSB had previously not charged fees for the fulfillment of most requests for records, the NTSB will begin requiring that requesters pay fees for the search, review, and duplication of records, as provided in § 801.60. The NTSB will not consider a request to be ''received'' pursuant § 801.10 of this title until the requester agrees to pay the amount that the NTSB FOIA Office specifies.

Proposed Addition of § 801.61, Appeals of Fee Determinations

The NTSB seeks to add § 801.61, Appeals of Fee Determinations, to provide that a requester may appeal the FOIA Office's decision regarding fees.

List of Subjects in 49 CFR part 801

Archives and records, Freedom of information, Privacy.

For the reasons set forth in the preamble, the NTSB proposes to amend 49 CFR part 801 as follows:

PART 801—PUBLIC AVAILABILITY OF INFORMATION

1. The authority citation for part 801 is revised to read as follows:

Authority: Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101–1155); 5 U.S.C. 551(2); Freedom of Information Act (5 U.S.C. 552); 18 U.S.C. 641 and 2071; 31 U.S.C. 3717 and 9701; Federal Records Act, 44 U.S.C. Chapters 21, 29, 31, and 33.

2. Section 801.1 is revised to read as follows:

§ 801.1 Applicability.

(a) This part contains the rules that the National Transportation Safety Board (NTSB) follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These rules should be read together with the FOIA, which provides additional information about public access to records maintained by the NTSB.

(b) This part also provides for document services and the fees for such services, pursuant to 31 U.S.C. 9701.

(c) This part applies only to records existing when the request for the information is made. The NTSB is not required to create records for the sole purpose of responding to a FOIA request.

(d) Sections 801.51 through 801.59 of this title describe records that are exempt from public disclosure.

3. Section 801.2 is revised to read as follows:

§ 801.2 Policy.

(a) In implementing 5 U.S.C. 552, it is the policy of the NTSB to make information available to the public to the greatest extent possible, consistent with the mission of the NTSB. Information the NTSB routinely provides to the public as part of a regular NTSB activity (such as press releases and information disclosed on the NTSB's public website) may be provided to the public without compliance with this part. In addition, as a matter of policy, the NTSB may make discretionary disclosures of records or information otherwise exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption; however, this policy does not create any right enforceable in court.

(b) Given the NTSB's stated policy of providing as much information as possible regarding general NTSB operations and releasing documents involving investigations, the NTSB strongly encourages requesters seeking information to check the NTSB's website for such information before submitting a FOIA request. For every investigation in which the NTSB has determined the probable cause of an accident, the NTSB's docket management system will include a ''public docket'' containing documentation that the investigator-in-charge deemed pertinent to the investigation. Requesters may obtain these public dockets without submitting a FOIA request. The NTSB encourages all requesters to review the public docket materials before submitting a FOIA request.

4. Section 801.3 is revised to read as follows:

§ 801.3 Definitions.

The following definitions shall apply in this subpart:

(a) ''Record'' includes any writing, drawing, map, recording, tape, film, photo, or other documentary material by which information is preserved. In this part, ''document'' and ''record'' shall have the same meaning.

(b) ''Redact'' refers to the act of making a portion of text illegible by placing a black mark on top of the text.

(c) ''Public Docket'' includes a collection of records from an accident investigation that the investigator who oversaw the investigation of that accident has deemed pertinent to determining the probable cause of the accident.

(d) ''Non-docket'' items include other records from an accident that the investigator who oversaw the investigation of that accident has deemed irrelevant or not directly pertinent to determining the probable cause of the accident.

(e) ''Chairman'' means the Chairman of the NTSB.

(f) ''Managing Director'' means the Managing Director of the NTSB.

(g) ''Requester'' means any person, as defined in 5 U.S.C. 551(2), who submits a request pursuant to the FOIA.

5. Section 801.10 is revised to read as follows:

§ 801.10 General.

(a) The NTSB's Chief, Records Management Division, is responsible for the custody and control of all NTSB records required to be preserved under the Federal Records Act, 44 U.S.C. Chapters 21, 29, 31, and 33.

(b) The NTSB's FOIA Officer shall be responsible for the initial determination of whether to release records within the 20-working-day time limit, or the extension specified in the Freedom of Information Act.

(c) The NTSB's Chief, Records Management Division, shall:

(1) Maintain for public access and commercial reproduction all accident files containing aviation and surface investigators' reports, factual accident reports or group chairman reports, documentation and accident correspondence files, transcripts of public hearings, if any, and exhibits; and

(2) Maintain a public reference room, also known as a ''Reading Room,'' in accordance with 5 U.S.C. 552(a)(2). The NTSB's public reference room is located at 490 East L'Enfant Plaza, SW., Washington, DC. Other records may be available in the NTSB's Electronic Reading Room, which is located on the NTSB's website, found at *http://www.ntsb.gov*.

(d) Requests for documents must be made in writing to: National Transportation Safety Board, Attention: FOIA Officer CIO–40, 490 L'Enfant Plaza, SW., Washington, DC 20594–2000. All requests:

(1) Must reasonably identify the record requested. For requests regarding an investigation of a particular accident, requesters should include the date and location of the accident, as well as the NTSB investigation number. In response to broad requests for records regarding a particular investigation, the FOIA Office will notify the requester of the existence of a public docket, and state that other non-docket items may be available, or may become available, at a later date. After receiving this letter and reviewing the items in the public docket, requesters should notify the FOIA office if the items contained in the public docket suffice to fulfill their request.

(2) Must be accompanied by the fee or agreement (if any) to pay the reproduction costs shown in the fee schedule at § 801.60 of this title, and

(3) Must contain the name, address, and telephone number of the person making the request. Requesters must update their address and telephone number in writing should this information change.

(e) The envelope in which the requester submits the request should be marked prominently with the letters ''FOIA.'' If a request fails to include a citation to the FOIA, the NTSB FOIA Office will attempt to contact the requester immediately to rectify the omission and/or clarify the request. However, the 20-working-day time limit for processing shall not commence until the FOIA Office receives a complete request.

(f) The field offices of the NTSB shall not maintain, for public access, records maintained by the Chief, Records Management Division. Requests mailed to NTSB field offices will not satisfy the NTSB's requirements for submitting a FOIA request.

(g) The NTSB may work with a commercial reproduction firm to accommodate requests for reproduction of accident records from the public docket. The reproduction charges may be subject to change. The NTSB will update its FOIA website to reflect any such changes. Section 801.60 of this title contains a current fee schedule.

(h) The NTSB will not release records originally generated by other agencies or entities. Instead, the NTSB will refer such requests for other agencies' records to the appropriate agency, which will make a release determination upon receiving and processing the referred request.

(i) Where a requester seeks a record on behalf of another person, and the record contains that person's personal information protected by Exemption 6 of the FOIA (see section 801.56 of this title), the NTSB requires the requester to submit a notarized statement of consent from the person whose personal information is contained in the record, before the NTSB releases the record.

(j) In general, the NTSB will deny requests for records concerning a pending investigation, pursuant to appropriate exemptions under the FOIA. The FOIA Office will notify the requester of this denial, and will provide the requester with information regarding how the requester may receive information on the investigation once the investigation is complete. The NTSB discourages requesters from submitting multiple FOIA requests in a continuing effort to obtain records before an investigation is complete.

6. Section 801.11 is revised to read as follows:

§ 801.11 Segregability of records.

The initial decision of the FOIA Officer will include a determination of segregability. If it is reasonable to do so, the exempt portions of a record will be segregated and, where necessary, redacted, and the nonexempt portions will be sent to the requester.

7. Section 801.12 is revised to read as follows:

§ 801.12 Protection of records.

(a) No person may, without permission, remove from the place where it is made available any record made available for inspection or copying under § 801.10(c)(2) of this part. Stealing, altering, mutilating, obliterating, or destroying, in whole or in part, such a record shall be deemed a criminal offense.

(b) Section 641 of title 18 of the United States Code provides, in pertinent part, as follows:

''Whoever * * * steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record * * * or thing of value of the United States or of any department or agency thereof * * * shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property in the aggregate, combining amounts from all the counts for which the defendant is convicted in a single case, does not exceed the sum of $1,000, he shall be fined under this title or imprisoned not more than one year, or both.''

(c) Section 2071(a) of title 18 of the United States Code provides, in pertinent part, as follows:

''Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited * * * in any public office, or with any * * * public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.''

8. Section 801.20 is revised to read as follows:

§ 801.20 Processing of requests.

(a) The NTSB processes FOIA requests upon receipt. The NTSB FOIA Office may notify the requester that the NTSB has received the request. The FOIA Office will then place each request on one of three tracks:

(1) Track 1: Requests for which there are no records, requests that meet the

criteria for expedited processing, or requests that seek records that have been produced in response to a prior request.

(2) Track 2: Requests that do not involve voluminous records or lengthy consultations with other entities.

(3) Track 3: Requests that involve voluminous records and for which lengthy or numerous consultations are required, or those requests which may involve sensitive records.

(b) Regarding expedited processing, if a requester states that he or she has a compelling need for the expedited treatment of their request, then the NTSB FOIA Office will determine whether to expedite the request and, where appropriate, do so.

9. Section 801.21 is revised to read as follows:

§ 801.21 Initial determination.

The NTSB FOIA Officer will make an initial determination as to whether to release a record within 20 working days (excluding Saturdays, Sundays, and legal public holidays) after the request is received. This time limit may be extended up to 10 additional working days in accordance with § 801.23 of this part. The person making the request will be notified immediately in writing of such determination. If a determination is made to release the requested record(s), such record(s) will be made available promptly. If the FOIA Officer determines not to release the record(s), the person making the request will, when he or she is notified of such determination, be advised of:

(a) The reason for the determination;

(b) The right to appeal the determination; and

(c) The name and title or positions of each person responsible for the denial of the request.

10. Section 801.22 is revised to read as follows:

§ 801.22 Final determination.

Requesters seeking an appeal of the FOIA Officer's initial determination must send a written appeal to the NTSB's Managing Director within 20 days. The NTSB's Managing Director will determine whether to grant or deny any appeal made pursuant to § 801.21 within 20 working days (excluding Saturdays, Sundays, and legal public holidays) after receipt of such appeal, except that this time limit may be extended for as many as 10 additional working days, in accordance with § 801.23.

11. Section 801.23 is added to read as follows:

§ 801.23 Extension.

In unusual circumstances as specified in this section, the time limits prescribed in either § 801.21 or § 801.22, may be extended by written notice to the person making a request and setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. Such notice will not specify a date that would result in an extension for more than 10 working days. As used in this paragraph, ''unusual circumstances,'' as they relate to any delay that is reasonably necessary to the proper processing of the particular request, means—

(a) The need to search for and collect the requested records from field facilities or other establishments;

(b) The need to search for, collect, and appropriately examine and process a voluminous amount of records which are the subject of a single request; or

(c) The need to consult with another agency that has a substantial interest in the disposition of the request or with two or more components of the agency having substantial subject-matter interest therein.

12. Section 801.30 is revised to read as follows:

§ 801.30 Records from accident investigations.

Upon completion of an accident investigation, each NTSB investigator (or ''group chairman,'' depending on the investigation) shall complete a factual report with supporting documentation and include these items in the public docket for the investigation. The Chief, Records Management Division, will then make the records available to the public for inspection or production by an order for commercial copying.

13. Section 801.31 is revised to read as follows:

§ 801.31 Public hearings regarding investigations.

Within approximately four (4) weeks after a public hearing concerning an investigation, the Chief, Records Management Division, will make available to the public the hearing transcript. On or before the date of the hearing, the Chief, Records Management Division, will make the exhibits introduced at the hearing available to the public for inspection or commercial copy order.

14. Section 801.32 is revised to read as follows:

§ 801.32 Accident reports.

(a) The NTSB will report the facts, conditions, and circumstances, and its determination of the probable causes of U.S. civil transportation accidents, in accordance with 49 U.S.C. 1131(e).

(b) These reports may be made available for public inspection in the NTSB's public reference room and/or on the NTSB's Web site, at *http://www.ntsb.gov.*

§ 801.33 [Removed]

15. Section 801.33 is removed.

§ 801.34 [Removed]

16. Section 801.34 is removed.

§ 801.35 [Removed]

17. Section 801.35 is removed.

§ 801.36 [Removed]

18. Section 801.36 is removed.

19. Section 801.40 is revised to read as follows:

§ 801.40 The Board's rules.

The NTSB's rules are published in the Code of Federal Regulations as Parts 800 through 850 of Title 49.

§§ 801.41, 801.42, 801.43 [Removed]

20. Sections 801.41, 801.42, and 801.43 are removed.

21. Section 801.41 is revised to read as follows:

§ 801.41 Reports to Congress.

The NTSB submits its annual report to Congress each year, in accordance with 49 U.S.C. 1117. The report will be available on the NTSB's Web site, found at *http://www.ntsb.gov.* Interested parties may purchase the report from the Government Printing Office or review it in the NTSB's public reference room. All other reports or comments to Congress will be available in the NTSB's public reference room for inspection or by ordering a copy after issuance.

§ 801.45 [Removed]

22. Section 801.45 is removed.

§ 801.46 [Removed]

23. Section 801.46 is removed.

24. Section 801.50 is revised to read as follows:

§ 801.50 Exemptions from disclosure.

Title 5, United States Code section 552(a) and (b) exempt certain records from public disclosure. As stated in § 801.2 of this title, the NTSB may choose to make a discretionary release of a record that is authorized to be withheld under 5 U.S.C. 552(b), unless it determines that the release of that record would be inconsistent with the purpose of the exemption concerned. Examples of records given in §§ 801.51 through 801.58 included within a particular statutory exemption are not necessarily illustrative of all types of

records covered by the applicable exemption.

25. Section 801.51 is revised to read as follows:

§ 801.51 National defense and foreign policy secrets.

Pursuant to 5 U.S.C. 552(b)(1), national defense and foreign policy secrets established by Executive Order, as well as properly classified documents, are exempt from public disclosure. Requests to the NTSB for such records will be transferred to the source agency as appropriate, where such classified records are identified. (See, e.g., Executive Order 12,958, as amended on March 25, 2003.)

26. Section 801.52 is revised to read as follows:

§ 801.52 Internal personnel rules and practices of the NTSB.

Pursuant to 5 U.S.C. 552(b)(2), the following records are exempt from disclosure under FOIA:

(a) Records relating solely to internal personnel rules and practices, including memoranda pertaining to personnel matters such as staffing policies, and procedures for the hiring, training, promotion, demotion, or discharge of employees, and management plans, records, or proposals relating to labor-management relations.

(b) Records regarding:

(1) Internal matters of a relatively trivial nature that have no significant public interest; and

(2) Predominantly internal matters, the release of which would risk circumvention of a statute or agency regulation.

27. Section 801.53 is revised to read as follows:

§ 801.53 Records exempt by statute from disclosure.

Pursuant to 5 U.S.C. 552(b)(3), the NTSB will not disclose records specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute:

(a) Requires that the matters be withheld from the public in such manner as to leave no discretion on the issue; or

(b) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

28. Section 801.54 is revised to read as follows:

§ 801.54 Trade secrets and commercial or financial information.

Pursuant to 5 U.S.C. 552(b)(4), trade secrets and items containing commercial or financial information that are obtained from a person and are privileged or confidential are exempt from public disclosure.

29. Section 801.55 is revised to read as follows:

§ 801.55 Interagency and intra-agency exchanges.

(a) Pursuant to 5 U.S.C. 552(b)(5), any record prepared by an NTSB employee for internal Government use is exempt from public disclosure to the extent that it contains—

(1) Opinions made in the course of developing official action by the NTSB but not actually made a part of that official action, or

(2) Information concerning any pending NTSB proceeding, or similar matter, including any claim or other dispute to be resolved before a court of law, administrative board, hearing officer, or contracting officer.

(b) The purpose of this section is to protect the full and frank exchange of ideas, views, and opinions necessary for the effective functioning of the NTSB. These resources must be fully and readily available to those officials upon whom the responsibility rests to take official NTSB action. Its purpose is also to protect against the premature disclosure of material that is in the developmental stage, if premature disclosure would be detrimental to the authorized and appropriate purposes for which the material is being used, or if, because of its tentative nature, the material is likely to be revised or modified before it is officially presented to the public.

(c) Examples of materials covered by this section include, but are not limited to, staff papers containing advice, opinions, or suggestions preliminary to a decision or action; preliminary notes; advance information on such things as proposed plans to procure, lease, or otherwise hire and dispose of materials, real estate, or facilities; documents exchanged in preparation for anticipated legal proceedings; material intended for public release at a specified future time, if premature disclosure would be detrimental to orderly processes of the NTSB; records of inspections, investigations, and surveys pertaining to internal management of the NTSB; and matters that would not be routinely disclosed in litigation but which are likely to be the subject of litigation.

30. Section 801.56 is revised to read as follows:

§ 801.56 Unwarranted invasion of personal privacy.

Pursuant to 5 U.S.C. 552(b)(6), any personal, medical, or similar file is exempt from public disclosure if its disclosure would harm the individual concerned or would be a clearly unwarranted invasion of the person's personal privacy.

31. Section 801.57 is revised to read as follows:

§ 801.57 Records compiled for law enforcement purposes.

Pursuant to 5 U.S.C. 552(b)(7), any records compiled for law or regulatory enforcement are exempt from public disclosure to the extent that disclosure would interfere with enforcement, would be an unwarranted invasion of privacy, would disclose the identity of a confidential source, would disclose investigative procedures and practices, or would endanger the life or security of law enforcement personnel.

32. Section 801.58 is revised to read as follows:

§ 801.58 Records for regulation of financial institutions.

Pursuant to 5 U.S.C. 552(b)(8), records compiled for agencies regulating or supervising financial institutions are exempt from public disclosure.

33. Section 801.59 is revised to read as follows:

§ 801.59 Geological records.

Pursuant to 5 U.S.C. 552(b)(9), records concerning geological wells are exempt from public disclosure.

34. Section 801.60 is added as follows:

§ 801.60 Fee Schedule.

(a) Pursuant to 5 U.S.C. 552(a)(4)(i) and 52 Fed. Reg. 10,012 (Mar. 27, 1987), the NTSB may charge certain fees for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section, or where a waiver or reduction of fees is granted under paragraph (e) of this section. The NTSB may collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States, and must send fee payments to the NTSB's FOIA Office (see mailing address at § 801.10(d)).

(b) Definitions. For purposes of this section:

(1) ''Commercial use request'' means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests. This includes the furtherance of commercial interests through litigation. When it appears that the requester will use the requested records for a commercial purpose, either because of the nature of the request or because the NTSB has reasonable cause to doubt a

requester's stated use, the NTSB shall provide the requester with a reasonable opportunity to submit further clarification.

(2) ''Direct costs'' means those expenses that an agency actually incurs in searching for, reviewing, and duplicating records in response to a FOIA request. This includes the salaries of employees performing the work, as listed below, but does not include overhead expenses such as the costs of office space.

(3) ''Duplication'' means the copying of a record, or of the information contained in a record, in response to a FOIA request.

(4) ''Educational institution'' means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. In order for a requester to demonstrate that their request falls within the category of an ''educational institution,'' the requester must show that the request is authorized by the qualifying institution and that the requester does not seek the records for commercial use, but only to further scholarly research.

(5) ''Representative of the news media'' or ''news media requester'' means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. For ''freelance'' journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization (for example, a journalist may submit a copy of a publication contract for which the journalist needs NTSB records).

(6) ''Review'' means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. ''Review'' also includes processing the record(s) for disclosure, which includes redacting and otherwise preparing releasable records for disclosure. The NTSB may require review costs even if the NTSB ultimately does not release the record(s).

(7) ''Search'' means the process of looking for and retrieving records or information within the scope of a request. ''Search'' includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The NTSB will make an effort to conduct such searches in the least expensive manner.

(c) In responding to FOIA requests, the NTSB will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (d) of this section:

(1) Search.

(i) The NTSB will charge search fees for all requests, unless an educational institution, a noncommercial scientific institution, or a news media representative submits a request containing adequate justification for obtaining a fee waiver. These fees, however, are subject to the limitations of paragraph (d) of this section. The NTSB may charge for time spent searching even if the NTSB does not locate any responsive record or if the NTSB withholds the record(s) located because such record(s) are exempt from disclosure.

(ii) The NTSB will charge $4.00 for each quarter of an hour spent by clerical personnel in searching for and retrieving a requested record. Where clerical personnel cannot entirely perform a search and retrieval (for example, where the identification of records within the scope of a request requires the assistance of professional personnel), the applicable fee will instead be $7.00 for each quarter hour of search time spent by professional personnel. Where a request requires the time of managerial personnel, the fee will be $10.25 for each quarter hour of time spent by these personnel.

(2) Duplication. The NTSB will charge duplication fees, subject to the limitations of paragraph (d) of this section.

(i) The NTSB utilizes the services of a commercial reproduction facility for requests for duplicates of NTSB public dockets and publications.

(ii) Regarding the reproduction of non-public records in response to a FOIA request, the NTSB will charge $0.10 per page for the duplication of a standard-size paper record. For other forms of duplication, the NTSB will charge the direct costs of the duplication.

(iii) Where the NTSB certifies records upon request, the NTSB will charge the direct cost of certification.

(3) Review. The NTSB will charge fees for the initial review of a record to determine whether the record falls within the scope of a request, or whether the record is exempt from disclosure. Such fees will be charged to requesters who make a request for commercial purposes. The NTSB will not charge for subsequent review of the request and responsive record; for example, in general, the NTSB will not charge additional fees for review at the administrative appeal level when the NTSB has already applied an exemption. The NTSB will charge review fees at the same rate as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) Limitations on charging fees.

(1) The NTSB will not charge a fee for notices, decisions, orders, etc. provided to persons acting as parties in the investigation, or where required by law to be served on a party to any proceeding or matter before the NTSB. Likewise, the NTSB will not charge fees for requests made by family members of accident victims, when the NTSB has investigated the accident that is the subject of the FOIA request.

(2) The NTSB will not charge a search fee for requests from educational institutions or representatives of the news media.

(3) The NTSB will not charge a search fee or review fee for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for requesters seeking records for commercial use, the NTSB will provide the following items without charge:

(i) The first 100 pages of duplication (or the cost equivalent) of a record; and

(ii) The first two hours of search (or the cost equivalent) for a record.

(5) Whenever the total fee calculated under paragraph (c) of this section is $14.00 or less for any request, the NTSB will not charge a fee.

(6) When the NTSB's FOIA Office determines or estimates that fees to be charged under this section will amount to more than $25.00, the Office will notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If the FOIA Office is able to estimate only a portion of the expected fee, the FOIA Office will advise the requester that the estimated fee may be only a portion of the total fee. Where the FOIA Office notifies a requester that the actual or estimated fees will exceed $25.00, the NTSB will not expend additional agency resources on the request until the requester agrees in writing to pay the anticipated total fee. In circumstances involving a total fee that will exceed $250.00, the NTSB may require the requester to make an advance payment or deposit of a specific amount before beginning to process the request.

(7) The NTSB may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided at 31

U.S.C. 3717 and will accrue from the date of the billing until the NTSB receives payment. The NTSB shall follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(8) Where a requester has previously failed to pay a properly charged FOIA fee to the NTSB within 30 days of the date of billing, the NTSB may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the NTSB begins to process a new request or continues to process a pending request from that requester.

(9) Where the NTSB reasonably believes that a requester or group of requesters acting together is attempting to divide a request into multiple series of requests for the purpose of avoiding fees, the NTSB may aggregate those requests and charge accordingly.

(e) Requirements for waiver or reduction of fees. For fee purposes, the NTSB will determine, whenever reasonably possible, the use to which a requester will put the requested records.

(1) The NTSB will furnish records responsive to a request without charge, or at a reduced charge, where the NTSB determines, based on all available information, that the requester has shown that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations of activities of the government, and

(ii) Disclosure of the requested information is not primarily in the commercial interest or for the commercial use of the requester.

(2) In determining whether disclosure of the requested information is in the public interest, the NTSB will consider the following factors:

(i) Whether the subject of the requested records concerns identifiable operations or activities of the federal government, with a connection that is direct and clear, and not remote or attenuated. In this regard, the NTSB will consider whether a requester's use of the documents would enhance transportation safety or contribute to the NTSB's programs.

(ii) Whether the portions of a record subject to disclosure are meaningfully informative about government operations or activities. The disclosure of information already in the public domain, in either a duplicative or substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) Whether disclosure of the requested information would contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. The NTSB will consider a requester's expertise in the subject area and ability to effectively convey information to the public.

(iv) Whether the disclosure is likely to enhance the public's understanding of government operations or activities.

(3) In determining whether the requester is primarily in the commercial interest of the requester, the NTSB will consider the following factors:

(i) The existence and magnitude of any commercial interest the requester may have, or of any person on whose behalf the requester may be acting. The NTSB will provide requesters with an opportunity in the administrative process to submit explanatory information regarding this consideration.

(ii) Whether the commercial interest is greater in magnitude than any public interest in disclosure.

(4) Additionally, the NTSB may, at its discretion, waive publication, reproduction, and search fees for qualifying foreign countries, international organizations, nonprofit public safety entities, State and Federal transportation agencies, and colleges and universities, after approval by the Chief, Records Management Division.

(5) Where only some of the records to be released satisfy the requirements for a waiver of fees, the NTSB will grant a waiver for those particular records.

(6) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (2) and (3) of this subsection, insofar as they apply to each request. The NTSB will exercise its discretion to consider the cost-effectiveness of its use of administrative resources in determining whether to grant waivers or reductions of fees.

(f) Services available free of charge.

(1) The following documents are available without commercial reproduction cost until limited supplies are exhausted:

(i) Press releases;

(ii) Safety Board regulations (Chapter VIII of Title 49, Code of Federal Regulations);

(iii) Indexes to initial decisions, Board orders, opinion and orders, and staff manuals and instructions;

(iv) Safety recommendations; and

(v) NTSB Annual Reports.

(2) The NTSB public Web site, located at *http://www.ntsb.gov,* also includes an e-mail subscription service for press releases, safety recommendations, and other announcements.

35. Section 801.61 is added as follows:

§ 801.61 Appeals of Fee Determinations.

Requesters seeking an appeal of the FOIA Officer's fee or fee waiver determination must send a written appeal to the NTSB's Managing Director within 20 days. The NTSB's Managing Director will determine whether to grant or deny any appeal made pursuant to § 801.21 within 20 working days (excluding Saturdays, Sundays, and legal public holidays) after receipt of such appeal, except that this time limit may be extended for as many as 10 additional working days, in accordance with § 801.23.

Dated: November 15, 2006.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 06–9289 Filed 11–21–06; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Rule To List Six Foreign Birds as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list six avian species, black stilt (*Himantopus novaezelandiae*), caerulean Paradise-flycatcher (*Eutrichomyias rowleyi*), giant ibis (*Pseudibis gigantea*), Gurney's pitta (*Pitta gurneyi*), Socorro mockingbird (*Mimodes graysoni*), and long-legged thicketbird (*Trichocichla rufa*) as endangered, pursuant to the Endangered Species Act of 1973, as amended (Act). This proposal, if made final, would extend the Act's protection to these species. The Service seeks data and comments from the public on this proposal.

DATES: We must receive comments and information from all interested parties by February 20, 2007. Public hearing requests must be received by January 8, 2007.

ADDRESSES: Submit any comments, information, and questions by mail to

the Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, VA 22203; or by fax to 703–358–2276; by e-mail to *ScientificAuthority@fws.gov* or through the Federal eRulemaking Portal at *http://www.regulations.gov.* Comments and supporting information will be available for public inspection, by appointment, Monday through Friday from 8 a.m. to 4 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Marie T. Maltese at the above address, or by telephone, 703–358–1708; fax, 703–358–2276; or e-mail, *ScientificAuthority@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

In this proposed rule, we propose to list six foreign bird species as endangered, pursuant to the Act (16 U.S.C. 1531 *et seq.*). These species are: giant ibis (*Pseudibis gigantea*), black stilt (*Himantopus novaezelandiae*), Gurney's pitta (*Pitta gurneyi*), Socorro mockingbird (*Mimodes graysoni*), caerulean Paradise-flycatcher (*Eutrichomyias rowleyi*), and long-legged thicketbird (*Trichocichla rufa*).

Black stilt

The black stilt, or kaki, was first described by Gould in 1841 (BirdLife International 2006). A small black wading bird with long red legs, the species was formerly widespread across New Zealand. In 1950, the total population was estimated at 1,000 birds; however, within one decade the population decreased to fewer than 100 birds (Pierce 1996). When a concerted effort to manage the species began in 1981, only 23 adults remained in the wild population (Van Heezik *et al.* 2005). In August 2000, there were 48 adults in the wild, of which 15–18 were females. An additional 11 male and 9 female adult black stilts are held in captivity (Maloney and Murray 2001). Despite the release of captive-hatched young, by 2005, only 4–13 breeding pairs were observed in the wild (Van Heezik *et al.* 2005). The species is listed as ''Critically Endangered'' by the IUCN (World Conservation Union) and the New Zealand Department of Conservation (Maloney and Murray 2001), and is considered one of the most threatened shorebirds in the world (IUCN 2005).

Caerulean Paradise-flycatcher

The caerulean Paradise-flycatcher was first recorded in 1874, and was not observed again until recently (Wardill and Riley 2000). It is only known to occur in one small, unprotected forest on the island of Sangihe, north of Sulawesi, Indonesia (BirdLife International 2001; British Broadcasting Corporation 2003). This flycatcher is a sedentary insectivore that prefers lower-elevation primary forest habitat; however, individuals have recently been found in steep, forested gullies (Birdlife International 2004).

In a review of Indonesia's development, degraded rainforests, and decreasing biological diversity, Thompson (1996) noted that the Indonesian rain forests are biologically rich, with more than 10,000 species of trees, 500 species of mammals, and 1,500 species of birds, all playing a vital role in regulating the ecosystem. However, Indonesia also has the world's longest list of species threatened with extinction, and in his review Thompson stated that the caerulean Paradise-flycatcher was believed to have become extinct during the 1980s. There were no sightings of live caerulean Paradise-flycatchers during the last century, and the species was known only from the type specimen. Searches in 1985 and 1986 failed to locate the species, fueling the belief that the species was extinct. However, in 1998, a single female was discovered by a joint expedition of the University of Sam Ratulangi in Indonesia and Britain's York University. Subsequent expeditions located a population of at least 21 birds in 6 localities around the base of Gunung Sahendaruman, a mountain on the small island of Sangihe (Birdlife International 2004). The total caerulean Paradise-flycatcher population is currently estimated to range from 19 to 135 birds (BirdLife International 2005). The species is considered ''Critically Endangered'' by the IUCN because of its low estimated population and extremely limited range, both which continue to undergo major and continuing declines (IUCN 2005).

Giant ibis

The giant ibis is a lowland bird found in both open and forested wetland habitats (Collar *et al.* 1994). It inhabits open deciduous forest in extreme southern Laos and a portion of northern and eastern Cambodia (BirdLife International 2001). The species' range has been remarkably reduced, considering its historic range spanned central and peninsular Thailand, central and northern Cambodia, southern and central Laos, and southern Viet Nam (King *et al.* 1975, as cited in Collar *et al.* 1994). It appears that the species has always been uncommon and local throughout its range; sightings are extremely rare (Matheu and del Hoyo 1992; BirdLife International 2000). The remaining giant ibis population is found in Cambodia, although several sightings of giant ibis have been reported from southern Laos. The species is considered extirpated from Viet Nam and Thailand (BirdLife International 2000).

The IUCN categorizes the giant ibis as a ''Critically Endangered'' species (IUCN 2005). The current status and trend for the giant ibis is described as declining (IUCN 2005). The entire giant ibis population was estimated at about 250 individuals in 1997, but current estimates put the population at fewer than 50 mature individuals (BirdLife International 2000).

Gurney's pitta

The Gurney's pitta, first described by Hume in 1875, is classified as ''Critically Endangered'' by the IUCN, and is considered to be on the verge of extinction (IUCN 2005). Until recently, the species was known only from a single declining population in Thailand, which occupies an extremely small and declining range (Rose 2003). However, in 2003, surveys in southern Tenasserim, Myanmar, revealed a minimum of 4 populations, although these are extremely small, numbering no more than 10–12 pairs at a given location (BirdLife International 2003c).

The Gurney's pitta was formerly considered common across much of its range in lowland evergreen forests in peninsular Thailand and adjacent southern Tenasserim, Myanmar. However, the species was not documented in Myanmar from 1914 to 2003, and between 1952 and 1986, there were no reported field observations in Thailand. A few pittas were finally located in a small forest patch in southern Thailand with the help of a wildlife smuggler in Bangkok, after he was found to have an individual bird in his possession (Round and Gretton 1989). Intensive surveys since 1986 located the species in at least five localities, although it has since been extirpated from all but one of these areas (BirdLife International 2000). The remaining viable population is located in a 2-square-mile area of Khao Nor Chuchi (Round and Gretton 1989) and declined from 44–45 pairs in 1986, to 9 pairs in 1997, most of which were located outside of protected areas (BirdLife International 2000). Surveys in 2000 and 2001 later estimated the total world population of the Gurney's pitta to be no more than 30 individuals, with 11–12 territories located in Khao Nor Chuchi and another 2 at nearby Tambon Aw Tong, in Trang (Rose 2003). Field

surveys in Myanmar resulted in the discovery of four small populations. BirdLife International has begun comprehensive surveys of remaining populations in southern Myanmar and is working to conserve remaining lowland forests there (BirdLife International 2004, 2005).

Socorro Mockingbird

The Socorro mockingbird is endemic to Socorro Island in the Revillagigedo Islands, Mexico (BirdLife International 2000). In 1925, it was the most abundant land-based bird in the area and was still considered abundant in 1958. However, the species began to decline over the next 20 years, and by 1978, it was believed to be on the verge of extinction (BirdLife International 2000). From 1988 through 1990, an estimated population of 50–200 pairs of mockingbirds remained in the area (Castellanos and Rodriguez-Estrella 1993, as cited in BirdLife International 2000). By 1993–1994, an estimated 350 individuals remained (Mart and Curry 1996, as cited in BirdLife International 2000), and of the 215 birds that were banded, 55 percent were subadults (BirdLife International 2000). The large percentage of subadults suggests that the number of mature individuals is quite small (IUCN 2005). Current estimates of population size for the species range from 50 to 249 individuals (BirdLife International 2000). The Socorro mockingbird is listed as ''Critically Endangered'' by the IUCN (IUCN 2005).

The Socorro mockingbird dwells in moist dwarf forest and ravines with a mixture of shrubs above 600 meters in altitude (Mart and Curry 1996, as cited in BirdLife International 2000). Habitat vegetation is dominated by several tree species, including *Ilex socorrensis, Guettarda insularis,* and *Oreopanax xalapensis* (BirdLife International 2000). Understory vegetation includes *Triumfetta socorrensis* and *Eupatorium pacificum* (BirdLife International 2000). The species is less common in taller forest patches and groves of fig (*Ficus cotinifolia*) at low and mid elevations, and is no longer present in areas of *Croton masonii* scrub near sea-level (Mart and Curry 1996, as cited in BirdLife International 2000). The species was previously widespread in all vegetation types on the Island, including scrub, woodland, and woodland edge (Cody 2005). Its current range is extremely limited and continuing to decline (BirdLife International 2000).

Long-Legged Thicketbird

The long-legged thicketbird, originally described by Reichenow in 1890, has long been considered extinct and was only recently rediscovered by researchers after an absence of sightings since 1894 (BirdLife International 2003b). It is classified as ''Data Deficient'' by the IUCN (IUCN 2005). A taxon is designated as Data Deficient when there is inadequate information to make a direct, or indirect, assessment of its risk of extinction based on its distribution and/or population status. Listing of taxa in this category indicates that more information is required and acknowledges the possibility that future research will show that a threatened classification is appropriate (IUCN 2004). On November 28, 2003, BirdLife International announced that the species had been located during a survey of rare birds in Fiji. The long-legged thicketbird is only found in dense undergrowth on the mountains of Fiji. Researchers, it was reported, discovered 12 pairs in Wabu, a remote Forest Reserve on the island of Viti Levu, in Fiji (BirdLife International 2003b). The Darwin Initiative funded the rare bird survey, which was conducted by BirdLife International, and the project's coordinator was the first to hear the thicketbird's song. It was this song that revealed the species' presence to the researchers as they were recording the previously undescribed and unknown song (BirdLife International 2003b). Nine pairs were found along a 2-km length of stream in dense undergrowth thickets. Researchers believe these 18 birds reflect a relatively high local density in this unlogged forest at an elevation of 800–1000 meters (BirdLife International 2003b). Two of the pairs were accompanied by recently fledged juveniles. Encouraged by identifying the species' song, researchers plan to fully assess the population's status and develop a conservation plan. The local residents named the secretive thicketbird ''Manu Kalou,'' or ''Spirit Bird,'' during the 19th century because of its ethereal voice. The thicketbird is only known from four birds that were collected from 1890 to 1894, and unconfirmed reports of sightings in 1967, 1973, and 1991 (BirdLife International 2000). Two individuals of a subspecies, *Trichocichla rufa clunei*, were discovered in 1974, but since then, there has been no evidence of its continued existence (BirdLife International 2003b).

We had previously concluded from the best available scientific and commercial information that the long-legged thicketbird was likely to be extinct, and listing the species was no longer warranted. However, we received information in response to the Annual Notice of Findings indicating that the species exists, albeit in very small numbers. The magnitude of the threat to the species is high, and the immediacy of threat is imminent. Therefore, we assigned this species a listing priority ranking of 1 and determined that listing this species is warranted at this time.

Previous Federal Action

Section 4(b)(3)(A) of the Act requires the Service to make a finding known as a ''90-day finding'' on whether a petition to list, delist, or reclassify a species has presented substantial information indicating that the requested action may be warranted. To the maximum extent practicable, the finding shall be made within 90 days following receipt of the petition and published promptly in the **Federal Register**. If the 90-day finding is positive (*i.e.*, the petition has presented substantial information indicating that the requested action may be warranted), Section 4(b)(3)(A) of the Act requires the Service to commence a status review of the species if one has not already been initiated under the Service's internal candidate assessment process. In addition, Section 4(b)(3)(B) of the Act also requires the Service to make a finding within 12 months following receipt of the petition on whether the requested action is warranted, not warranted, or warranted but precluded by higher-priority listing actions (this finding is referred to as the ''12-month finding''). The 12-month finding is also to be published promptly in the **Federal Register**. If the listing of a species is found to be warranted but precluded, then the petition to list that species is treated as if it is a petition that is resubmitted on the date of the finding, and is therefore subject to a new 12-month finding within one year. The Service publishes an Annual Notice of Resubmitted Petition Findings (Annual Notice) for all foreign species for which listings were previously found to be warranted but precluded.

On November 28, 1980, we received a petition (1980 petition) from Dr. Warren B. King, Chairman, United States Section, International Council for Bird Preservation (ICBP), to add 77 foreign and native bird species to the list of Threatened and Endangered Wildlife (CFR 17.11). The species covered by the 1980 petition comprised 19 native species and 58 foreign species, including the black stilt and long-legged thicketbird (or long-legged warbler, which was the common name used in the petition). In response to the 1980 petition, we published a Notice to announce a positive 90-day finding and

initiation of status review on May 12, 1981 (46 FR 26464). On January 20, 1984 (49 FR 2485), we published a Notice of findings on pending petitions and description of progress in listing actions (hereafter referred to as a Notice of findings), but no action on the 1980 petition was discussed. On May 10, 1985 (50 FR 19761), we published a Notice of findings in which we found that the listing of all 58 foreign bird species listed on the 1980 petition was warranted but precluded by higher-priority listing actions (warranted but precluded). In our next Notice of findings, published on January 9, 1986 (51 FR 996), we found that the listing of 54 species from the 1980 petition (including the black stilt and the long-legged thicketbird) continued to be warranted but precluded, whereas new information caused us to find that the listing of the 4 remaining species was no longer warranted. We published additional Notices of findings on July 7, 1988 (53 FR 25511), December 29, 1988 (53 FR 52746), January 6, 1989 (54 FR 554), and December 29, 1989 (54 FR 554) in which the listing of the black stilt and long-legged thicketbird remained warranted but precluded.

On December 16, 1991, in response to a petition submitted by the ICBP that we received on May 6, 1991 (1991 petition), we published a positive 90-day finding and announced the initiation of a status review of 53 foreign birds (56 FR 65207). The 1991 petition included the giant ibis, Gurney's pitta, Socorro mockingbird, and caerulean Paradise-flycatcher among the 53 foreign birds that the petitioner proposed to be added to the List of Endangered and Threatened Wildlife. On March 28, 1994 (59 FR 14496), we published a Proposed rule to list 30 African birds from both the 1980 and 1991 petitions, but in the same **Federal Register** document we included a Notice of findings in which we announced our determination that listing of 38 remaining species from the 1991 petition was warranted but precluded. The species whose listing was found to be warranted but precluded included the giant ibis, Gurney's pitta, Socorro mockingbird, and caerulean Paradise-flycatcher. Our most recent Annual Notice of Findings on Resubmitted Petitions for Foreign Species; Annual Description of Progress on Listing Actions (Annual Notice of Findings) was published in the **Federal Register** on May 21, 2004 (69 FR 29354). In that Annual Notice of Findings, based on numerical rankings and other listing priorities, we found that listing five of the previously petitioned species was now warranted. The five species included the black stilt, caerulean Paradise-flycatcher, giant ibis, Gurney's pitta, and Socorro mockingbird. We later determined that listing the long-legged thicketbird was warranted at this time, after information received in response to the Annual Notice of Findings revealed that the species still exists in very low numbers.

Summary of Factors Affecting the Black Stilt, Caerulean Paradise-Flycatcher, Giant Ibis, Gurney's Pitta, Socorro Mockingbird, and Long-Legged Thicketbird

Section 4(a)(1) of the Act (16 U.S.C. 1533(a)(1)) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the black stilt, caerulean Paradise-flycatcher, giant ibis, Gurney's pitta, Socorro mockingbird, and Long-legged thicketbird follow.

Black Stilt

A. *The present or threatened destruction, modification, or curtailment of the black stilt's habitat or range.* Habitat loss is one of the primary threats to the survival of the black stilt. Although the black stilt was once widespread throughout the wetlands of North and South Islands, New Zealand, the species' current breeding range is now restricted to wetlands and rivers of the Upper Waitaki Valley, on the eastern side of the Southern Alps, in central South Island, New Zealand (Maloney and Murray 2001). A few black stilts winter on North Island (BirdLife International 2000). New Zealand's black stilt recovery team has determined that approximately 10 percent of the population migrates to post-breeding grounds in coastal Canterbury and the northern North Island estuaries, where it utilizes these sites from February through June, before returning to breeding sites in July and August (Maloney and Murray 2001). The black stilt requires large areas of habitat for feeding and nesting. Preferred habitat includes riverbanks, lakeshores, swamps, and shallow ponds (Maloney and Murray 2001).

Habitat loss and degradation are largely human-induced and are the most difficult threats to control when undertaking the recovery of the species (IUCN 2005). Breeding grounds and nesting sites have been eliminated by drainage for agricultural purposes and diversion of rivers for hydroelectric development (Collar *et al.* 1994). Further habitat disruption has been attributed to overgrazing of wetlands, water extraction for agricultural irrigation, river channelization and modification for flood control schemes, and the proliferation of introduced weeds (Maloney and Murray 2001). Land is seldom returned to its original state once it has been modified for agriculture or flood-control purposes. The lack of suitable habitat for feeding and successful nesting increases the species' risk of extinction.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no known threat to the species from use for commercial, recreational, scientific, or educational purposes.

C. *Disease or predation.* Researchers at the Auckland Zoo Wildlife Health and Research Centre have identified a number of ''diseases of concern'' for black stilts and other wading birds (Jakob-Hoff 2001). The diseases are considered threats to the wild population, particularly when releasing captive-reared birds to augment the wild population. These diseases include salmonellosis, yersiniosis, campylobacteriosis, pasteurellosis (fowl cholera), capillariasis, cestodiasis, trematodiasis, avian malaria, and coccidiosis (Jakob-Hoff 2001). Often illness and mortality in captive-reared birds can be attributed to deficient husbandry methods; therefore, improved captive-rearing husbandry techniques have been developed. The need for a surveillance program to determine the prevalence of significant disease outbreaks in wild black stilts, and other wading birds, has been recommended, so that pre-release quarantine and health-screening protocols for captive-reared birds can be developed to protect wild birds (Jakob-Hoff 2001).

Although habitat loss is a primary threat to the survival of the black stilt, the other is predation by animals that have been introduced to New Zealand, including feral cats (*Felis catus*), ferrets (*Mustelo furo*), stoats (*M. erminea*), hedgehogs (*Erinaceus europaeus*), and brown rats (*Rattus norvegicus*) (BirdLife International 2001, 2005). In addition, populations of avian predators, such as the Australian harrier (*Circus approximans*) and kelp gull (*Larus dominicanus*), are unnaturally high because of human-induced changes, such as the introduction of rabbits, agricultural development, and the presence of rubbish dumps (Maloney and Murray 2001). Most of the predation occurs at sunset or sunrise (Sanders and Maloney 2002). Sanders and Maloney

(2002) observed cats taking adult birds during their study in the Upper Waitaki Basin, South Island.

The black stilt's life history and nesting behavior also contribute to heavy predation losses experienced by the species. They are solitary nesters, with a lengthy fledgling period, and exhibit ineffective anti-predator behavior, all factors contributing to significant mortality of nestlings and fledglings (Pierce 1996). They also prefer dry, stable riverbank locations for nesting, which may increase their susceptibility to predation by mammalian predators, such as feral cats and ferrets, which use the banks as pathways (Pierce 1986, as cited in Collar *et al.* 1994; Maloney and Murray 2001). Despite 20 years of predator trapping, there is only limited evidence to suggest that predator trapping is beneficial to the survival of the black stilt (Keedwell *et al.* 2002).

D. *The inadequacy of existing regulatory mechanisms* The species is not protected in the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (CITES 2006).

The black stilt is a taonga species for the Ngai Tahu, the native tribal population in New Zealand. Taonga species are birds, plants, and other animals found within the Ngai Tahu Claim Area. Taonga species of the Ngai Tahu are legally recognized under the Ngai Tahu Claims Settlement Act of 1998, which requires the New Zealand Department of Conservation to consult with and have particular regard to the views of the Ngai Tahu when making management decisions concerning these species (Maloney and Murray 2001).

E. *Other natural or manmade factors affecting the continued existence of the species.* Conservation efforts for the species have been guided by two recovery plans, the first published in 1993 and a second approved in 2002; the latter covers the period 2001–2011. The goal of the current recovery plan is to increase the black stilt population within the next 10 years to more than 250 breeding individuals, with a mean annual recruitment rate that exceeds the mean annual adult mortality rate (Maloney and Murray 2001). A multi-phased program will be used to achieve this goal. The first phase involves captive-rearing black stilts and releasing large numbers of young. The second phase will utilize scientific research to determine the primary causes of adult and chick mortality and develop mitigation measures to prevent excess mortality (Maloney and Murray 2001). It should be noted that all of the threats that have resulted in the decline of the species still exist throughout its historic range (Maloney and Murray 2001).

The black stilt's breeding success is very low; for example, from 1977 to 1979, only 2 (6.1 percent) of the 33 chicks that hatched in unmanaged nests survived to fledge. Breeding success (nesting success plus breeding success) for the same period was 0.9 percent. In 1981, the New Zealand Department of Conservation undertook management of the wild black stilt population. Predator control was initiated, which resulted in fledging and breeding increases to 32.5 percent and 10.8 percent, respectively. From 1992 through 1999, utilizing limited predator control and artificial incubation, the fledging rate for 189 artificially incubated eggs that were starting to hatch when they were placed in the wild was 17 percent. Breeding success and the subsequent hatching rates for wild chicks was 16.5 percent. Recruitment rates are much lower, and the rate of natural wild recruitment is unknown because the population has been artificially managed for the past 23 years. The minimum recruitment rate (age ≥ 1 year) of captive-reared and released black stilts is 22 percent (Maloney and Murray 2001). However, during the period from 1992 to 1999, researchers found that only 8 of the 189 artificially incubated chicks (4 percent) that hatched survived to 2 years of age (Maloney and Murray 2001).

Disturbance of breeding and nesting grounds by outdoor recreational users of riverine habitats is also considered to be a serious threat to the species. These activities include indiscriminate use of off-road vehicles and jet-boats, disturbance by hikers and dogs, and fishing and camping activities (Maloney and Murray 2001). Recreational use of riverbed sites disturbs nesting birds and prevents successful rearing of offspring (BirdLife International 2006).

Conservation authorities and scientists cite the risk of a single catastrophic level event destroying most of the population as a serious threat, due to the species' small population size (Maloney and Murray 2001). Finally, the dispersed nature of individual birds limits potential contact between possible mates, increasing the likelihood of hybridization (Maloney and Murray 2001). In fact, interbreeding with the pied stilt, or poaka (*H. himantopus*), has been documented as the population size has decreased (Pierce 1996). Excess black stilt males are mating with female pied stilts in the absence of black stilt females (Maloney and Murray 2001). Black stilt males and pied stilt females can produce fertile offspring, but survival to adult age is about 50 percent of the survival rate of offspring of pure black stilt pairs. The relatedness of all black stilts in the population has yet to be determined, but inbreeding depression is believed to be a possible threat (Maloney and Murray 2001).

Based on the best available information, we find that the black stilt is in danger of extinction throughout its range because of several threats, which are not easy to manage or control. The primary threat to the species is loss of the extensive habitat required for successful reproduction of the species. Increased demand for electrical power to fuel growing economies has resulted in the loss of wetlands due to river diversions for hydroelectric power. Development of former breeding grounds and nesting sites, for agricultural purposes to provide food for rapidly increasing human populations, has further reduced available habitat. Furthermore, the continuing reduction and modification of wetland habitats severely impacts New Zealand's black stilt reintroduction program due to the lack of suitable available habitat for release sites. A number of disease organisms have been identified as significant threats to black stilts and other wading birds. This issue is most important when considering the vital importance of reintroduction programs utilizing captive-reared birds. A surveillance program to determine the prevalence of disease outbreaks in wild black stilts and pre-release quarantine and health-screening protocols for captive-reared birds would help to protect wild birds before reintroduction of captive-reared birds but has not yet been implemented. Predation is a serious threat to the species, and predator control has been undertaken by the New Zealand Department of Conservation for over 20 years, but there is little evidence that it has been effective in increasing fledgling survival and recruitment.

Caerulean Paradise-Flycatcher

A. *The present or threatened destruction, modification, or curtailment of the caerulean Paradise-flycatcher's habitat or range.* The caerulean Paradise-flycatcher inhabits one small primary forest around the base of Gunung Sahendaruman, on the Island of Sangihe, Indonesia (BirdLife International 2001). Virtually the entire Island of Sangihe has been deforested and converted to agricultural use. The total area of forest available to the species is probably less than 8 km^2 (BirdLife International 2005). Monoculture agricultural practices such as commercial coconut and nutmeg plantations, clear-cutting forests for

wood and paper production, and encroaching human habitation are responsible for the large-scale land clearances that have occurred on Sangihe Island (BirdLife International 2001; Thompson 1996). The remaining habitat that does exist for the caerulean Paradise-flycatcher is considered sub-optimal because the species prefers lower elevations (BirdLife International 2001; Thompson 1996). Deforestation activities and destruction of habitat is a constant and continuing problem on Sangihe Island (Kirby 2003; BirdLife International 2001; Thompson 1996).

Since 1995, this species has been included in a biodiversity project, Action Sampiri, which has resulted in the development of plans to reclassify 4 km^2 of protection forest on Gunung Sahengbalira as a wildlife reserve, with core areas as a strict nature reserve (BirdLife International 2005). This conservation measure, however, has not yet been implemented.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no known threat to the caerulean Paradise-flycatcher from use for commercial, recreational, scientific, or educational purposes.

C. *Disease or predation.* There is no available evidence indicating that disease or predation have led to the decline in caerulean Paradise-flycatcher populations or contribute to the species' risk of extinction.

D. *The inadequacy of existing regulatory mechanisms.* The species is not protected under CITES, and according to BirdLife International (2003), has no legal protection nationally or internationally.

E. *Other natural or manmade factors affecting the continued existence of the species.* The total caerulean Paradise-flycatcher population is currently estimated to range from 19 to 135 birds (BirdLife International 2005). The species is considered ''Critically Endangered'' by the IUCN because of its low estimated population and extremely limited range, both which continue to undergo major and continuing declines (IUCN 2005). Small populations are subject to three primary genetic risks: Inbreeding depression, loss of genetic variation, and accumulation of new mutations. Inbreeding can have individual and population consequences by either increasing the phenotypic expression of recessive, deleterious alleles (Charlesworth and Charlesworth 1987) or by reducing the overall fitness of individuals in the population.

Stochastic events such as fire, typhoon, earthquake, tsunami, or other natural disasters can result in extensive mortalities, such that the species is unable to recover and slowly dwindles into extinction. The extinction of the species may even occur during a single event.

Based on the best available information, we find that the caerulean Paradise-flycatcher is in danger of extinction throughout its range because of loss of habitat, and the diminished number of individuals remaining in the only extant population. The caerulean Paradise-flycatcher is found only in a single 8 square kilometer forest on Sangihe Island, Indonesia. However, the forests of Sangihe Island are rapidly being clear-cut for wood and paper production and the development of monoculture agricultural practices such as commercial coconut and nutmeg plantations. The remaining habitat that exists for the caerulean Paradise-flycatcher is considered sub-optimal because the species prefers forested cover at lower elevations. Until 1998, when a single female was located, the species had been considered extinct. Later expeditions have located other individuals, and the current population is now believed to range from 19 to 135 individuals. The continuing threat to the species' habitat, considered in the context of the small number of surviving individuals is magnified and places the caerulean Paradise-flycatcher at risk of extinction. Other threats may also be affecting the species' survival, but knowledge of the species is limited at this time.

Giant Ibis

A. *The present or threatened destruction, modification, or curtailment of the giant ibis' habitat or range.* The giant ibis' historic range extended from central and peninsular Thailand, through central and northern Cambodia, southern and central Laos, and southern Viet Nam (King *et al.* 1975, as cited in N.J. Collar *et al.* 1994). Although never believed to be a common bird species, its range has been reduced, with only a few birds remaining in open deciduous forest habitat in extreme southern Laos and a portion of northern and eastern Cambodia (BirdLife International 2001). The species is considered to be extirpated from Viet Nam and Thailand (BirdLife International 2000).

This lowland wading bird prefers open and forested wetland habitats, which have become increasingly rare in its remaining range (N.J. Collar *et al.* 1994). Although little is known of its breeding biology, the giant ibis is believed to nest in trees. Deforestation has reduced the number of nesting sites available to the species (BirdLife International 2005). The giant ibis also inhabits lakes, swamps, seasonally flooded marshes, paddy fields, open wooded plains, humid clearings, and pools in deep forest (Matheu and del Hoyo 1992). During drought conditions, the species congregates at permanent water holes (Matheu and del Hoyo 1992). However, the habitat loss through wetland drainage for agricultural purposes has reduced foraging and roosting areas (BirdLife International 2005).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* We are unaware of any threats to the giant ibis from overutilization for commercial, recreational, scientific, or educational purposes.

C. *Disease or predation.* There is no available information indicating that disease or predation are threats to the species.

D. *The inadequacy of existing regulatory mechanisms.* The species is not protected under CITES. It occurs seasonally in the Xe Pian National Biodiversity Conservation Area (NBCA) and the Dong Khanthung proposed NBCA, Laos, where the species is marginally protected by the NBCA designation for a portion of each year. The giant ibis also occurs in land set aside as the Lomphat Wildlife Sanctuary (Sanctuary), Cambodia, which is considered to be one of the most important areas for wildlife in Cambodia. In 2003 and 2004, the Service's Rhino and Tiger Conservation Fund supported the Lomphat Conservation Project (LCP), which has a long-term goal of assisting rangers and field staff in the conservation of the Sanctuary's living resources. The LCP had three goals: (1) Train and equip sufficient park rangers to prevent poaching and illegal take of wildlife and forest products; (2) community outreach and education; and (3) wildlife monitoring. Six teams of rangers were trained during the duration of the LCP and at that time, the Sanctuary had instituted patrols no less than 15 days per month. The rangers have been extremely efficient in locating poachers, illegal loggers, and entire camps set aside for poachers. The rangers have been assisted by local villagers who are quite interested in offering information to protect their resources. The relationship between the local community and the rangers was developed using extensive public outreach and education which has improved conservation awareness throughout the Sanctuary and around its borders. Educational materials were developed and tailored to the villagers' after a socio-economic assessment was

completed to determine how the villagers used the local resources (WildAid 2003).

Unregulated hunting is believed to be a primary factor in the species' decline, particularly when the birds flock around waterholes during the dry season (BirdLife International 2005). The species' large size probably makes it vulnerable to hunting for subsistence purposes. Furthermore, nearly continuous war during much of the previous century throughout much of the species' range has likely contributed to the decline of the species (Matheu and del Hoyo 1992). A public-awareness campaign to reduce hunting of large waterbirds in Laos and Cambodia uses the giant ibis as a symbol to depict all threatened waterbirds on the campaign's posters and books (BirdLife International 2003). The materials are produced and distributed by The Wildlife Conservation Society in Laos and Cambodia's Wildlife Protection Office distributes information in an effort to reduce hunting of waterbirds (IUCN 2006). We are not aware of any national protective legislation.

E. *Other natural or manmade factors affecting the continued existence of the species.* The entire giant ibis population was estimated at 250 individuals in 1997 (Rose and Scott 1997, as cited in BirdLife International 2006). The most recent estimate indicates a total world-wide population ranging from 50 to 249 birds (BirdLife International 2006). The species occurs over a wide range and is highly sensitive to disturbance by humans. Considering the limited number of mature adults believed to be remaining in the population, the potential exists for a reduction in genetic variation. When a species becomes significantly reduced in number, the loss of genetic variation can result in inbreeding depression and an increase in the expression of deleterious alleles. Furthermore, small populations are more susceptible to stochastic events, such as severe weather, fires, and other natural disasters, which could severely reduce or eradicate the entire species in a single event. These factors contribute to an increased likelihood of extinction of the species.

We are unaware of any other natural or manmade factors affecting the continued existence of this species.

Based on the best available information, we find that the giant ibis is in danger of extinction throughout its range because of loss of habitat and hunting. Never a common species, the giant ibis now occupies a much reduced range than it did historically. Range reduction has occurred over the last century during the nearly continuous periods of armed conflict and war. Hunting has also been a major threat to the species. However, habitat loss and degradation, and decreased availability of nesting sites, are the largest threats to the species. Much of the species' former habitat has been drained, cut, irrigated, and plowed for agricultural uses.

Gurney's Pitta

A. *The present or threatened destruction, modification, or curtailment of the Gurney's pitta's habitat or range.* Gurney's pitta prefers secondary, lowland semi-evergreen forest, usually 160 meters (m) or less in elevation. The species nests in understory *Salacca* palms during the wet season, from April through October. Territories contain access to water and are located in forest edge habitat near gully systems where moist conditions remain year-round (BirdLife International 2000). The primary cause for the species' decline is the nearly total clearance of lowland forest habitat in southern Myanmar and peninsular Thailand (BirdLife International 2000). The lowland forests have been clear-cut for timber and conversion to croplands, fruit orchards, and coffee, rubber, and oil-palm plantations. By 1987, only 20–50 km^2 of forest below 100 m remained in peninsular Thailand, and available habitat in this area continues to decline (BirdLife International 2000).

Attempts to census the species are difficult because the Gurney's pitta is shy, secretive, and relatively silent (WCMC 2004). To date, only three Gurney's pitta's nests have been found and monitored. The fledging rate from those nests was 27.3 percent (Rose 2003). Because of the difficulty in locating the bird, until surveys were conducted in 1986–1989, habitat requirements were poorly understood.

Following the rediscovery of Gurney's pitta at Khao Nor Chuchi in Myanmar in 1986, a non-hunting area was established in 1987. This area was upgraded to a wildlife sanctuary in 1993; however, the most important and extensive areas of lowland forest have not been protected due to the presence of the local human population (Round 1999).

Although there is a substantial conservation effort involving adoption of sustainable agriculture methods around the Khao Nor Chuchi protected area, illegal forest clearance persists. Moreover, the recent practice of planting oil palms (*Elaeis guineensis*) on illegally cleared forest patches, which are more profitable than rubber plantations, removes the natural ground cover used for feeding and concealment by the ground-dwelling pitta (Rose 2003).

Until 2003, ornithologists believed approximately 20 Gurney's pittas had survived in the wild. However, in 2003, a population of 10–20 pairs were observed at one lowland forest site in Myanmar, and in 2004, about 150 birds were identified in the 50,000-ha Ngawun Reserve Forest, the largest remaining contiguous lowland forest in southern Myanmar (BirdLife International 2003c, 2004). However, the habitat is largely unprotected.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Gurney's pitta was formerly popular in the pet trade and was overutilized for this purpose by local snare-trappers (Rose 2003; BirdLife International 2005). Trapping for the caged-bird trade continued to be a serious threat until the early 1990s. Although trapping appears to have ceased as the result of few available individuals, some hunting and trapping continues in the Khao Nor Chuchi protected area (Rose 2003). There is no information indicating that scientific or educational uses of the species are a threat.

C. *Disease or predation.* There is no information that indicates any threats to the species from disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* The species was listed in CITES Appendix III by Thailand in 1987 (CITES 2006), which required that exports be accompanied by an export permit. The species was listed in CITES Appendix I in 1990, which prohibited further international trade for commercial purposes, and also required that any trade be legal and not detrimental to the survival of wild populations. As discussed under Factor A, one of the few remaining populations exists in Khao Nor Chuchi Wildlife Sanctuary, but nearby areas important to the species are not protected (Round 1999; BirdLife International 2000). In 1990, the Khao Nor Chuchi Lowland Forest Project was established to engage the local community in management, education programs, and ecotourism, to reduce pressure on the remaining forest habitat. This project, however, has been met with only limited success as economic incentives continue to govern land-use decisions (BirdLife International 2000). A survey in 2001 confirmed that protection and law enforcement at Khao Nor Chuchi is essentially nonexistent (Rose 2003).

E. *Other natural or manmade factors affecting the continued existence of the species.* We are unaware of any other specific natural or manmade factors

affecting the continued existence of this species.

Based on the best available information, we find that the Gurney's pitta is in danger of extinction throughout its range because of loss of habitat and overharvest for the caged bird trade, especially prior to 1990. The lowland forest habitat that is preferred by the Gurney's pitta has been nearly totally cleared in southern Myanmar and peninsular Thailand. These lowland forests have been clear-cut for timber and conversion to croplands, fruit orchards, and monoculture coffee, rubber, and oil-palm plantations. Gurney's pitta was popular in the pet bird trade until fewer and fewer individuals could be located during the 1980s. By 1990, the species had been transferred from CITES Appendix III to Appendix I, which prohibits commercial trade in the species. However, the previous large-scale snaring of birds for the trade had already reduced the population to such a small number of individuals that the species has become in danger of extinction. Additionally, the remaining small populations are susceptible to the three genetic risks discussed earlier: inbreeding depression, loss of genetic variation, and accumulation of new deleterious mutations.

Socorro mockingbird

A. *The present or threatened destruction, modification, or curtailment of Socorro mockingbird's habitat or range.* The Socorro mockingbird's habitat and range have been severely degraded and reduced due to intensive grazing by introduced domestic sheep (BirdLife International 2000). Rabbits and pigs that were also introduced in the area have destroyed habitat by preventing woodland regeneration (Cody 2005). Prior to widespread unchecked grazing, the species was distributed in all vegetation types on the island including scrub, woodland, and woodland edge (Cody 2005). This species is also absent in degraded habitat where hop bush (Dodonaea viscose) has replaced the original understory (Martínez-Gómez *et al.* 2001). It is now restricted to mixed open woodland and wooded canyons at higher elevations and is most common in undisturbed habitat (Cody 2005). Grazing has completely extirpated the species from the southern portion of the island. Reduction of habitat is considered the primary cause of population and range declines of the Socorro mockingbird (BirdLife International 2000; IUCN 2005).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no available information indicating that the Socorro mockingbird has been overutilized for commercial, recreational, scientific, or educational purposes.

C. *Disease or predation.* During the early 1970s, cats were introduced to the islands, and predation by feral cats was initially considered a factor contributing to the species' decline (BirdLife International 2000). However, recent examinations of feral cat stomach contents and scat have not provided substantive evidence of feral cat predation as a significant factor in the decline of the Socorro mockingbird (J. Martinez *in litt.*, as cited in BirdLife International 2000). Nonetheless, plans to eradicate feral cats and introduced sheep from Socorro were put forward as early as 1999 (B. Tershy and B. Keitt *in litt.* 1999 as cited in BirdLife International 2000). In 2001, Grupo de Ecología y Conservación de Islas, A.C., (GECI) received a North American Wetlands Conservation Act grant to initiate the eradication of cats and sheep from Socorro Island (USFWS 2006). We are not aware of any disease concerns that may have led to the decline of Socorro mockingbird species.

D. *The inadequacy of existing regulatory mechanisms.* The species is not protected under CITES (CITES 2006). Although the Revillagigedo Islands were declared a biosphere reserve in 1994, this does not confer protection upon the Islands (Rodriguez-Estrella *et al.* 1996, as cited in BirdLife International 2000). We are unaware of any further protection for the species.

E. *Other natural or manmade factors affecting the continued existence of the species.* In 1925, the Socorro mockingbird was the most abundant land-based bird on Socorro Island, and it was still considered plentiful in 1958. However, within the next 20 years, the species began to decline, and by 1978 it was feared to be on the verge of extinction (BirdLife International 2000). Field surveys conducted from 1988 through 1990 yielded population estimates of 50–200 remaining pairs (Castellanos and Rodr 1993 as cited in BirdLife International 2000). Further surveys carried out in 1993–1994 resulted in a population estimate of 350 individuals inhabiting the island (MartGand Curry 1996 as cited in BirdLife International 2000). During the survey, 215 birds were banded and 55 percent of the total was found to be subadults (BirdLife International 2000). The large percentage of subadults suggests that the current number of mature birds is quite small (IUCN 2003). Population estimates in 2000 ranged from 50 to 249 individual Socorro mockingbirds (BirdLife International 2000). The IUCN lists the species as Critically Endangered because of loss of habitat and the small remaining number of mature adults (IUCN 2006). Considering the limited number of mature adults believed to be remaining in the population, the potential exists for a reduction in genetic variation. When a species becomes significantly reduced in number, the loss of genetic variation can result in inbreeding depression and an increase in the expression of deleterious alleles. Furthermore, small populations are more susceptible to stochastic events, such as severe weather, fires, and other natural disasters, which could severely reduce or eradicate the entire species in a single event. These factors contribute to an increased likelihood of extinction of the species.

We are unaware of any other specific natural or manmade factors affecting the continued existence of this species.

Based on the best available information, we find that the Socorro mockingbird is in danger of extinction throughout its range because of loss of habitat. The primary cause of habitat loss and range contraction is overgrazing due to the introduction of domestic sheep. Introduced rabbits and pigs have also destroyed habitat by preventing woodland regeneration, thus forcing the complete extirpation of the Socorro mockingbird from most of its former range.

Long-Legged Thicketbird

A. *The present or threatened destruction, modification, or curtailment of the long-legged thicketbird's habitat or range.* Much of the forest habitat the long-legged thicketbird inhabits is unprotected in Fiji and there is a high probability that it will be logged and converted to plantations for big-leaf mahogany (*Swietenia macrophylla*) in the near future (BirdLife International 2003b). Converting forest habitat to mahogany plantations produces unsuitable habitat for this species and is a putative factor in the species' decline.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* We are unaware of any threat to the species from overutilization for commercial, recreational, scientific, or educational purposes.

C. *Disease or predation.* Mongooses were introduced in 1883 to Fiji to kill rats (IUCN *et al* 2006). However, they are considered a serious predatory threat because they also prey on ground-dwelling forest birds, such as the long-legged thicketbird (BirdLife International 2005). The mongoose is

responsible for the local extirpation of all of the ground-nesting birds on the main Fijian islands (BirdLife International 2004). It is likely that mongoose predation has contributed to the decline of the long-legged thicketbird, given that the species is ground-dwelling and currently restricted to rainforests in the mountainous regions of the Fijian Islands.

D. *The inadequacy of existing regulatory mechanisms.* The forest habitat of the long-legged thicketbird is unprotected in Fiji (BirdLife International 2004). We are not aware of any existing regulatory mechanisms for the conservation of the species. The species is not protected under CITES (CITES 2006).

E. *Other natural or manmade factors affecting the continued existence of the species.* The long-legged thicketbird is a reclusive island endemic, found only in the mountain forests of Fiji, which are rapidly being destroyed by logging and development of bigleaf mahogany plantations. Previously believed to be extinct, the species was rediscovered in 2004, and only a small number of individuals have been located at this time. Researchers discovered 12 pairs of long-legged thicketbirds in Wabu, a remote Forest Reserve on the island of Viti Levu, Fiji (BirdLife International 2003). The survey coordinator was the first to notice a previously unknown bird song on Viti Levu while field personnel were recording other species' songs in the area. Recognition of the unknown bird song finally led the team to nine pairs of long-legged thicketbirds inhabiting in dense undergrowth thickets along a 2-km reach of stream at an elevation of 800–1000 meters (BirdLife International 2003). Field personnel believe that the discovery of 18 birds living in such a limited area of old-growth forest reflects a relatively high local density (BirdLife International 2003). Two pairs of the birds were accompanied by recently fledged juveniles. Additional birds have been located during recent surveys, and the population is now believed to range from 50 to 249 individuals, with a stable trend (BirdLife International 2006). The IUCN categorizes the species as Endangered (IUCN 2006). Little is known about the species' life history, except that it prefers old-growth forest, which is rapidly disappearing in the area. Similar to other species with small population numbers, the thicketbird may have experienced a reduction in genetic variation. When a species becomes significantly reduced in number, the loss of genetic variation can result in inbreeding depression and an increase in the expression of deleterious alleles. Furthermore, small populations are more susceptible to stochastic events, such as severe weather, fires, and other natural disasters, which could significantly reduce or eradicate the entire species in a single event. These factors contribute to an increased likelihood of extinction of the species.

Based on the best available information, we find that the long-legged thicketbird is in danger of extinction throughout its range because the species is an island endemic found in extremely limited habitat. Other threats include loss of habitat and predation. Degraded forest habitat is unsuitable for the species and is believed to be a factor in the species' decline. Predation by introduced mongoose is likely also a threat to the species, as they have been the cause of extirpation of many other ground-dwelling bird species in the Fijian Islands.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments, private agencies and groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions within the United States or on the high seas with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. However, given that the black stilt, caerulean Paradise-flycatcher, giant ibis, Gurney's pitta, Socorro mockingbird, and long-legged thicketbird are not native to the United States, no critical habitat is being proposed for designation with this rule.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species and to provide assistance for such programs in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. As such, these prohibitions would be applicable to the black stilt, caerulean Paradise-flycatcher, giant ibis, Gurney's pitta, Socorro mockingbird, and long-legged thicketbird. These prohibitions, pursuant to 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning biological information, population status, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individuals may request that we withhold their home addresses, which we will honor to the extent allowable by law. In some circumstances, we may also withhold an individual's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will

make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section.

Final promulgation of the regulations concerning the listing of these species will take into consideration all comments and additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of the publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Chief of the Division of Scientific Authority (see **ADDRESSES** section).

Peer Review

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' that was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analysis. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**.

Paperwork Reduction Act

This proposed rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The regulation will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (groupings and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand? Send a copy of any comments that concern how we could make this rule easier to understand to the Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail comments to *Exsec@ios.doi.gov.*

References Cited

A list of the references used to develop this proposed rule is available upon request (see **ADDRESSES** section).

Author

The primary author of this notice is Marie T. Maltese, Division of Scientific Authority, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend 17.11(h) by adding new entries for ''Ibis, giant,'' ''Mockingbird, Socorro,'' ''Paradise-flycatcher, caerulean,'' ''Pitta, Gurney's,'' ''Stilt, black,'' and ''Thicketbird, Long-legged'' in alphabetical order under Birds, to the List of Endangered and Threatened Wildlife as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
BIRDS							
*	*	*	*	*	*	*	
Ibis, giant	*Pseudibis gigantea*	Cambodia, Laos, Thailand, Viet Nam.	Entire	E		NA	NA
*	*	*	*	*	*	*	
Mockingbird, Socorro	*Mimodes graysoni*	Mexico	Entire	E		NA	NA
*	*	*	*	*	*	*	
Paradise-flycatcher, caerulean.	*Eutrichomyias rowleyi*	Indonesia	Entire	E		NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
Pitta, Gurney's	*Pitta gurneyi*	Myanmar, Thailand	Entire	E		NA	NA
*	*	*	*	*	*	*	
Stilt, black	*Himantopus novaezelandiae.*	New Zealand	Entire	E		NA	NA
*	*	*	*	*	*	*	
Thicketbird, long-legged.	*Trichocichla rufa*	Fiji	Entire	E		NA	NA
*	*	*	*	*	*	*	

Dated: November 6, 2006.

H. Dale Hall,

Director, Fish and Wildlife Service.

[FR Doc. E6–19721 Filed 11–21–06; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 71, No. 225

Wednesday, November 22, 2006

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 16, 2006.

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

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

Cooperative State Research, Education, and Extension Service

Title: Assurance of Compliance with the Department of Agriculture Regulations Assuring Civil Rights Compliance Organization Information.

OMB Control Number: 0524–0026.

Summary of Collection: The Cooperative State Research, Education, and Extension Service (CSREES) has primary responsibility for providing linkages between the Federal and State components of a broad-based, national agricultural research, extension, and higher education system. Focused on national issues, its purpose is to represent the Secretary of Agriculture and the intent of Congress by administering formula and grant funds appropriated for agricultural research, extension, and higher education. Before awards can be made, certain information is required from applicant to assure compliance with the civil rights laws and to effectively assess the potential recipient's capacity to manage Federal funds. CSREES will collect information using forms CSREES 665, ''Assurance of Compliance with the Department of Agriculture Regulations Assuring Civil Rights Compliance and CSREES 666, ''Organizational Information.''

Need and Use of the Information: CSREES will collect information to determine that applicants recommended for awards are responsible recipients of Federal funds. Also, CSREES will collect information to determine that applicant agrees that they will offer programs to all eligible persons without regard to race, color, national origin, sex, disability, age, political beliefs, religion, marital status, or familial status. If the information were not collected, it would not be possible to determine that the prospective grantees are responsible and are complying with the Civil Rights Act.

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

Number of Respondents: 150.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,020.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–19704 Filed 11–21–06; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act (TITLE VIII, Pub. L. 108–447)

AGENCY: Prescott National Forest, USDA Forest Service.

ACTION: Notice of New Fee site.

SUMMARY: The Prescott National Forest will begin charging fees for the Alto Pit OHV Campground. Fees paid at similar campgrounds on the Prescott National Forest have shown that publics appreciate and enjoy the availability of campgrounds and are willing to pay reasonable fees for use of such sites. The fee rates will be $15 per night for camping in single family camp units and $30 per unit per night for the double unit. The fee will include the current day use fee collected at the site. Funds from fees will be used for the operation and maintenance of Alto Pit OHV Campground.

DATES: Fees will be collected for camping starting May, 2007.

ADDRESSES: Forest Supervisor, Prescott National Forest, 344 S. Cortez St, Prescott, Arizona 86303.

FOR FURTHER INFORMATION CONTACT: Ann May, Landscape Architect, Prescott National Forest, 928–443–8017.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 198–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. This new fee will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

A business analysis and past history has shown that people expect to pay for recreation experiences such as camping, at developed sites on the Prescott National Forest. A market analysis indicates that the proposed fees for Alto Pitt OHV Campground are both

reasonable and acceptable for this sort of recreation experience.

Dated: November 14, 2006.

Alan Quan,

Prescott National Forest Supervisor

[FR Doc. 06–9293 Filed 11–21–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Prescott National Forest, USDA Forest Service, Arizona.

ACTION: Notice of New Fee Site.

SUMMARY: The Prescott National Forest will begin charging a $150 fee for the daily rental of historic Groom Creek Schoolhouse near Prescott, Arizona. Rental of other facilities on the Prescott National Forest and other Arizona National Forests has shown that publics appreciate and enjoy the availability of historic rental facilities. Funds from the rental will be used for the continued operation and maintenance of Groom Creek Schoolhouse.

DATES: Groom Creek Schoolhouse will become available for rent April, 2007.

ADDRESSES: Forest Supervisor, Prescott National Forest, 344 S. Cortez St, Prescott, Arizona, 86303.

FOR FURTHER INFORMATION CONTACT: Doug Schmidgall, Facility Engineer, Prescott National Forest, 928–443–8177.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. The Prescott National Forest currently has three other rental facilities. These rentals are booked regularly throughout their rental season. A business analysis for the rental of Groom Creek Schoolhouse shows that people desire having this sort of recreation experience on the Prescott National Forest. A market analysis indicates that the $150 daily fee is both reasonable and acceptable for this sort of unique recreation experience. People wanting to rent Groom Creek Schoolhouse will need to do so through the National Recreation Reservation Service, at *http://www.reserveusa.com* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a $9 fee per reservation.

Dated: November 14, 2006.

Alan M. Quan,

Forest Supervisor, Prescott National Forest.

[FR Doc. 06–9294 Filed 11–21–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, this constitutes notice of the upcoming meeting of the Grain Inspection Advisory Committee. The Grain Inspection Advisory Committee meets twice annually to advise GIPSA on the programs and services we deliver under the U.S. Grain Standards Act. Recommendations by the committee help us to better meet the needs of our customers who operate in a dynamic and changing marketplace.

DATES: December 12 , 7:30 a.m. to 5p.m.; and December 13, 2006, 7:30 a.m. to 1 p.m.

ADDRESSES: The Advisory Committee meeting will take place at the Marriott at Metro Center, 775 12th Street NW., Washington, DC 20005.

Requests to address the Advisory Committee at the meeting or written comments may be sent to: Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 3601, Washington, DC 20250–3601. Requests and comments may also be Faxed to (202) 690–2755.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Henry, (202) 205–8281 or by e-mail at *Terri.L.Henry@usda.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the Advisory Committee is to provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*). Relevant information about the Advisory Committee is available on the GIPSA Web site. Go to *http://www.gisa.usda.gov* and under the section ?I Want To * * *?, click on ?Learn about the Advisory Committee.?

The agenda will include an update on the agency's finances, update on agency succession plan, use of third-party contracting, central monitoring, international activities, impact of ethanol industry on agency operations, and liberty link rice.

For a copy of the agenda please contact Terri Henry, (202) 205–8281 or by e-mail *Terri.L.Henry@usda.gov*.

Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Advisory Committee. The meeting will be open to the public.

Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Terri Henry, at the telephone number listed above.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E6–19782 Filed 11–21–06; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Project: Plum Creek Watershed, Rehabilitation of Flood Retarding Structure (FRS) #18, Spencer County, KY

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice than an environmental impact statement is not being prepared for the Plum Creek Watershed, FRS#18, Spencer County, Kentucky.

FOR FURTHER INFORMATION CONTACT: Jacob Kuhn, Acting State Conservationist, Natural Resource Conservation Service, 771 Corporate Drive, Suite 210, Lexington, KY 40503–5479, telephone (859) 224–7350.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional or national impacts on the environment. As a result of these findings, Jacob Kuhn, Acting State Conservationist, has determined that the preparation of an environmental impact statement is not needed.

The purposes of this project are flood control, watershed protection, and

structure rehabilitation. The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available at the above address. Basic data developed during the assessment are on file at the NRCS State Office, Lexington, KY and may be reviewed upon request.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed and Flood Prevention, and is subject to the provision of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: November 15, 2006.

Jacob Kuhn,

Acting State Conservationist.

[FR Doc. E6–19774 Filed 11–21–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Rehabilitation of Floodwater Retarding Structure No. 6 of the Big Creek Watershed, Craighead County, AR

AGENCY: Natural Resources Conservation Service, DOA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Floodwater Retarding Structure No. 6 of the Big Creek Watershed, Craighead County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Kalven L. Trice, State Conservationist, Natural Resources Conservation Service, Rm 3416, Federal Building, 700 West Capital Avenue, Little Rock, AR 72201–3225, Telephone (501) 301–3100.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Kalven L. Trice, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project will rehabilitate Floodwater Retarding Structure (FWRS) No. 6 to maintain the present level of flood control benefits and comply with the current dam safety and performance standards.

Rehabilitation of FWRS No. 6 will require the dam to be modified to meet current performance and safety standards for a high hazard dam. The modification will consist of installing a new 30-inch principal spillway with an ungated two stage outlet, widening the auxiliary spillway from 100 to 159 feet, and raising the top of dam from elevation 352.5 to elevation 353.1 to safely pass the probable maximum flood. All disturbed areas will be planted to plants that have wildlife values. The proposed work will not affect any prime farmland, endangered or threatened species, wetlands, or cultural resources.

Federal assistance will be provided under authority of the Small Watershed Rehabilitation Amendments of 2000 (section 313, Public Law 106–472). Total project cost is estimated to be $583,000, of which $421,300 will be paid from the Small Watershed Rehabilitation funds and $161,700 from local funds.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Kalven L. Trice, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: November 17, 2006.

Kalven L. Trice,

State Conservationist.

[FR Doc. E6–19772 Filed 11–21–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Census Bureau

Generic Clearance for Master Address File (MAF) and Topologically Integrated Geographic Encoding and Referencing (TIGER) Update Activities

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 22, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dennis Randolph, U.S. Census Bureau, 5H024, Washington, DC 20233, 301–763–9701 (or via the Internet at *Dennis.E.Randolph@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau presently operates a generic clearance covering activities involving respondent burden associated with updating our Master Address File (MAF) and Topologically Integrated Geographic Encoding and Referencing (TIGER) system. (The MAF is the Census Bureau's address database and TIGER is the geographic database.) We now propose to extend that generic clearance to cover update activities we will undertake during the next three fiscal years. Under the terms of the generic clearance, we plan to submit a request for OMB approval that will describe all planned activities for the entire period; we will not submit a clearance package for each updating activity. We will send a letter to OMB at least two weeks before the planned start of each activity that gives more exact details, examples of forms, and final estimates of respondent burden. We also will file a year-end summary

with OMB after the close of each fiscal year giving results of each activity conducted. This generic clearance enables OMB to review our overall strategy for MAF and TIGER updating in advance, instead of reviewing each activity in isolation shortly before the planned start. The Census Bureau used the MAF for mailing and delivering questionnaires to households during Census 2000. The MAF is also used as a sampling frame for our demographic current surveys. In the past, the Census Bureau built a new address list for each decennial census. The MAF we built for Census 2000 is meant to be kept current, thereby, eliminating the need to build a completely new address list for future censuses and surveys. The TIGER is a geographic system that maps the entire country in Census Blocks with applicable address range or living quarter location information. Linking MAF and TIGER allows us to assign each address to the appropriate Census Block, produce maps as needed and publish results at the appropriate level of geographic detail. The following are descriptions of activities we plan to conduct under the clearance for the next three fiscal years.

1. Demographic Area Address Listing (DAAL)

The Demographic Area Address Listing (DAAL) program encompasses the geographic area updates for the Community Address Updating System (CAUS) and the area and group quarters frame listings for many ongoing demographic surveys (the Current Population Survey, the Consumer Expenditures Survey, etc.). The CAUS program was designed to address quality concerns relating to areas with high concentrations of noncity-style addresses, and to provide a rural counterpart to the update of city-style addresses the MAF will receive from the U.S. Postal Services's Delivery Sequence File. The ongoing demographic surveys, as part of the 2000 Sample Redesign Program, plan to use the MAF as one of several sources of addresses from which to select their samples. In addition to the area and group quarters frame listings, the demographic surveys will also list blocks via the DAAL program for their Frame Assessment for Current Household Surveys (FACHS) evaluations. The DAAL program is a cooperative effort across many divisions at the Census Bureau; it includes automated listing software, systems, and procedures that will allow us to conduct listing operations in a dependent manner based on information contained in the MAF.

The DAAL operations will be conducted on an ongoing basis in potentially any county across the country. Field Representatives (FRs) will canvass selected Census tabulation blocks to improve the address list in areas where substantial address changes have occurred that have not been added to the MAF through regular update operations, and/or in blocks in the area or group quarters frame sample for the demographic surveys. FRs will update existing address information, and when necessary, contact individuals, to collect accurate location and mailing address information. In general, contact will occur only when the FR is adding to the address list, and the individual's address is not posted or visible to the FR. If the occupants of these households are not at home, the FR may attempt to contact a neighbor to determine the best time to find the occupants at home and/or to obtain the correct address information.

DAAL is an ongoing operation. Listing assignments are distributed quarterly with the work conducted throughout the time period. We expect that DAAL listings will be conducted throughout the entire time period of the extension.

2. Dress Rehearsal Address Canvassing

An Address Canvassing operation will take place as part of the 2008 Census Dress Rehearsal. The operation will take place between May 7, 2007 and June 26, 2007. The operation will be a standard address canvassing operation where census listers will canvass specified blocks and conduct brief interviews to verify or update address information against address information on the Census Bureau's address lists and maps. Listers will enter an address status for every address based on what they found out during the visit. Listers will also visit addresses not listed on our address lists and add them. They will record address information and address statuses on the address lists that reside on the hand held computer (HHC). Sites for the 2008 Census Dress Rehearsal will be San Joaquin County, California and Fayetteville and Eastern North Carolina.

3. Decennial Address Canvassing

An Address Canvassing operation will take place as part of the 2010 Decennial Census. The operation will take place between 13 April 2009 and May 2009. The operation will be a standard address canvassing operation where census listers will canvass specified blocks and conduct brief interviews to verify or update address information against address information on the Census Bureau's address lists and maps. Listers will enter an address status for every address based on what they found out during the visit. Listers will also visit addresses not listed on our address lists and add them. They will record address information and address statuses on the address lists that reside on the hand held computer (HHC). Sites for the 2010 Decennial Census will be nation wide.

4. Dress Rehearsal Update/Leave

The U.S. Census Bureau will conduct the Update/Leave operation, March 3, 2008 through April 7, 2008 in the 2008 Census Dress Rehearsal sites of San Joaquin County, California and Fayetteville and Eastern North Carolina. Update/Leave is a field operation for the 2008 Census Dress Rehearsal. The results of this test will enable the Census Bureau to identify, refine, and improve our address collection procedures for a more cost-effective and accurate decennial census.

Update/Leave requires Listers to update the Census Bureau's address list and maps, and to leave a census questionnaire at each housing unit. Listers verify and update the addresses on the address list and their locations on census maps to ensure that they are as current, complete and accurate as possible. Listers will use Form DX–105A (U/L), Update/Leave Address Listing Pages to verify, and update addresses currently in the Census Bureau's Update/Leave universe. Listers will enter an action code for every address based on what they found out. Listers will visit addresses not already listed and add them to our address list. To add addresses, Listers will use Form DX–105B (U/L), Update/Leave Add Pages.

If the occupants of these living quarters are not at home the Listers will leave a questionnaire at the household in a plastic bag, then attempt to contact neighbors in order to obtain the correct address information. If the Lister is unable to contact anyone about an address, they will use their own judgment, and information from surrounding addresses to enter the address information. Quality Control (QC) for Update/Leave consist of an initial observation, a dependent quality control check in the field and an office review of completed work.

5. Decennial Update/Leave

The U.S. Census Bureau will conduct the Update/Leave operation in the 2010 Decennial Census. Update/Leave requires Listers to update the Census Bureau's address list and maps, and to leave a census questionnaire at each housing unit. Listers verify and update the addresses on the address list and

their locations on census maps to ensure that they are as current, complete and accurate as possible. Listers will use Form DX–105A (U/L), Update/Leave Address Listing Pages to verify, and update addresses currently in the Census Bureau's Update/Leave universe. Listers will enter an action code for every address based on what they found out. Listers will visit addresses not already listed and add them to our address list. To add addresses, Listers will use Form DX–105B (U/L), Update/Leave Add Pages.

If the occupants of these living quarters are not at home the Listers will leave a questionnaire at the household in a plastic bag, then attempt to contact neighbors in order to obtain the correct address information. If the Lister is unable to contact anyone about an address, they will use their own judgment, and information from surrounding addresses to enter the address information. Quality Control (QC) for Update/Leave consist of an initial observation, a dependent quality control check in the field and an office review of completed work.

6. Dress Rehearsal Group Quarters Validation (GQV)

The U.S. Census Bureau will conduct the Group Quarters Validation Operation from 17 September–24 October 2007 at the 2008 Census Dress Rehearsal sites of San Joaquin County, California and Fayetteville and Eastern North Carolina. The GQV operation, which supports the Census Bureau's strategic goal of developing methodologies for compiling a complete and accurate MAF for the 2010 Census, is designed to verify and classify addresses identified as other living quarters during the 2006 Address Canvassing operation. The addresses will be classified as Group Quarters (GQ), Housing Unit (HU), or ''not a living quarters''. If the address is a GQ, the lister will label it with the correct type code, (*e.g.* as a college residence hall or skilled nursing unit). Listers will use the DX–351 GQV Questionnaire to list address information and type codes for each GQ in their workload. GQV creates the universe for a follow-up operation known as Group Quarters Enumeration (GQE), in which we count the residents of identified GQs.

7. Decennial Group Quarters Validation

The U.S. Census Bureau will conduct the Group Quarters Validation Operation as part of the 2010 Decennial Census. The operation will take place between Sept 11, 2009–October 22, 2009. The GQV operation verifies and classifies addresses identified as other living quarters during the Decennial Address Canvassing operation. The addresses will be classified as Group Quarters (GQ), Housing Unit (HU), or ''not a living quarters''. If the address is a GQ, the lister will label it with the correct type code, (*e.g.* as a college residence hall or skilled nursing unit). Listers will use the DX–351 GQV Questionnaire to list address information and type codes for each GQ in their workload. GQV creates the universe for a follow-up operation known as Group Quarters Enumeration (GQE), in which we count the residents of identified GQs.

The list above is not exhaustive of all activities which may be performed under this generic clearance. We will follow the approved procedure when submitting any additional activities not specifically listed here.

II. Method of Collection

The primary method of data collection for most operations/evaluations will be personal interview by Census Listers, Verifiers or Enumerators using the operation/evaluation's listing form or questionnaire. A hand held computer and GPS software will be used as part of Address Canvassing to update address lists and maps. In some cases, the interview could be by telephone callback if no one was home on the initial visit.

III. Data

OMB Number: 0607–0809.

Form Number: Some form numbers for activities have not yet been assigned.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: FY07–849,900, FY08–40,000, FY09–144,300,00.

Estimated Time Per Response: Varies by operation.

Estimated Total Annual Burden Hours: FY07–14,315, FY08–2,000, FY09–2,651,000.

Estimated Total Annual Cost: The only cost to respondents is that of their time to respond.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 16, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–19709 Filed 11–21–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee, Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet December 5, 2006, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the Public.
3. Regulations update.
4. Update on Wassenaar Statement of Understanding on Military End-uses (China 'catch-all')
5. Briefing on the new Office of Technology Evaluation (OTE)
6. Encryption update.
7. Enforcement update.
8. Country policy updates,.
9. Automated Export System (AES) update.
10. RPTAC license conditions project.
11. Working group reports.

Closed Session

12. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3).

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov.*

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on November 14, 2006, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 (10)(d)), that the portion of the meeting dealing with matters the disclosure of portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of any agency action as described in 5 U.S.C. 552b (c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: November 16, 2006.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 06–9345 Filed 11–21–06; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta from Italy: Extension of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 22, 2006.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Preeti Tolani, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230: (202) 482–5973 or (202) 482–0395, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue (1) the preliminary results of a review within 245 days after the last day of the month in which occurs the anniversary of the date of publication of an order or finding for which a review is requested, and (2) the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and the final results to a maximum of 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results. See also 19 CFR 351.213(h)(2).

Background

On August 29, 2005, the Department published a notice of initiation of the administrative review of the antidumping duty order on certain pasta from Italy, covering the period July 1, 2004 to June 30, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 51009 (August 29, 2005). On March 16, 2006, the Department extended the preliminary results of the review by 45 days. *See Certain Pasta from Italy: Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 13584 (March 16, 2006). On May 23, 2006, the Department extended the preliminary results of the review by an additional 75 days. *See Certain Pasta from Italy: Extension of Time Limits for the Preliminary Results of the Antidumping Duty Administrative Review*, 71 FR 29615 (May 23, 2006). On August 8, 2006, the Department published the preliminary results of its review. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 71 FR 45017 (August 8, 2006). The final results of this review are currently due no later than December 6, 2006.

Extension of Final Results of Reviews

We determine that it is not practicable to complete the final results of this review within the original time limit because the Department needs additional time to review and analyze the information gathered at Atar S.r.L.'s sales verification. Therefore, we are fully extending the deadline for the final results of the above–referenced review until February 4, 2007. However, because February 4 falls on a Sunday, the deadline for completion of the final results is February 5, 2007, the next business day.

This extension is in accordance with sections 751(a)(3)(A) and 777(i) of the Act and 19 CFR 351.213(h)(2).

Dated: November 16, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–19766 Filed 11–21–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Commercial Operator's Annual Report (COAR)

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 22, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, 907–586–7008 or *patsy.bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Magnuson-Stevens Fishery Conservation and Management Act authorizes the North Pacific Fishery Management Council to prepare and amend fishery management plans for any fishery in waters under its jurisdiction. Fishing for groundfish by

U.S. vessels in the exclusive economic zone (EEZ) in waters off the coast of Alaska is managed by the National Marine Fisheries Service (NMFS) according to the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMPs). The regulations implementing the FMPs are found at 50 CFR part 679.

The owners of shoreside processors and stationary floating processors are required to annually submit the Commercial Operator's Annual Report (COAR) to the State of Alaska, Department of Fish and Game (ADF&G), under Alaska Administrative Code (AAC), chapter 5 AAC 39.130. The owners of catcher/processors and motherships operating in the EEZ off Alaska are required to annually submit the COAR to ADF&G under 50 CFR part 679.5(p).

The COAR provides information on ex-vessel and first wholesale values for statewide fish and shellfish products. Containing information from shoreside processors, stationary floating processors, motherships, and catcher/processors, this data collection yields equivalent annual product value information for all respective processing sectors and provides a consistent time series according to which groundfish resources may be managed more efficiently.

II. Method of Collection

Paper reports are required from participants and transmitted by U.S. mail.

III. Data

OMB Number: 0648–0428.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 87.

Estimated Time Per Response: 8 hours.

Estimated Total Annual Burden Hours: 696.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 16, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–19710 Filed 11–21–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111406B]

Endangered Species; File No. 1540–03

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

ACTION: Notice; issuance of permit modification.

SUMMARY: Notice is hereby given that South Carolina Department of Natural Resources (SCDNR), Marine Resources Division, P.O. Box 12559, Charleston, SC 29422–2559 has been issued a modification to scientific research Permit No.1540–01.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Patrick Opay, (301)713–2289.

SUPPLEMENTARY INFORMATION: On October 5, 2006, notice was published in the **Federal Register** (7 FR 58805) that a modification of Permit No. 1540–01, February 6, 2006 (71 FR 7019), had been requested by the above-named individual. The requested modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1540 currently authorizes the permit holder to study loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempii*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles. The purpose of the research is to continue to document in-water relative abundances, size distributions, sex ratios, genetic contributions, and the health of sea turtles in coastal waters in the southeastern U.S. SCDNR is authorized to capture 146 loggerhead, 48 Kemp's ridley, 15 green, 1 leatherback, and 3 hawksbill sea turtles, during the first year of the permit's five- year period. The permit authorizes research on up to 346 loggerhead, 48 Kemp's ridley, 15 green, 1 leatherback, and 3 hawksbill sea turtles annually for the remaining four years. Turtles are captured by trawls, handled, blood sampled, measured, flipper and Passive Integrated Transponder tagged, photographed, and released. A subsample of animals have barnacles and keratin removed from their shell, have cloacal samples taken, have laparoscopic and ultrasound exams, and have satellite transmitters attached. Up to 7 loggerhead and 1 leatherback captures could potentially result in accidental mortalities over the course of the entire permit. Additionally, up to 5 Kemp's ridley, green, or hawksbill sea turtles (combined total but no more than two of any given species) may potentially be taken as accidental mortalities over the course of the entire permit. The permit is issued for 5 years.

The permit modification authorizes skin biopsy of 50 loggerhead sea turtles annually as well authorizing an increase in the number of turtles undergoing ultrasound, cloacal swabbing, keratin scraping, and having satellite transmitters attached. The number of sea turtles captured does not change. The goal of the additional research would be to assess the potential diversity of diets and foraging habits and document over-wintering habitats of loggerheads.

Issuance of this modification, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of any endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 16, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–19760 Filed 11–21–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030602141–6291–43]

Availability of Grants Funds for Fiscal Year 2007; Reopening of Application Deadline

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice

SUMMARY: NOAA publishes this notice to reopen the solicitation period on the ''NOAA Office of Hydrologic Development Hydrologic Research Announcement of Opportunity, FY 2007,'' which was originally announced in the **Federal Register** on June 12, 2006. This notice is being modified to more fully explain ensemble streamflow forecasting. This notice applies to only those applicants who have already submitted pre-proposals. The solicitation period is being extended from June 12, 2006, to December 15, 2006, to provide pre-proposal applicants the opportunity to submit revised proposals.

DATES: Proposals must be received by the NWS no later than 3 p.m., eastern standard time, December 15, 2006.

ADDRESSES: Applications should be submitted electronically to *http://www.grants.gov/*. Electronic submission is strongly encouraged. Applicants without Internet access may send hard copy applications to Pedro Restrepo, NOAA/NWS; 1325 East-West Highway, Room 8176, phone number 301–713–0640, ext. 210; Silver Spring, MD 20910–3283; these applications must be received by the Office of Hydrologic Development no later than 3 p.m. EST on December 15, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. Pedro Restrepo by phone at 301–713–0640 ext. 210, or fax to 301–713–0963, or via internet at *Pedro.Restrepo@noaa.gov.*

SUPPLEMENTARY INFORMATION: NOAA recently became aware that the Office of Hydrologic Development Hydrologic Research's Announcement of Opportunity for FY 2007 (71 FR 33919, June 12, 2006) did not clearly describe the program priority identified as Ensemble Streamflow Forecasting, which was listed under the heading: ''B. NWS/OHD/HL Hydrologic Modeling Priorities.'' In order to ensure that applicants are fully informed of NOAA's program priorities, NOAA clarifies that Ensemble Streamflow Forecasting includes the preprocessing of atmospheric forecasts, and the use of weather and climate reforecast datasets to produce reliable and skillful ensemble forcing and to evaluate improvement in hydrologic forecast skill.

NOAA recognizes that applicants who submitted their full proposals may wish to revise their submission in light of this clarification. Therefore, NOAA re-opens the solicitation period from November 22, 2006 to December 15, 2006 to allow these applicants the opportunity to revise and submit their full proposals. This re-opening applies only to those applicants who previously submitted a pre-proposal. This re-opening is not a solicitation for new pre-proposals. All other requirements for this solicitation remain the same.

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program is cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds. Applicants are hereby given notice that funding for the Fiscal Year 2007 program is contingent upon the availability of Fiscal Year 2007 appropriations.

Universal Identifier

Applicants should be aware they are 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 at *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*, 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. 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, 424A, 424B, SF–LLL, and CD–346 has been approved by the Office of Management and Budget (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: November 14, 2006.

D.L. Johnson,

NOAA Assistant Administrator for Weather Services.

[FR Doc. E6–19800 Filed 11–21–06; 8:45 am]

BILLING CODE 3510–KE–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Closed Meeting

AGENCY: Defense Intelligence Agency Joint Military Intelligence College.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Joint Military Intelligence College Board of Visitors has been scheduled as follows:

DATES: Tuesday, 3 January 2006, 0800 to 1700; and Wednesday, 4 January 2006, 0800 to 1200.

ADDRESSES: Joint Military Intelligence College, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Mr. A. Denis Clift, President, DIA Joint Military Intelligence College, Washington, DC 20340–5100 (202/231–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence College.

Dated: November 15, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–9295 Filed 11–21–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 22, 2007.

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

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 16, 2006.

Angela C. Arrington,

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

Institute of Education Sciences

Type of Review: New.

Title: The Effectiveness of the Alabama Mathematics, Science and Technology Initiative (AMSTI).

Frequency: Monthly; Annually; Trainer log.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 2,233.

Burden Hours: 746.

Abstract: This study is a group randomized controlled trial by the Regional Educational Laboratory for the Southeast and its subcontractors to test the effectiveness of the Alabama Mathematics, Science and Technology Initiative (AMSTI). This study is needed so that the Alabama State Department of Education (ALSDE), following the requirements of the No Child Left Behind Act (NCLB), can make decisions about this initiative based on scientific data regarding the program's effectiveness at improving student achievement. The evidence from this experiment will be used by ALSDE and the Alabama legislature as a consideration in deciding about program continuation, expansion, and improvement. Respondents are all (324) teachers in grades 4–8 and the principals in 40 schools in 3 regions of Alabama and AMSTI trainers in these regions. Assessment data will also be collected for all students in grades 4–8 in these schools.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3231. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be

electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

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

[FR Doc. E6–19752 Filed 11–21–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 22, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 16, 2006.

Angela C. Arrington,

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

Office of Vocational and Adult Education

Type of Review: Extension.

Title: America's Career Resource Network State Grant Annual Performance Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or household; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 59.

Burden Hours: 354.

Abstract: Section 118(e) of the Carl D. Perkins Vocational and Technical Education Act of 1998 (PL 105–332) requires the Department of Education to submit an annual report to the Congress. Information for that report is obtained from semi-annual and annual progress reports required of grantees by Sec.74.51 EDGAR. Information is used by Departmental managers and project officers: (1) To develop the required annual report to the Congress; (2) to monitor State activities for compliance; and (3) to identify high quality practices for dissemination among the States, as required by the law.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3219. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW, Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

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

[FR Doc. E6–19757 Filed 11–21–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, December 13, 2006; 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The main presentation topic will be Plans for Independent Cleanup Verification at East Tennessee Technology Park.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m., Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on November 17, 2006.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–19768 Filed 11–21–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; High Energy Physics Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, February 22, 2007; 10 a.m. to 6 p.m. and Friday, February 23, 2007; 8:30 a.m. to 4 p.m.

ADDRESSES: Hotel Palomar, 2121 P St., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Kogut, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; SC–25/ Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; *Telephone*: 301–903–1298.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda: Agenda will include discussions of the following:

Thursday, February 22, 2007, and Friday, February 23, 2007.

- Discussion of Department of Energy High Energy Physics Program.
- Discussion of National Science Foundation Elementary Particle Physics Program.
- Reports on and Discussions of Topics of General Interest in High Energy Physics.
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut, 301–903–1298 or *John.Kogut@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 90 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on November 17, 2006.

R. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–19767 Filed 11–21–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–36–000]

Dominion Cove Point LNG, LP Notice of Tariff Filing

November 14, 2006.

Take notice that on October 27, 2006, Dominion Cove Point LNG, LP (Dominion Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective on the date that Dominion Cove Point places in-service its Vaporizer Reactivation Project certificated in Docket No. CP05–395–000:

Pro Forma Sheet No. 1
Pro Forma Sheet No. 7
Pro Forma Sheet No. 8
Pro Forma Sheet No. 10
Pro Forma Sheet No.11
Pro Forma Sheet No. 20
Pro Forma Sheet No. 22
Pro Forma Sheet No. 23
Pro Forma Sheet No. 23A
Pro Forma Sheet No. 27
Pro Forma Sheet No. 120
Pro Forma Sheet No. 121
Pro Forma Sheet No. 122
Pro Forma Sheet No. 123
Pro Forma Sheet No. 124
Pro Forma Sheet No. 203
Pro Forma Sheet No. 204
Pro Forma Sheet No. 205
Pro Forma Sheet No. 206
Pro Forma Sheet No. 230
Pro Forma Sheet No. 256
Pro Forma Sheet No. 256A
Pro Forma Sheet No. 257
Pro Forma Sheet No. 261
Pro Forma Sheet No. 400
Pro Forma Sheet No. 450
Pro Forma Sheet No. 472
Pro Forma Sheet No. 475
Pro Forma Sheet No. 490
Pro Forma Sheet No. 492
Pro Forma Sheet Nos. 518–549
Pro Forma Sheet No. 550
Pro Forma Sheet No. 551
Pro Forma Sheet No. 552
Pro Forma Sheet Nos. 553–999

Dominion Cove Point's pro forma tariff sheets listed above establish rates and terms of service for the new incremental services associated with Vaporizer Reactivation Project: the Incremental Send-Out Quantities to be added to Rate Schedule LTD–1 and the new off-peak firm transportation service, Rate Schedule OTS.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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

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

document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19699 Filed 11–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–1308–002]

Midwest Independent Transmission System Operator, Inc.; Notice of Filing

November 13, 2006.

Take notice that on November 6, 2006, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed proposed revisions to Schedules 10–C, 16–A, and 17–A of the Midwest ISO's Open Access Transmission and Energy Markets Tariff, Third Revised Volume No. 1, compliance filing pursuant to the Commission's October 6, 2006 Order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

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

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

Comment Date: 5 p.m. Eastern Time on November 27, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19701 Filed 11–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–102–002]

Southern Company Services, Inc.; Notice of Filing

November 13, 2006.

Take notice that on November 6, 2006, Southern Company Services, Inc. acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company filed a compliance filing pursuant with the Commission's Order on Settlement, Paragraph (C), issued October 5, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

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

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

Comment Date: 5 p.m. Eastern Time on November 27, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19700 Filed 11–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

November 14, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–15–000.

Applicants: Delta Person Limited Partnership; Lowell Cogeneration Company; Vineland Energy LLC; Delta Power Company, LLC; Delta Power Holdings, LLC; Arroyo DP Holding LP.

Description: Delta Person Limited Partnership et al submit an application for authorization of indirect disposition of jurisdictional facilities.

Filed Date: 11/03/2006.

Accession Number: 20061109–0071

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: EC07–16–000; ER01–2398–014.

Applicants: Liberty Electric Power, LLC.

Description: Liberty Electric Power, LLC submits its application for authorization for disposition of jurisdictional facilities and notice of change on status.

Filed Date: 11/07/2006.

Accession Number: 20061113–0006.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 28, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–4257–012; ER97–4257–013.

Applicants: Mid-Power Service Corporation.

Description: Mid-Power Service Corp submits its Updated Market Analysis for the period ended 9/30/06 and to inform the Commission of a no change in status for that period.

Filed Date: 11/08/2006.

Accession Number: 20061114–0063.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 29, 2006.

Docket Numbers: ER02–2397–005; ER03–796–005; ER05–118–003; ER05–131–003; ER05–454–003; ER06–1446–001; ER06–642–002; ER06–643–001; ER06–784–001.

Applicants: Great Lakes Hydro America, LLC; Katahdin Paper Company LLC; Carr Street Generating Station, L.P.; Erie Boulevard Hydropower, L.P.; Bear Swamp Power Company LLC; Hawks Nest Hydro LLC; Brookfield Power Piney & Deep Creek LLC; Brookfield Energy Marketing Inc.; Rumford Falls Hydro LLC.

Description: Bear Swamp Power Co, LLC et al submit a Notice of Change in Status.

Filed Date: 11/03/2006.

Accession Number: 20061109–0174.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER03–478–014; ER03–951–010; ER03–416–011; ER04–94–008; ER03–296–010; ER05–534–008; ER05–365–008; ER01–3121–009; ER02–418–008; ER05–332–008; ER06–1–006; ER02–417–008; ER05–1146–008; ER06–200–007; ER05–481–008; ER03–1326–007; ER05–1262–005; ER06–1093–001.

Applicants: PPM Energy Inc.; Moraine Wind LLC; Klondike Wind Power LLC; Mountain View Power Partners III, LLC; Flying Cloud Power Partners, LLC; Eastern Desert Power LLC; Elk River Windfarm LLC; Klamath Energy LLC; Klamath Generation LLC; Klondike Wind Power II LLC; Leaning Juniper Wind Power, LLC; Phoenix Wind Power LLC; Shiloh I Wind Project LLC; Big Horn Wind Project LLC; Trimont Wind I LLC; Colorado Green Holdings, LLC; Flat Rock Windpower LLC; Flat Rock Windpower II LLC.

Description: PPM Energy, Inc et al submit a notice of a change in status as a result of the acquisition of an interest in an affiliate of PPM by JPM Capital Corp.

Filed Date: 11/09/2006.

Accession Number: 20061114–0059.

Comment Date: 5 p.m. Eastern Time on Thursday, November 30, 2006.

Docket Numbers: ER04–928–003.

Applicants: Pacific Gas & Electric Company.

Description: Pacific Gas and Electric Company submits a revised template for the City of Santa Clara, Silicon Valley Power Grizzly Development et al Settlement Agreement.

Filed Date: 11/08/2006.

Accession Number: 20061108–5031.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 29, 2006

Docket Numbers: ER06–18–005.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc submits proposed revisions to its Open Access Transmission and Energy Markets Tariff, pursuant to the Commission's 2/3/06 order.

Filed Date: 11/08/2006.

Accession Number: 20061113–0003.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 29, 2006.

Docket Numbers: ER06–1358–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc submits proposed compliance revisions to Attachment N–1 of its Open Access Transmission and Energy Markets Tariff, pursuant to the Commission's 10/10/06 order.

Filed Date: 11/09/2006.

Accession Number: 20061114–0065.

Comment Date: 5 p.m. Eastern Time on Thursday, November 30, 2006.

Docket Numbers: ER06–1519–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc submits an amendment to its 9/26/06 filing of the Transmission Interconnection Agreement, Service Agreement No. 1759, Third Revised Volume No. 1.

Filed Date: 11/08/2006.

Accession Number: 20061113–0002.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 29, 2006.

Docket Numbers: ER07–175–000.

Applicants: ISO New England Inc.; New England Power Pool. Participants Committee.

Description: ISO New England Inc & New England Power Pool Participants Committee submits a joint changes to Market Rule 1 that revise the deadlines for including transmission & generation resources in the network assumptions used to calculate the Locational Forward Reserve Market Auction requirements.

Filed Date: 11/03/2006.

Accession Number: 20061108–0043.

Comment Date: 5 p.m. Eastern Time on Monday, November 27, 2006.

Docket Numbers: ER07–188–000. ER07–189–000; ER07–190–000; ER07–191–000; ER07–192–000.

Applicants: Duke Energy Carolinas, LLC; Duke Energy Indiana, Inc.; Duke Energy Kentucky, Inc.; Duke Energy Ohio, Inc.; Duke Energy Shared Services, Inc.

Description: Duke Energy Carolinas, LLC et al submits Notices of Succession, tariffs, rate schedules, service agreements to reflect new names, and a notice of cancellation.

Filed Date: 11/09/2006.

Accession Number: 20061031–4017.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 29, 2006.

Docket Numbers: ER07–193–000.

Applicants: Desert Generation & Trans Co-operative, Inc.

Description: Deseret Generation and Transmission Co-operative, Inc submits its proposed Wholesale Power Contract Supplemental Rate Rebate to Service Agreement 1—6, FERC Electric Tariff, Original Volume 1.

Filed Date: 11/08/2006.

Accession Number: 20061113–0001.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 29, 2006.

Docket Numbers: ER07–194–000.

Applicants: Idaho Power Company.

Description: Idaho Power Co submits its Tenth Revised Sheet 28 to the Transmission Services Agreement with the City of Seattle, City Light Department.

Filed Date: 11/09/2006.

Accession Number: 20061114–0061.

Comment Date: 5 p.m. Eastern Time on Thursday, November 30, 2006.

Docket Numbers: ER07–195–000.

Applicants: Locust Ridge Wind Farm, LLC.

Description: Locust Ridge Wind Farm, LLC submits an application for order accepting market-based rate tariff for filing and granting waivers and blanket approvals, FERC Electric Tariff, 1.

Filed Date: 11/09/2006.

Accession Number: 20061114–0062.

Comment Date: 5 p.m. Eastern Time on Thursday, November 30, 2006.

Docket Numbers: ER07–196–000.

Applicants: Pinpoint Power, LLC.

Description: Pinpoint Power, LLC submits its Amended and Restated Agreement for Supplemental Installed Capacity Southwest Connecticut with ISO New England, Inc.

Filed Date: 11/09/2006.

Accession Number: 20061114–0060.

Comment Date: 5 p.m. Eastern Time on Thursday, November 30, 2006.

Docket Numbers: ER07–198–000.

Applicants: Highland Energy.

Description: Highland Energy LLC submits a Petition for Market Based Rate Authority, Request for Waivers and Blanket Approvals, designated as FERC Electric Tariff, Original Volume 1.

Filed Date: 11/08/2006.

Accession Number: 20061114–0064.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 29, 2006.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH07–5–000.

Applicants: International Transmission Holdings LP.

Description: Joint Waiver Notification of FERC 65B of International Transmission Holdings Limited Partnership, *et al.* under PH07–5.

Filed Date: 11/09/2006.

Accession Number: 20061109–5079.

Comment Date: 5 p.m. Eastern Time on Thursday, November 30, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19698 Filed 11–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–102–000]

Trunkline LNG Company, LLC ; Notice of Availability of the Environmental Assessment for the Proposed Infrastructure Enhancement Project

November 13, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas facilities proposed by Trunkline LNG Company, LLC (Trunkline LNG) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of Ambient Air Vaporization (AAV) facilities at its existing liquefied natural gas import terminal in Calcasieu Parish, Louisiana. These facilities would consist of system that uses ambient heat in the air to reduce the use of fuel gas in the vaporization of liquefied natural gas (LNG). Additionally, Trunkline LNG would add natural gas liquids (NGL) processing facilities for LNG conditioning and British thermal unit (Btu) control. The facilities would include the following:

- 64 Potassium Formate (KF)-Air heaters (64 forced convection, three-fan air exchangers, 17.9 million Btu per hour (MMBtu/hr)/Air Heater;
- Four KF–LNG Vaporizers (525 million standard cubic feet per day [MMscf/d]);
- One NGL Recovery Unit, sized for a maximum capacity of 1,050 MMscf/d;
- 1,160 feet of 12-inch-diameter ethane product piping;
- 1,160 feet of 12-inch-diameter propane product piping;
- Two propylene glycol heaters (150 MMBtu/hr each);
- Glycol storage and circulation System;
- Two electrical switchgear buildings;
- One remote instrumentation building, designed as Equipment Room 2; and
- Foam Building No. 4.

The EA also discusses facilities planned by British Gas (BG), and Entergy Louisiana which are considered nonjurisdictional facilities to the FERC. These facilities include the expansion of the existing electric substation, a meter station, and the construction of two 16.4 mile-long (each) take away NGL product pipelines; an NGL processing facility consisting of a metering station and a depropanizer/truck terminal facility; and an underground storage cavern. BG has contracted PetoLogistics, LLC to design, permit, and operate the meter station and take away pipelines. The pipelines would consist of a 12-inch-diameter ethane (approximately 1,800 gallons per minute [gpm]) pipeline and an 8-inch-diameter propane (approximately 1,250 gpm) pipeline. The pipelines would be constructed from the meter station to PetroLogistics' storage facility in Sulfur, Louisiana.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, State and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Branch 2, PJ11.2.
- Reference Docket No. CP06–102–000; and
- Mail your comments so that they will be received in Washington, DC on or before December 13, 2006.

Please note the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://*

www.ferc.gov under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Sign-up.''

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202)502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–19702 Filed 11–21–06; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2006–0515; FRL–8245–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Confidentiality Rules (Renewal); EPA ICR No. 1665.07, OMB Control No. 2020–0003

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 22, 2006.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OEI–2006–0515 to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Larry F. Gottesman, National FOIA Officer, Collection Strategies Division, Office of Information Collection, Mail Code 2822T, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 202–566–2162; fax number: 202–566–2147; e-mail address: *gottesman.larry@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 17, 2006, (71 *FR* 40510), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID. No. EPA–HQ–OEI–2006–0515, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Confidentiality Rules (Renewal).

ICR numbers: EPA ICR No. 1665.07, OMB Control No. 2020–0003.

ICR Status: This ICR is scheduled to expire on November 30, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: In the course of administering environmental protection statutes, EPA collects data from thousands of facilities in many sectors of the U.S. economy. In many cases, industry marks the data it submits to EPA as CBI. In addition, businesses submit information to EPA without the Agency requesting the information. EPA

established the procedures described in 40 CFR part 2, subparts A and B, to protect the confidentiality of information as well as the rights of the public to obtain access to information under the Freedom of Information Act (FOIA). In accordance with these regulations, when EPA finds it necessary to make a final confidentiality determination (e.g., in response to a FOIA request or in the course of rulemaking or litigation), or in advance confidentiality determination, it shall notify the affected business and provides an opportunity to comment (i.e., to submit a substantiation of confidentiality claim). This ICR relates to the collection of information that will assist EPA in determining whether previously submitted information is entitled to confidential treatment.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4.9 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are businesses and other for-profit companies.

Estimated Number of Respondents: 1,330.

Frequency of Response: 1 per year.

Estimated Total Annual Hour Burden: 6,521 hours.

Estimated Total Annual Cost: $240,158, includes $0 annualized capital or O&M costs and $240,158 annual labor costs.

Changes in the Estimates: There is no change in hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: November 14, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–19751 Filed 11–21–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2006–0557; FRL–8245–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Tips and Complaints Regarding Environmental Violations (Renewal); EPA ICR No. 2219.02, OMB Control No. 2020–0032

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing, approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 22, 2006.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2006–0557, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by mail to: The Enforcement and Compliance Docket and Information Center, Environmental Protection Agency, Mailcode: 2201T, 1301 Constitution Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Michael Le Desma; Legal Counsel & Resource Management Division; Office of Criminal Enforcement, Forensics, and Training, Environmental Protection Agency, Building 25, Box 25227, Denver Federal Center, Denver, CO 80025; telephone number: (303) 462–9453; fax number: (303) 462–9075; e-mail address: *ledesma.michael@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On Thursday, August 31, 2006 (71 *FR* 51810), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment during the comment period, which is addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OECA–2006–0557, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is 202–564–1927.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Tips and Complaints Regarding Environmental Violations (Renewal).

ICR numbers: EPA ICR No. 2219.02, OMB Control No. 2020–0032.

ICR Status: This ICR is scheduled to expire on November 30, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: The EPA tips and complaints web form is intended to

provide an easy and convenient means by which members of the public can supply information to EPA regarding suspected violations of environmental law. The decision to provide a tip or complaint is entirely voluntary and use of the web form when supplying a tip or complaint is also entirely voluntary. Tippers need not supply contact information or other personal identifiers. Those who do supply such information, however, should know that this information may be shared by EPA with appropriate administrative, law enforcement, and judicial entities engaged in investigating or adjudicating the tip or complaint.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average one-half hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Respondents are expected to be members of the general public as well as employees of any company subject to federal environmental regulation. There is no specific industry or group of industries about which EPA expects tips or complaints.

Estimated Number of Respondents: 3,600.

Frequency of Response: One time, on occasion.

Estimated Total Annual Hour Burden: 1,800 hours.

Estimated Total Annual Cost: EPA does not anticipate any capital or start-up costs associated with completion of this form. EPA also does not anticipate that, in the usual case, burden hours associated with the tips and complaint form will translate into actual labor costs; we expect relatively few tips or complaints to be submitted as part of an employee's official duties. For this reason, we believe that the relevant ''labor costs'' associated with the form are best calculated as the wage opportunity cost to tippers of the form's estimated burden hours. The wage opportunity cost of the burden hours associated with this form can be estimated by multiplying the total number of burden hours by the average national hourly wage reported by the Bureau of Labor Statistics (BLS). BLS reports the average hourly wage in December 2005 to have been $18.59 per hour; accordingly, the total wage opportunity cost associated with the tips and complaints form would be approximately $33,462 per annum.

Changes in the Estimates: There is no change in the hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

Dated: November 15, 2006.

Oscar Morales, Director,

Collection Strategies Division.

[FR Doc. E6–19753 Filed 11–21–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2006–0448; FRL–8245–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels (Renewal) ICR Number 1060.14, OMB Number 2060–0038

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before December 22, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2006–0448, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: María Malavé, Compliance Assessment and Media Programs Division (Mail Code 2223A), Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; e-mail address: *malava.maria@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 21, 2006 (71 *FR* 35652), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2006–0448, which is available for public viewing online at *http://www/regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: NSPS for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels (Renewal).

ICR Numbers: EPA ICR Number 1060.14, OMB Control Number 2060–0038.

ICR Status: This ICR is scheduled to expire on November 30, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The New Source Performance Standards (NSPS) for electric arc furnaces were proposed on October 21, 1974 (39 *FR* 37466) and promulgated on September 23, 1975 (40 FR 43850). These standards apply to the following affected facilities in steel plants that produce carbon, alloy, or specialty steels: Electric arc furnaces (EAFs) and dust handling systems commencing construction, modification or reconstruction after the date of proposal and on or before August 17, 1983. A review of 40 CFR part 60, subpart AA in 1980 resulted in the promulgation of a new standard (NSPS 40 CFR part 60, subpart AAa). The review of NSPS subpart AA found that fugitive emissions capture technology had improved since promulgation of NSPS subpart AA, and that argon-oxygen decarburization (AOD) vessels are a significant source of particulates in specialty steel shops. NSPS, subpart AAa was proposed on August 17, 1983 and promulgated on October 31, 1984. The new standard established new standards applicable to EAFs, AOD vessels, and dust handling systems constructed, modified, or reconstructed after August 17, 1983. On March 2, 1999, the Agency promulgated a direct final rule to amend subparts AA and AAa in response to a petition made by the Common Sense Initiative Council, established under a charter approved pursuant to the Federal Advisory Committee Act (FACA), which approved daily visible emissions observations as an alternative to static pressure monitoring at an EAF with a direct shell evacuation system, and clarified some definitions.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NSPS. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 308 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: plants with electric arc furnaces, AOD vessels, and dust handling systems that produce carbon, alloy, or specialty steels.

Estimated Number of Respondents: 97.

Frequency of Response: Initially and semiannually.

Estimated Total Annual Hour Burden: 60,112 hours (rounded).

Estimated Total Cost: $5,286,222, which includes $4,140 annualized capital startup costs, $194,250 annual Operating and Maintenance (O&M) costs, and $5,087,832 annual labor cost.

Changes in the Estimates: There is a decrease of 288 hours from the most recently approved ICR due primarily to a change made in the number of operational days from 365 to 350 which offsets any increase that resulted from the increase on the number of average respondents per year from 95.3 to 96.6. The labor hours for management, clerical, as well as for technical employees have been updated.

The decrease in the annualized capital/startup and operation and maintenance costs from $285,750 to $198,390 is due to a decrease on the number of respondents using continuous opacity monitors (COMs) for compliance with the stack emissions requirements. This is an update to the most recently approved ICR (*i.e.*, ICR 1060.13) which did not account for this type of burden change as a result of the 2005 amendments to the standard. The operation and maintenance costs for the renewal of this ICR decreased due to a decrease in the number of sources using COMs as a result of electing to comply with the alternative option of daily opacity shop observations by a certified visible emission observer couple with the use of bag leak detection systems (BLDS).

Dated: November 15, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–19754 Filed 11–21–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0073; FRL–8245–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Distribution of Offsite Consequence Analysis Information Under Section 112(r)(7)(H) of the Clean Air Act (CAA) (Renewal); EPA No. 1981.03, OMB No. 2050–0172

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the

nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 22, 2006.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2003–0073 to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to, *a-and-r-Docket@epa.gov,* or by mail to: EPA Air Docket, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Office of Solid Waste and Emergency Response, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8019; fax number: (202) 564–2620; e-mail address: *jacob.sicy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 14, 2006, (71 FR 40093), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA did not receive any comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2003–0073, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Distribution of Offsite Consequence Analysis Information under Section 112(r)(7)(H) of the Clean Air Act (CAA) (Renewal).

ICR number: EPA ICR No. 1981.03, OMB Control No. 2050–0172.

ICR Status: This ICR is scheduled to expire on December 31, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR is the renewal of the ICR developed for the final rule, Accidental Release Prevention Requirements; Risk Management Programs Under the Clean Air Act Section 112(r)(7); Distribution of Off-Site Consequence Analysis Information. CAA section 112(r)(7) required EPA to promulgate reasonable regulations and appropriate guidance to provide for the prevention and detection of accidental releases and for responses to such releases. The regulations include requirements for submittal of a risk management plan (RMP) to EPA. The RMP includes information on offsite consequence analyses (OCA) as well as other elements of the risk management program.

On August 5, 1999, the President signed the Chemical Safety Information, Site Security, and Fuels Regulatory Relief Act (CSISSFRRA). The Act required the President to promulgate regulations on the distribution of OCA information (CAA section 112(r)(7)(H)(ii)). The President delegated to EPA and the Department of Justice (DOJ) the responsibility to promulgate regulations to govern the dissemination of OCA information to the public. The final rule was published on August 4, 2000 (65 FR 48108). The regulations imposed minimal requirements on the public, state and local agencies that request OCA data from EPA. The state and local agencies who decide to obtain OCA information must send a written request on their official letterhead to EPA certifying that they are covered persons under Public Law 106–40, and that they will use the information for official use only. EPA will then provide paper copies of OCA data to those agencies as requested. The rule authorizes and encourages state and local agencies to set up reading rooms. The local reading rooms would provide read-only access to OCA information for all the sources in the Locoal Emergency Planning Committee's (LEPC's) jurisdiction and for any source where the vulnerable zone extends into the LEPC's jurisdiction.

Members of the public requesting to view OCA information at federal reading rooms would be required to sign in and self certify. If asking for OCA information from federal reading rooms for the facilities in the area where they live or work, they would be required to provide proof that they live or work in that area. Members of the public are required to give their names, telephone number, and the names of the facilities for which OCA information is being requested, when they contact the central office to schedule an appointment to view OCA information.

Burden Statement: For this ICR period, EPA estimates a total of 2,150 hours (annually) for local agencies requesting OCA data from EPA and providing read-only access to the public. For the state agencies, the total annual burden for requesting OCA data from EPA and providing read-only access to the public, is 2,480 hours. For the public to display photo identification, sign a sign-in sheet, certify that the individual has not received access to OCA information for more than 10 stationary sources for that calendar month, and to request information from the vulnerable zone indicator system (VZIS), EPA estimates a total of 4,965 hours annually. The total burden for the members of the public, state and local agencies is 9,595 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing

and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State and local agencies; members of the public.

Estimated Number of Respondents: 5,220.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 9,595.

Estimated Total Annual Cost: $296,603, which includes $100 annualizied capital or O&M costs and $296,500 annual labor costs.

Changes in the Estimates: There is a decrease of 6,245 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR. This adjustment is due to using actual data of the state and local officials requesting OCA data and the public visiting reading rooms. The previous ICR estimated that all 50 states plus U.S. territories and D.C. and at least 1,000 of the 1,500 active LEPCs will be requesting OCA data. However, EPA only received requests for OCA data from 9 LEPCs and 240 state officials in the past three years. The public burden and costs have also decreased from the previous ICR, due to the actual number of people that have visited the federal, state and local reading rooms.

Dated: November 15, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–19756 Filed 11–21–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[IL228–1; FRL–8245–4]

Notice of Prevention of Significant Deterioration Final Determination for Indeck Elwood, LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This notice announces that on September 27, 2006, the Environmental Appeals Board (EAB) of the EPA denied in part, and remanded in part, a petition for review of a federal Prevention of Significant Deterioration (PSD) permit issued to Indeck-Elwood, LLC by the Illinois Environmental Protection Agency (IEPA).

DATES: The effective date for the EAB's decision is September 27, 2006. Pursuant to Section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of this permit decision, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeals for the Seventh Circuit within 60 days of January 22, 2007.

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address: Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604. To arrange viewing of these documents, call Constantine Blathras at (312) 886–0671.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, Air and Radiation Division, Air Programs Branch, Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard (AR–18J), Chicago, Illinois 60604. Anyone who wishes to review the EAB decision can obtain it at *http://www.epa.gov/eab/*.

SUPPLEMENTARY INFORMATION:

Notification of EAB Final Decision

The IEPA, acting under authority of a PSD delegation agreement, issued a PSD permit to Indeck-Elwood, LLC on October 10, 2003, granting approval to construct a coal-fired steam electric generating station in Elwood, Will County, Illinois. The American Lung Association of Metropolitan Chicago, Citizens Against Ruining the Environment, the Clean Air Task Force, Lake County Conservation Alliance, and the Sierra Club filed a petition for review with the EAB on November 17, 2003. The EAB denied in part, and remanded in part, the petition on September 27, 2006. The EAB remands the permit on the following issues: The inclusion of Source-Wide Condition 9, which allows Indeck Elwood to construct a power plant with less capacity than addressed by the permit applicant; IEPA's soils and vegetation analysis; the permit's substitution of work and operational practices for Best Available Control Technology numeric limits during start-up, shut-down, and malfunction events; and the permit's particulate matter emissions limits and the absence of a limitation for condensable particulate matter. On all other issues, review is denied.

Dated: November 13, 2006.

Jo Lynn Traub,

Acting Regional Administrator, Region 5.

[FR Doc. E6–19785 Filed 11–21–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8245–2]

Secondary Containment Grant Guidelines for States; Solid Waste Disposal Act, Subtitle I, as Amended by Title XV, Subtitle B of the Energy Policy Act of 2005

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: By this notice, the Environmental Protection Agency (EPA), Office of Underground Storage Tanks (OUST) is advising the public that on November 15, 2006 EPA issued the secondary containment grant guidelines and made the guidelines available on EPA's Web site at: *http://www.epa.gov/oust/fedlaws/epact_05.htm#Final*. In this notice, EPA is publishing the secondary containment grant guidelines in their entirety. EPA developed the secondary containment grant guidelines as required by section 9003(i)(1) of Subtitle I of the Solid Waste Disposal Act, as amended by section 1530 of the Energy Policy Act of 2005.

DATES: On November 15, 2006, EPA issued and posted the secondary containment grant guidelines on EPA's Web site. EPA is notifying the public via this notice that the secondary containment grant guidelines are available as of November 22, 2006.

ADDRESSES: EPA posted the secondary containment grant guidelines on our Web site at: *http://www.epa.gov/oust/fedlaws/epact_05.htm#Final.* You may also obtain paper copies from the National Service Center for Environmental Publications (NSCEP), EPA's publications distribution warehouse. You may request copies from NSCEP by calling 1–800–490–9198; writing to U.S. EPA/NSCEP, Box 42419, Cincinnati, OH 45242–0419; or faxing your request to NSCEP at 301–604–3408. Ask for: Grant Guidelines To States For Implementing The Secondary Containment Provision Of The Energy Policy Act Of 2005 (EPA 510–R–06–001, November 2006).

FOR FURTHER INFORMATION CONTACT: Paul Miller, EPA's Office of Underground Storage Tanks, at *miller.paul@epa.gov* or (703) 603–7165.

SUPPLEMENTARY INFORMATION: On August 8, 2005, President Bush signed the Energy Policy Act of 2005. Title XV, Subtitle B of this act, entitled the Underground Storage Tank Compliance Act of 2005, contains amendments to Subtitle I of the Solid Waste Disposal Act. This is the first federal legislative change for the underground storage tank (UST) program since its inception over 20 years ago. The UST provisions of the law significantly affect federal and state UST programs; require major changes to the programs; and are aimed at further reducing UST releases to our environment. Among other things, the UST provisions of the Energy Policy Act require that states receiving funding under Subtitle I comply with certain requirements contained in the law. OUST worked, and is continuing to work, with its partners to develop grant guidelines that EPA regional tank programs will incorporate into states' grant agreements. The guidelines will provide states that receive UST funds with specific requirements, based on the UST provisions of the Energy Policy Act, for their state UST programs.

Section 9003(i) of Subtitle I of the Solid Waste Disposal Act, as amended by section 1530 of the Energy Policy Act, requires EPA to require states that receive Subtitle I funding to impose measures to protect groundwater from contamination by USTs through use of either secondary containment or evidence of financial responsibility and certification. As a result of that requirement, EPA worked with states, tribes, other federal agencies, tank owners and operators, UST equipment industry, and other stakeholders to develop draft secondary containment grant guidelines. In May 2006, EPA released a draft of the secondary containment grant guidelines. EPA considered comments and, subsequently on November 15, 2006, issued the secondary containment grant guidelines. EPA will incorporate these guidelines into grant agreements between EPA and states. States receiving funds from EPA for their UST programs must comply with the UST provisions of the Energy Policy Act and will be subject to action by EPA under 40 CFR 31.43 if they fail to comply with the guidelines. (Please note that EPA intends to issue the financial responsibility and certification grant guidelines in the next few months.)

Statutory and Executive Order Reviews: Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. Section 601) or Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. Although this action does create new binding legal requirements, such requirements do not substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). Although this grant action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999), EPA consulted with states in the development of these grant guidelines. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final action will contain legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit a report to Congress containing this final action prior to the publication of this action in the **Federal Register**.

Grant Guidelines to States for Implementing the Secondary Containment Provision of the Energy Policy Act of 2005

U.S. Environmental Protection Agency; Office of Underground Storage Tanks; November 2006.

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Overview of the Secondary Containment Grant Guidelines

Why Is EPA Issuing These Guidelines?

The U.S. Environmental Protection Agency (EPA), in consultation with states, developed these grant guidelines to implement the secondary containment provision in Section 9003(i)(1) of the Solid Waste Disposal Act (SWDA), enacted by the Underground Storage Tank Compliance Act, part of the Energy Policy Act of 2005 signed by President Bush on August 8, 2005.

Section 1530 of the Energy Policy Act amends Section 9003 in Subtitle I of the Solid Waste Disposal Act by adding requirements for additional measures to protect groundwater from contamination. State underground storage tank (UST) programs that receive funding under Subtitle I must meet, at a minimum, one of the following:

1. *Tank and Piping Secondary Containment*—Each new or replaced underground tank, or piping connected to any such new or replaced tank, that is within 1,000 feet of any existing community water system or any existing potable drinking water well must be secondarily contained and monitored for leaks. In the case of a replacement of an existing underground tank or existing piping connected to the underground tank, the secondary containment and monitoring shall apply only to the specific underground tank or piping being replaced, not to other underground tanks and connected pipes

comprising such system. In addition, each new motor fuel dispenser system installed within 1,000 feet of any existing community water system or any existing potable drinking water well must have under-dispenser containment. These requirements do not apply to repairs meant to restore an underground tank, pipe, or dispenser to operating condition. or,

2. *Evidence of Financial Responsibility and Certification*—A person that manufactures an underground tank or piping for an underground storage tank system or installs an underground storage tank system must maintain evidence of financial responsibility under Section 9003(d) of Subtitle I in order to provide for the costs of corrective actions directly related to releases caused by improper manufacture or installation unless the person can demonstrate themselves to be already covered as an owner or operator of an underground storage tank under Section 9003 of Subtitle I. In addition, underground storage tank installers must: be certified or licensed; have the installation certified or approved; install the underground storage tank system compliant with a code of practice and in accordance with the manufacturer's instructions; or use another method determined to be no less protective of human health and the environment.

EPA's Office of Underground Storage Tanks (OUST) is issuing these grant guidelines to establish the minimum requirements a state receiving Subtitle I funding (hereafter referred to as ''state'') must meet in order to comply with the secondary containment requirements in the Energy Policy Act.

What Is in These Guidelines?

These guidelines describe the minimum requirements for secondary containment that a state's underground storage tank program must contain in order for a state to comply with statutory requirements for Subtitle I funding. These guidelines include definitions, requirements, and examples for states choosing to implement the secondary containment provision.

When Do These Guidelines Take Effect?

States receiving Subtitle I funding must implement either the secondary containment requirements described in these guidelines or the financial responsibility and installer certification requirements (described in separate guidelines) by February 8, 2007.

Requirements for Secondary Containment

What Underground Tanks, Piping, and Motor Fuel Dispenser Systems Do These Guidelines Apply To?

These guidelines apply to new or replaced underground tanks and piping regulated under Subtitle I except those excluded by regulation at 40 CFR 280.10(b) and those deferred by regulation at 40 CFR 280.10(c). New or replaced underground tanks and piping used for emergency power generation [deferred from release detection by 280.10(d)] must meet these guidelines. These guidelines also apply to new motor fuel dispenser systems connected to underground storage tank systems covered by these guidelines.

What Definitions Are Used in These Guidelines?

The following are definitions for purposes of these guidelines.

Community Water System (CWS)—A public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

This definition is taken from the federal drinking water regulations at 40 CFR 141.2 (7–1–02 Edition).

Existing—For purposes of these guidelines, existing means that an underground tank, piping, motor fuel dispensing system, facility, community water system, or potable drinking water well is in place when a new installation or replacement of an underground tank, piping, or motor fuel dispensing system begins.

Installation of a New Motor Fuel Dispenser System—The installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the underground storage tank system. It does not mean the installation of a motor fuel dispenser installed separately from the equipment needed to connect the dispenser to the underground storage tank system. For purposes of these guidelines, the equipment necessary to connect the motor fuel dispenser to the underground storage tank system may include check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are beneath the dispenser and connect the dispenser to the underground piping.

Motor Fuel—Petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol and is typically used in the operation of a motor engine.[1]

Piping—For purposes of these guidelines, piping is the hollow cylinder or the tubular conduit constructed of non-earthen materials that routinely contains and conveys regulated substances from the underground tank(s) to the dispenser(s) or other end-use equipment. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that contain and convey regulated substances from the underground tank(s) to the dispenser(s). This definition does not include vent, vapor recovery, or fill lines.

Potable Drinking Water Well—Any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater which:

- Supplies water for a non-community public water system, or
- Otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses).

Such wells may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

Public Water System (PWS)—A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and, any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any ''special irrigation district.'' A public water system is either a ''community water system'' or a ''non-community water system.''

This definition is taken from the federal drinking water regulations at 40 CFR 141.2 (7–1–02 Edition).

Replace—This term applies to underground tanks and piping.

[1] This definition applies to blended petroleum motor fuels such as biodiesel and ethanol blends that contain more than a *de minimis* amount of petroleum or petroleum-based substance.

Underground tank—Replace means to remove an existing underground tank and install a new underground tank.[2]

Piping—Replace means to remove and put back in an amount of piping connected to a single underground tank defined by the state to be a replacement. States may determine the amount of piping connected to a single underground tank that triggers replacement by piping length, percent of piping replaced, percent of piping replacement cost, or some combination of these. At a minimum, states must consider a piping replacement to have occurred when 100 percent of the piping, excluding connectors (such as flexible connectors), connected to a single underground tank is removed and put back in. States are encouraged to consider variations in underground storage tank system layout, such as those having extensive piping runs, when determining piping replacement criteria.

Secondary Containment—A release prevention and release detection system for an underground tank and/or piping. The release prevention part of secondary containment is an underground tank and/or piping having an inner and outer barrier. Between these two barriers is a space for monitoring. The release detection part of secondary containment is a method of monitoring the space between the inner and outer barriers for a leak or release of regulated substances from the underground tank and/or piping (called interstitial monitoring). Interstitial monitoring must meet the release detection requirements in 40 CFR 280.43(g).

Under-Dispenser Containment (UDC)—Containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or groundwater. Such containment must:

- Be liquid-tight on its sides, bottom, and at any penetrations;
- Be compatible with the substance conveyed by the piping; and
- Allow for visual inspection and access to the components in the containment system and/or be monitored.

Underground Storage Tank (UST)—This term has the same meaning given to it in Section 9001 of Subtitle I, except that such term does not include tank combinations or more than a single underground pipe connected to a tank.

Underground Tank—This term has the same meaning as underground storage tank except that such term does not include underground piping.

[2] A new underground tank is a tank that meets the new tank standards in 40 CFR 280.20, whether or not the tank was ever used before.

How Does a State Implement These Guidelines?

A state implements these guidelines by:

- Requiring secondary containment and interstitial monitoring for all new or replaced underground tanks and piping unless a state determines[3] that the new or replaced underground tank and piping are not within 1,000 feet of any existing community water system or any existing potable drinking water well; and
- Requiring under-dispenser containment for all new motor fuel dispenser systems unless a state determines that the new motor fuel dispenser system is not within 1,000 feet of any existing community water system or any existing potable drinking water well.

The state must meet these requirements by February 8, 2007.

A state may choose to develop more stringent requirements than described in these guidelines. For example, a state may choose to require secondary containment for all new installations and replacements, independent of whether the installation is within 1,000 feet of any existing community water system or any existing potable drinking water well. Likewise, a state may choose to develop more stringent definitions.

What Are the Minimum Secondary Containment Requirements?

Consistent with current EPA regulations for hazardous substance tanks and piping [see 40 CFR 280.42(b)(1)], these guidelines require that, at a minimum, secondary containment systems be designed, constructed, and installed to:

- Contain regulated substances released from the tank system until they are detected and removed,
- Prevent the release of regulated substances to the environment at any time during the operational life of the underground storage tank system, and
- Be checked for evidence of a release at least every 30 days.

In addition, interstitial monitoring must meet the requirements of 40 CFR 280.43(g).

Section 1530 of the Energy Policy Act does not include under-dispenser containment as part of the secondary containment requirements for new or replaced underground tanks and piping. Instead, under-dispenser containment is required when installing a new motor fuel dispenser system. However, in cases where secondary containment of piping is required, under-dispenser containment may be necessary for secondary containment of the piping near the dispenser. Likewise, containment above the underground tank may be necessary for secondary containment of the piping near the underground tank.

[3] See the section titled How May States Determine When An Underground Tank, Piping, Or Motor Fuel Dispenser System Is Not Within 1,000 Feet Of An Existing Community Water System Or Existing Potable Drinking Water Well? of these guidelines for further information.

When Is Secondary Containment Required?

Secondary containment, including interstitial monitoring, is required for all new or replaced underground tanks and piping unless a state determines that the installation is not within 1,000 feet of any existing community water system or any existing potable drinking water well. If an existing underground tank is replaced, the secondary containment and interstitial monitoring requirements apply only to the replaced underground tank. Likewise, if existing piping is replaced, the secondary containment and interstitial monitoring requirements apply only to the replaced piping. States are not required to apply the requirements in these guidelines to repairs meant to restore an underground tank, piping, or dispenser to operating condition. Solely for purposes of determining when secondary containment is required by these guidelines, a repair is any activity that does not meet the definition of replace.

Manifolded Underground Tanks: States are not required to apply the secondary containment requirements to underground tanks that are not new or replaced in a manifolded underground tank system.

Multiple Piping Runs Connected To A Single Underground Tank: For underground tanks with multiple piping runs, states are not required to apply the secondary containment requirements to those piping runs that are not new or replaced.

Suction Piping And Manifold Piping: States are not required to apply the secondary containment requirements to suction piping that meets the requirements at 40 CFR 280.41(b)(2)(i)–(v) or to piping that manifolds two or more underground tanks together.

New Dispensers And Connected Piping At An Existing Underground Storage Tank Facility: If a new motor fuel dispenser system is installed at an existing underground storage tank facility and new piping is added to the underground storage tank system to connect the new dispenser to the existing system, then the new dispenser must have under-dispenser containment and the new piping must meet the

requirements described in these guidelines. States are not required to apply the requirements in these guidelines to the existing piping to which the new piping is connected.

New Underground Storage Tank Facilities: If a new underground storage tank facility will be installed that is not within 1,000 feet of any existing community water system or any existing potable drinking water well *and* the owner will install a potable drinking water well at the new facility that is within 1,000 feet of the underground tanks, piping, or motor fuel dispenser systems as part of the new underground storage tank facility installation, then secondary containment and under-dispenser containment are required, regardless of whether the well is installed before or after the underground tanks, piping, and motor fuel dispenser systems are installed.

Although not required by these guidelines, states may want to consider the following when developing secondary containment and under-dispenser containment requirements for new and replaced underground tanks and piping and new motor fuel dispenser systems:

- Designated source water protection areas,
- Water sources such as natural springs and surface waters, and
- Planned locations for new community water systems and new potable drinking water wells.

EPA encourages state underground storage tank programs to work with state agencies responsible for drinking water programs and state well permitting authorities to protect source water and other sensitive areas.

When Is Under-Dispenser Containment Required?

All new motor fuel dispenser systems must have under-dispenser containment unless a state determines that the new dispenser is not located within 1,000 feet of any existing community water system or any existing potable drinking water well. A motor fuel dispenser system is considered new when:

- A dispenser is installed at a location where there previously was no dispenser (new underground storage tank system or new dispenser location at an existing underground storage tank system), or
- An existing dispenser is removed and replaced with another dispenser and the equipment used to connect the dispenser to the underground storage tank system is replaced. This equipment may include unburied flexible connectors or risers or other transitional components that are beneath the dispenser and connect the dispenser to the piping.

Where Must the 1,000 Feet Be Measured From?

To determine if a new or replaced underground tank or piping or new motor fuel dispenser system is within 1,000 feet of any existing community water system or any existing potable drinking water well, at a minimum the distance must be measured from the closest part of the new or replaced underground tank or piping or new motor fuel dispenser system to:

- The closest part of the nearest existing community water system, including such components as:
  - —The location of the wellhead(s) for groundwater and/or the location of the intake point(s) for surface water;
  - —Water lines, processing tanks, and water storage tanks; and
  - —Water distribution/service lines under the control of the community water system operator.
- The wellhead of the nearest existing potable drinking water well.

How May States Determine When an Underground Tank, Piping, or Motor Fuel Dispenser System Is Not Within 1,000 Feet of an Existing Community Water System or Existing Potable Drinking Water Well?

States must have a system in place for determining when new or replaced underground tanks or piping or new motor fuel dispenser systems are not within 1,000 feet of any existing community water system or any existing potable drinking water well. There are various options states may use for making this determination. The following are some examples for meeting this requirement.

- States may determine, or establish criteria for determining, when new or replaced underground tanks or piping or new motor fuel dispenser systems are not within 1,000 feet.
- States may designate another entity to determine whether new or replaced underground tanks or piping or new motor fuel dispenser systems are not within 1,000 feet.
- States may require that owners or operators demonstrate to the satisfaction of the state that their new or replaced underground tanks or piping or new motor fuel dispenser systems are not within 1,000 feet.

How Will States Know That Secondary Containment and Under-Dispenser Containment Are Installed Where Required?

States must have a system in place so they will know that secondary containment and under-dispenser containment are installed where required by these guidelines. Such a system could be registration, notification, record keeping, or another mechanism developed by the state.

What Enforcement Authority Must States Have for Secondary Containment?

At a minimum, states must have comparable enforcement authorities for their secondary containment requirements as they have for current underground storage tank requirements.

How Will States Demonstrate Compliance With These Guidelines?

After February 8, 2007, the effective date of the secondary containment requirements, and before receiving future grant funding, states must provide one of the following to the appropriate EPA Regional office:

- For a state that has met the requirements for secondary containment, the state must submit a certification indicating that the state meets the requirements in the guidelines.
- For a state that has not yet met the requirements for secondary containment, the state must provide a document that describes the state's efforts to meet the requirements. This document must include:
  - —A description of the state's activities to date to meet the requirements in the guidelines;
  - —A description of the state's planned activities to meet the requirements; and
  - —The date by which the state expects to meet the requirements.

EPA may verify state certifications of compliance through site visits, record reviews, or audits as authorized by 40 CFR Part 31.

How Will EPA Enforce States' Compliance With the Requirements in These Guidelines?

As a matter of law, each state that receives funding under Subtitle I, which would include a Leaking Underground Storage Tank (LUST) Cooperative Agreement, must comply with certain underground storage tank requirements of Subtitle I. EPA anticipates State and Tribal Assistance Grants (STAG) funds will be available under the 2007 Appropriations Act for certain purposes authorized by the Energy Policy Act, and EPA will condition STAG grants with compliance with these guidelines. Absent a compelling reason to the contrary, EPA expects to address noncompliance with these STAG grant conditions by utilizing EPA's grant

enforcement authorities under 40 CFR Part 31.43, as necessary and appropriate.

For More Information About the Secondary Containment Grant Guidelines Visit the EPA Office of Underground Storage Tanks Web site at http://www.epa.gov/oust or call 703–603–9900.

Background About The Energy Policy Act Of 2005

On August 8, 2005, President Bush signed the Energy Policy Act of 2005. Title XV, Subtitle B of this act (entitled the Underground Storage Tank Compliance Act) contains amendments to Subtitle I of the Solid Waste Disposal Act—the original legislation that created the underground storage tank (UST) program. These amendments significantly affect federal and state underground storage tank programs, will require major changes to the programs, and are aimed at reducing underground storage tank releases to our environment.

The amendments focus on preventing releases. Among other things, they expand eligible uses of the Leaking Underground Storage Tank (LUST) Trust Fund and include provisions regarding inspections, operator training, delivery prohibition, secondary containment and financial responsibility, and cleanup of releases that contain oxygenated fuel additives.

Some of these provisions require implementation by August 2006; others will require implementation in subsequent years. To implement the new law, EPA and states will work closely with tribes, other federal agencies, tank owners and operators, and other stakeholders to bring about the mandated changes affecting underground storage tank facilities.

To see the full text of this new legislation and for more information about EPA's work to implement the underground storage tank provisions of the law, see: *http://www.epa.gov/oust/fedlaws/nrg05_01.htm.*

Dated: November 15, 2006.

Susan Parker Bodine,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. E6–19749 Filed 11–21–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0907; FRL–8103–5]

The Association of American Pesticide Control Officials (AAPCO)/Full State FIFRA Issues Research and Evaluation Group (SFIREG); Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/Full State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2–day meeting, beginning on December 4, 2006 and ending December 5, 2006. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on December 4, 2006 from 8.30 a.m. to 5 p.m. and 8:30 a.m. to 12 noon on December 5, 2006.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at Radisson Hotel Reagan National Airport, 2020 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Georgia McDuffie, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 605-0195; fax number: (703) 308-1850; e-mail address: *mcduffie.georgia@epa.gov* or Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843-1249; telephone number: (802) 472-6956; fax number: (802) 472-6957; e-mail address: *aapco@plainfield.bypass.com*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you all parties interested in SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to: Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0907. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

II. Tentative Agenda

1. Electronic Labeling and Unique Label Identifiers
2. Drift Issues and Lessons Learned
3. Implementation of Container and Containment Regulations
4. OPP Performance Measures
5. Endangered Species Implementation Update and the Role of the Services in Enforcements.
6. Section 18 Renewal Process
7. Water Quality Benchmarks and Metabolite Issues
8. TPPC Issues and Participation in SFIREG
9. Review of ''Parking Lot Issues''
10. EPA Update/Briefing
a. Office of Pesticide Programs Update
b. Office of Enforcement Compliance Assurance Update
11. Antimicrobials Division Notice on HVAC products
12. Regional/Working Committee Reports

List of Subjects

Environmental protection.

Dated: November 13, 2006.

William R. Diamond,

Director, Field External Affairs Division, Office of Pesticide Programs

[FR Doc. E6–19576 Filed 11–21–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8246–4]

Workshop on Interpretation of Epidemiologic Studies of Multipollutant Exposure and Health Effects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Workshop.

SUMMARY: EPA is announcing that a workshop entitled, ''Interpretation of Epidemiologic Studies of Multipollutant Exposure and Health Effects,'' is being organized by EPA's National Center for Environmental Assessment, Office of Research and Development, to be held on December 13 and 14, 2006, in Research Triangle Park, NC. The workshop will be open to attendance by interested public observers on a first-come, first-served basis up to the limits of available space.

DATES: The workshop will be held on December 13 and 14, 2006.

ADDRESSES: The workshop will be held at the Sheraton Hotel in Chapel Hill, NC. An EPA contractor, SAIC, is organizing the workshop. For further information on the workshop, contact Kristin Wheeler, SAIC Conference Coordinator, 11251 Roger Bacon Drive, Reston, VA 20190, telephone: 703–318–4535; facsimile: 703–318–4755; e-mail: *wheelerkr@saic.com.*

FOR FURTHER INFORMATION CONTACT: Questions regarding information, registration, and logistics for the workshop should be directed to Kristin Wheeler, SAIC Conference Coordinator, 11251 Roger Bacon Drive, Reston, VA 20190, telephone: 703–318–4535; facsimile: 703–318–4755; e-mail: *wheelerkr@saic.com.* Questions regarding the workshop should be directed to Dr. Jee Young Kim, telephone: 919–541–4157; facsimile: 919–541–1818; e-mail: *kim.jee-young@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of Information About the Project/Document

The U.S. Clean Air Act requires that EPA carry out periodic reviews of the National Ambient Air Quality Standards (NAAQS) for major ''criteria'' air pollutants and to revise the NAAQS for a given pollutant, as appropriate. As part of these reviews, the National Center for Environmental Assessment, within EPA's Office of Research and Development (ORD), assesses the newly available scientific information in Science Assessment documents (formerly known as Criteria Documents) that provide the scientific basis for the reviews of the NAAQS for particulate matter (PM), ozone (O_3), carbon monoxide (CO), nitrogen oxides (NO_X), sulfur oxides (SO_x), and lead (Pb).

NCEA is holding this workshop to inform the Agency's evaluation of the science in the review of the NAAQS for all criteria pollutants. The workshop will address various issues involved in the interpretation of epidemiologic study results that are based on ambient air monitoring data. These include issues related to exposure assessment, multipollutant confounding and effect modification, statistical modeling and biological plausibility. Cross-cutting issues pertaining to evaluation of all of the criteria air pollutants will be examined, with emphasis to be placed on studies involving evaluation of multipollutant health risks.

This workshop is planned to advance interpretation and understanding of criteria air pollutant health effects analyses in population-level epidemiologic studies, with a focus on multi-pollutant exposures. The principal goals of this workshop are to: (1) Assess issues related to the interpretation of the epidemiologic literature, particularly related to the use of centrally located air quality monitors; (2) discuss new methodology and approaches to advance future epidemiologic research in the areas of exposure error, confounding and effect modification by copollutants, and statistical modeling; and (3) evaluate the extent to which evidence from human clinical and animal toxicologic studies aids in interpretation of findings observed in the epidemiologic literature.

II. Workshop Information

Members of the public may attend the workshop as observers. Space is limited, and reservations will be accepted on a first-come, first-served basis.

Dated: November 16, 2006.

George W. Alapas,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. E6–19806 Filed 11–21–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8246–3]

Science Advisory Board Staff Office; Notification of a Meeting of the Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public face-to-face meeting of the chartered SAB to: (1) Discuss science use in disaster response programs; (2) conduct a quality review of the draft SAB Report on Office of Pollution Prevention and Toxics (OPPT) Estimation Programs Interface Suite; and (3) continue planning for upcoming SAB meetings.

DATE: The meeting dates are Tuesday, December 12, 2006, from 8:30 a.m. to 5:30 p.m. through Thursday, December 14, 2006, from 8:30 a.m. to 12 p.m. (Eastern Time).

ADDRESSES: The meeting will be held at the Four Points by Sheraton Washington, DC Downtown hotel, 1201 K Street, NW., Washington, DC 20005, phone (202) 289–7600.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information about this meeting may contact Mr. Thomas O. Miller, Designated Federal Officer (DFO), by mail at EPA SAB Staff Office, (1400F), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone at (202) 343–9982; by fax at (202) 233–0643; or by e-mail at: *miller.tom@epa.gov.* The SAB mailing address is: U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Ave., NW., Washington, DC 20460. General information about the SAB, as well as any updates concerning the meeting announced in this notice, may be found on the SAB Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background

The SAB is considering advising the Agency on the use of science in environmental disaster response. The SAB has invited several non-EPA experts to discuss their experiences with disaster response situations to explore how science might be better applied to future disasters. The chartered SAB will also conduct a quality review of the draft SAB Report

on Office of Pollution Prevention and Toxics (OPPT) Estimation Programs Interface Suite. Background information on this advisory subject can be found in a **Federal Register** Notice published February 1, 2006 (1 FR 8578–8580). Finally, the SAB will discuss plans for future meetings.

Availbility of Meeting Materials

Materials in support of this meeting will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of this meeting.

Procedures for Providing Public Input

Interested members of the public may submit relevant written or oral information for the SAB to consider during the advisory process.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than one hour for all speakers. Interested parties should contact Mr. Miller, DFO, at the contact information provided above, by December 6, 2006, to be placed on the public speaker list for the December 12–14, 2006 meeting.

Written Statements: Written statements should be received in the SAB Staff Office by December 6, 2006, so that the information may be made available to the SAB for their consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature, and one electronic copy via e-mail to: *miller.tom@epa.gov* (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Meeting Accommodations: For information on access or services for individuals with disabilities, please contact Mr. Thomas Miller at (202) 343–9982, or via e-mail at *miller.tom@epa.gov.* To request accommodation of a disability, please contact Mr. Miller, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: November 16, 2006.

Anthony Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. E6–19747 Filed 11–21–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2003–0237; FRL–8102–9]

Methyl Parathion; Notice of Receipt of a Request to Voluntarily Amend Methyl Parathion Pesticide Registrations to Terminate Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by the registrant to voluntarily amend their registration to terminate some uses from the methyl parathion technical registration. The request would terminate methyl parathion use in or on cabbage, dried beans, dried peas, hops, lentils, pecans and sugar beets. The request would not terminate the last methyl parathion product registered for use in the U.S., but would terminate these uses on the only technical product. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless the registrant withdraws their request within this period. Upon acceptance of this request, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before December 22, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2003–0237, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2003–0237. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703-308-8195; fax number: (703) 308–8005; e-mail address: *pates.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Requests to Amend Registrations to Delete Uses

This notice announces receipt by EPA of a request from the registrant Cheminova A/S to amend their registration to terminate some uses from the methyl parathion technical registration. Methyl parathion is an insecticide/miticide for use on various terrestrial food and feed crops to control many types of pests, including mites, thrips, weevils, aphids, and leafhoppers. In a letter dated October 11, 2006, Cheminova A/S requested EPA to amend the technical registration to terminate uses of the pesticide identified in this notice (Table 1). Specifically, the registrant has agreed to voluntarily cancel all use on cabbage, dried beans, dried peas, hops, lentils, pecans and sugar beets. The registrant's request will not terminate the last methyl parathion products registered in the United States, or the last pesticide products registered in the United States for these uses. This request will, however, remove these uses from the only technical methyl parathion registration. After this action is complete, a subsequent notice will be published to amend all end-use product registrations to remove these uses.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from the registrant to amend to terminate certain uses of methyl parathion registrations. The affected registrations and the registrant making the request are identified in Tables 1 and 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The methyl parathion registrant has requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed request.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued amending the affected registrations.

TABLE 1.—METHYL PARATHION PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Product name	Company	Use Sites
4787–33	Methyl Parathion Technical	Cheminova A/S	Cabbage, dried beans, dried peas, hops, lentils, pecans, and sugar beets

Table 2 of this unit includes the name and address of record for the registrant of the registrations listed in Table 1 of this unit.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA Company No.	Company name and address
4787	Cheminova, A/S Suite 700 Washington Office 1600 Wilson Boulevard Suite 700 Arlington, VA 22209

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish

a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Methyl Parathion

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before December 22, 2006. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. If the request for voluntary cancellation and/or use termination is granted as discussed above, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register.**

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 8, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–19748 Filed 11–21–06; 8:45 am]

BILLING CODE 6560–507–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0038; FRL–8103–9]

Triadimenol; Notice of Receipt of a Request to Voluntarily Cancel and Amend to Terminate Uses of Triadimenol Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by the registrant to voluntarily cancel and amend their registrations to terminate use of certain products containing the pesticide triadimenol. The request would terminate triadimenol use in or on sorghum (forage, hay and grain stover). The request would not terminate the last triadimenol product(s) registered for use in the United States. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless the registrant withdraws its request within this period. Upon acceptance of this request, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before December 22, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0038, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0038. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703-308-8195; fax number: 703-308-7070; e-mail address: *pates.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Request to Amend Registrations to Delete Uses

This notice announces receipt by EPA of a request from the technical registrant Bayer CropScience to terminate certain uses for triadimenol. Triadimenol is a systemic fungicide used as a seed treatment for barley, corn, cotton, oats, rye, sorghum, and wheat. Additionally, an import tolerance on bananas exists. In a letter dated October 30, 2006, Bayer CropScience requested EPA to terminate certain uses for the products containing the pesticide triadimenol identified in this notice (Table 1). Specifically, the registrant has agreed to voluntarily cancel all use of triadimenol on sorghum. The registrant's request for this use deletion will not terminate the last triadimenol products registered in the United States, or the last pesticide products registered in the United States for this use.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from a registrant to amend and to terminate certain uses of triadimenol product registrations. The affected products and the registrant making the request are identified in Tables 1 and 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The triadimenol registrant has agreed to waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed request.

Unless the request is withdrawn by the registrant within 30 days of publication of this notice, or the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued amending the affected registrations

TABLE 1.—TRIADIMENOL PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Product name	Company
264-742	Baytan Seed Treatment Fungicide	Bayer CropScience
264-743	Baytan Technical Fungicide	Bayer CropScience

Table 2 of this unit includes the name and address of record for the registrant of the products listed in Table 1 of this unit.

TABLE 2.—REGISTRANT REQUESTING VOLUNTARY CANCELLATION OF USE AND AMENDMENT TO THEIR REGISTRATIONS

EPA Company No.	Company name and address
264	Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Triadimenol

Registrants who choose to withdraw a request for cancellation must submit

such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before December 22, 2006. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

If the request for voluntary cancellation and use termination is granted as discussed above, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental Protection, Pesticides and pests.

Dated: November 14, 2006.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–19643 Filed 11–21–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0889; FRL–8102–2]

Notice of Filing of Pesticide Petition for Establishment of Regulations of Pyriproxyfen in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petition proposing the establishment of regulations for residues of pyriproxyfen in or on various commodities.

DATES: Comments must be received on or before December 22, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0889 and pesticide petition number (PP) 6E7003, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0889. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-3194; e-mail address: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be

affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment of regulations in 40 CFR 180.510 for residues of pyriproxyfen in or on various commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of pyriproxyfen residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

(PP) 6E7003. Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201 West, Princeton, NJ 08540, proposes to establish tolerances for residues of the insecticide, pyriproxyfen 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxypyridine in or on the following commodities: Vegetable, root and tuber, group 1 at 0.15 part per million (ppm); vegetable, leaves of root and tuber, group 2 at 2.0 ppm; vegetable, bulb, group 3, except onion, dry bulb at 0.70 ppm; vegetable, leafy, except brassica, group 4 at 2.0 ppm; vegetable, legume, group 6 at 0.2 ppm; vegetable, foliage of legume, group 7 at 2.0 ppm; caneberry, subgroup 13A at 1.0 ppm; grain, cereal, group 15 at 1.1 ppm; grain, cereal, forage, fodder and straw, group 16 at 1.1 ppm; animal feed, nongrass, group 18 at 0.7 ppm for forage, 2.0 for seed, and 1.1 for hay; asparagus at 2.0 ppm; banana and plantain at 0.2 ppm; cacao bean at 0.02 ppm;canola, seed at 0.20 ppm; coffee at 0.02 ppm; cranberry at 1.0 ppm;date at 0.3 ppm; grass, forage at 0.5 ppm; grass, hay at 1.0 ppm; kiwifruit at 0.1 ppm; pawpaw at 1.0 ppm; peanut at 0.2 ppm; pineapple at 0.3 ppm; pomegranate at 0.2 ppm; safflower, seed at 0.2 ppm; sesame, seed at 0.2 ppm; sugarcane at 1.1 ppm; tea at 0.02 ppm; watercress at 2.0 ppm; and artichoke, globe at 2.0 ppm.

Practical analytical methods for detecting and measuring levels of pyriproxyfen (and relevant metabolites) have been developed and validated in or on all appropriate agricultural commodities, respective processing fractions, milk, animal tissues, and environmental samples. The extraction methodology has been validated using aged radiochemical residue samples from metabolism studies. The methods have been validated in cottonseed, apples, soil, and oranges at independent laboratories. EPA has successfully validated the analytical methods for analysis of cottonseed, pome fruit, nutmeats, almond hulls, and fruiting vegetables. The limit of detection of pyriproxyfen in the methods is 0.01 ppm which will allow monitoring of food with residues at the levels proposed for the tolerances.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 9, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–19575 Filed 11–21–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0744; FRL–8101–9]

Notice of Filing of Pesticide Petition for Establishment to Regulations for Residues of Famoxadone in or on Caneberry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petition proposing the establishment of regulations for residues of famoxadone in or on caneberry.

DATES: Comments must be received on or before December 22, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0744 and pesticide petition number (PP) 6E7099, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0744. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT:

Shaja R. Brothers, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0001; telephone number: (703) 308-3194; e-mail address: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of the pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment of regulations in 40 CFR part 180.587 for residues of famoxadone in or on caneberry. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of famoxadone residues is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick

Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerances

PP 6E7099. Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201 West, Princeton, NJ 08540, proposes to establish a tolerance for residues of the fungicide, famoxadone (3-anilino-5-methyl-5-(4-phenoxyphenyl)-1,3-oxazolidine-2,4-dione) in or on caneberry at 11 parts per million (ppm).

An analytical enforcement method is available for determining famoxadone plant residues in or on potatoes, cucurbit vegetables (cucumbers, melons, and squash), fruiting vegetables (tomatoes, peppers), and head lettuce using gas-liquid chromatography (GC) with nitrogen phosphorus detection (NPD). The method is applicable to high and medium moisture, oily and non-oily crops and related matrices. The limit of quantitation (LOQ) is 0.02 ppm. The analytical enforcement for use on tomato processed fractions and also the RAC, tomato, utilizes column switching liquid chromatography with ultraviolet (UV) detection. The LOQ is 0.02 ppm. The LOQ in each method allows monitoring of crops with famoxadone residues at or above the levels proposed in these tolerances.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 9, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–19577 Filed 11–21–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0880; FRL–8102–1]

Notice of Filing for Foramsulfuron Pesticide Petition for the Exemption of a Requirement for a Tolerance in or on Corn, Pop and Corn, Sweet.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petition proposing the exemption from the requirement of a tolerance for corn, pop and corn, sweet.

DATES: Comments must be received on or before December 22, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0880 and pesticide petition number (PP) 5E7004, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0880. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers; Registration Division, (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, telephone number: (703) 308-3194; e-mail address: *brothers.shaja@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the exemption of a tolerance in 40 CFR part 180.1219 for foramsulfuron in or on corn, pop and corn, sweet. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting the exemption of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

PP 5E7004. Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201 West, Princeton, NJ 08540, proposes to establish an exemption from the requirement of a tolerance for residues of the herbicide, foramsulfuron in or on corn, pop and corn, sweet. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 9, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–19746 Filed 11–21–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0628; FRL–8089–9]

Cyproconazole; Notice of Filing of a Pesticide Petition for Establishment of Regulations for Residues of the Fungicide in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of the fungicide cyproconazole in or on soybeans, corn, wheat, and certain animal commodities.

DATES: Comments must be received on or before December 22, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0628 and pesticide petition number (*PP*) 6F7072, by one of the following methods:

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

•*Mail*: Office of Pesticide Programs (OPP) Public Regulatory Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Public Regulatory Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0628. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of

special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Public Regulatory Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT:

Mary Waller, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9354; e-mail address: *waller.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerances

PP 6F7072. Syngenta Crop Protection, Inc.; P.O. Box 18300; Greensboro, NC 27419-8300, proposes to establish tolerances for residues of the fungicide cyproconazole in or on food commodities soybean, seed at 0.05 parts per million (ppm); soybean, forage at 1.0 ppm; soybean, hay at 2.5 ppm; corn, field, grain at 0.02 ppm; corn, field, forage at 0.6 ppm; corn, field, stover at 1.5 ppm; wheat, grain at 0.05 ppm; wheat, forage at 1.0 ppm; wheat, hay at 1.5 ppm; wheat, straw at 1.0 ppm; aspirated grain fraction at 0.6 ppm; cattle, fat at 0.01 ppm; cattle, liver at 0.3 ppm; cattle, meat at 0.01 ppm; cattle, meat byproducts (except liver) at 0.01 ppm; milk at 0.01 ppm; goat, fat at 0.01 ppm; goat, liver at 0.3 ppm; goat, meat at 0.01 ppm; goat, meat byproducts (except liver) at 0.01 ppm; hog, fat at 0.01 ppm; hog, liver at 0.3 ppm; hog, meat at 0.01 ppm; hog, meat byproducts (except liver) at 0.01 ppm; horse, liver at 0.3 ppm; horse, meat at 0.01; horse, meat byproducts at 0.01, sheep, fat at 0.01 ppm; sheep, kidney at 0.3; sheep, meat at 0.01 ppm; sheep, meat byproducts (except liver) at 0.01.

The analytical methods AM-0822-0994-3 and AM-0842-0790-0 are used to measure and evaluate the chemical residue(s). Residues are quantified by gas chromatography equipped with a nitrogen-phosphorus detector. The limit of quantitation (LOQ) is 0.01 ppm for cyproconazole parent.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 9, 2006.

Donald L. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–19578 Filed 11–21–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–RO4–SFUND–2006–0908; FRL–8245–9]

General Electric Rome Site, Rome, Floyd County, GA; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency is proposing to enter into a settlement for reimbursement of past response costs concerning the General Electric Rome Site located in Rome, Floyd County, Georgia.

DATES: The Agency will consider public comments on the settlement until December 22, 2006. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2006–0908 or Site name General Electric Rome Superfund Site by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Batchelor.Paula@epa.gov.*
- *Fax:* 404/562–8842/Attn Paula V. Batchelor.
- *Mail:* Ms. Paula V. Batchelor, U.S. EPA Region 4, WMD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.''

Instructions: Direct your comments to Docket ID No. EPA–RO4–SFUND–2006–0908. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 p.m. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404/562–8887.

Dated: October 30, 2006.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. E6–19758 Filed 11–21–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2006–0064, FRL–8246–5]

U.S. EPA's National Clean Water Act Recognition Awards Presentation During the Water Environment Federation's Technical Exposition and Conference (WEFTEC), and Announcement of 2006 National Awards Winners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency recognized municipalities and industries for outstanding and innovative technological achievements in wastewater treatment and pollution abatement programs. An inscribed plaque was presented to first and second place national winners at the annual Clean Water Act Recognition Awards presentation during the Water Environment Federation's Technical Exposition and Conference (WEFTEC). Recognition is made every year for outstanding programs and projects in operations and maintenance at wastewater treatment facilities, biosolids management and public acceptance, municipal implementation and enforcement of local pretreatment programs, cost-effective storm water controls, and combined sewer overflow controls. This action also announces the 2006 national awards winners.

DATES: Monday, October 23, 2006, 11:30 a.m. to 1 p.m.

ADDRESSES: The national awards presentation ceremony was held at the Dallas Convention Center, 650 S. Griffin Street, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Maria E. Campbell, Telephone: (202) 564–0628. Facsimile Number: (202) 501–2396. E-Mail: *campbell.maria@epa.gov.* Also visit the Office of Wastewater Management's webpage at *http://www.epa.gov/owm.*

SUPPLEMENTARY INFORMATION: The Clean Water Act Recognition Awards are authorized by section 501(a) and (e) of the Clean Water Act, and 33 U.S.C. 1361(a) and (e). Applications and nominations for the national awards are recommended by EPA regions. A regulation establishes a framework for the annual recognition awards program at 40 CFR part 105. EPA announced the availability of application and nomination information for this year's awards (71 FR 23919, April 25, 2006). The awards program enhances national awareness of municipal wastewater treatment and encourages public

support of programs targeted to protecting the public's health and safety and the nation's water quality. State water pollution control agencies and EPA regional offices make recommendations to headquarters for the national awards. Programs and projects being recognized are in compliance with applicable water quality requirements and have a satisfactory record with respect to environmental quality. Municipalities and industries are recognized for their demonstrated creativity and technological achievements in five awards categories as follows:

(1) Outstanding Operations and Maintenance practices at wastewater treatment facilities;

(2) Exemplary Biosolids Management projects, technology/innovation or development activities, research and public acceptance efforts;

(3) Pretreatment Program Excellence;

(4) Storm Water Management Excellence; and,

(5) Outstanding Combined Sewer Overflow Control programs. The winners of the EPA's 2006 National Clean Water Act Recognition Awards are listed below by category.

	Sub-category
Category: Operations and Maintenance Awards	
First Place:	
Clean Water Services, Rock Creek Advanced Wastewater Treatment Facility, Hillsboro, OR	Large Advanced Plant.
Watertown Wastewater Treatment Facility, Watertown, SD	Medium Advanced Plant.
Town of Castleton Wastewater Treatment Facility, Castleton, VT	Small Advanced Plant.
Franklin Wastewater Treatment Facility, Winnipesaukee River Basin Program, Franklin, NH	Large Secondary Plant.
Huron Wastewater Treatment Facility, Huron, SD	Medium Secondary Plant.
Town of Wanatah Wastewater Treatment Facility, Wanatah, IN	Small Secondary Plant.
Sturgis Wastewater Treatment Facility, Sturgis, SD	Large Non-Discharging Plant.
Warner Village Water District, Warner, NH	Most Improved Plant.
New Hampshire Department of Environmental Services, Wastewater Engineering Bureau/Operations Section, Concord, New Hampshire.	Trainer for the Most Improved Plant.
Second Place:	
Littleton/Englewood Wastewater Treatment Facility, Englewood, CO	Large Advanced Plant.
The Pequannock Lincoln Park & Fairfield Sewerage Authority Wastewater Treatment Plant, Lincoln Park, NJ.	Medium Advanced Plant.
Hurlburt Field Wastewater Treatment Facility, Hurlburt Field Air Force Base, Okaloosa County, FL	Small Advanced Plant.
Northern Water Pollution Control Facility—Ocean County Utilities Authority, Brick Township, NJ	Large Secondary Plant.
Portage Lake Water and Sewage Authority, Houghton-Hancock Wastewater Treatment Plant, Houghton, MI.	Medium Secondary Plant.
City of Natoma Wastewater Treatment Facility, Natoma, KS	Most Improved Plant.
Gerald Grant, P.E., Fort Scott Community College, Fort Scott, KS	Trainer for the Most Improved Plant.
Category: Exemplary Biosolids Management Awards	
First Place:	
Encina Wastewater Authority, Biosolids Management Program, Carlsbad, CA	Large Operating Projects.
City of Olathe Compost Facility, Olathe, KS	Small Operating Projects.
Florida Water Environment Association and the Florida Dept. of Environmental Protection Agency/Central District, Orlando, FL.	Public Acceptance Activities.
Second Place:	
Rancho Las Virgenes Composting Facility, Community Compost Program, Calabasas, CA	Public Acceptance Activities.
Category: Pretreatment Program Awards	
First Place:	
City of Corvallis Pretreatment Program, Corvallis, OR	0–5 Significant Industrial Users (SIUs).
Riverside Regional Water Quality Control Plant, Environmental Compliance Section, City of Riverside, CA.	6–20 SIUs.
City of Fresno Industrial Pretreatment Program, Fresno, CA	Greater Than 21 SIUs.
Second Place:	
City of San Leandro, San Leandro, CA	6–20 SIUs.
Category: Storm Water Management Awards	
First Place:	
Santa Clara Valley Urban Runoff Pollution Prevention Program, San Jose, CA	Municipal Program.
Category: Combined Sewer Overflow Control Awards	
First Place:	
Auburn Sewerage District, Auburn, ME	Municipal Program.
Second Place:	
City of Little Falls Wastewater Treatment Plant, Little Falls NY	Municipal Program.

Dated: November 16, 2006.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. E6–19750 Filed 11–21–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8245–3]

Public Water System Supervision Program Revision for the State of Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Texas is revising its approved Public Water System Supervision Program. Texas has adopted the Lead and Copper Rule Minor Revisions (LCRMR), the Filter Backwash Recycling Rule (FBRR), and the Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR). EPA has determined that the proposed LCRMR, FBRR and LT1ESWTR revisions submitted by Texas are no less stringent than the corresponding federal regulation. Therefore, EPA intends to approve the program revisions.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by December 22, 2006 to the Regional Administrator at the EPA Region 6 address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by December 22, 2006, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on December 22, 2006. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Texas Commission on Environmental Quality, Water Supply Division, Public Drinking Water Section (MC–155), Building F, 12100 Park 35 Circle, Austin, TX 78753; and United States Environmental Protection Agency, Region 6, Drinking Water Section (6WQ–SD), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Damon McElroy, EPA Region 6, Drinking Water Section at the Dallas address given above or at telephone (214) 665–7159, or *mcelroy.damon@epa.gov.*

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: November 9, 2006.

Lawrence E. Starfield,

Acting Regional Administrator (6RA–D).

[FR Doc. E6–19784 Filed 11–21–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

November 13, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 22, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., DC 20554 or via the Internet to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Prepaid Calling Card Service Provider Certification, WC Docket No. 05–68.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 787 respondents; 3,148 responses.

Estimated Time Per Response: 25 hours (20 hours for the reporting to carriers and five hours for the certification to the Commission).

Frequency of Response: Quarterly reporting requirement, recordkeeping requirement and third party disclosure requirement.

Nature of Response: Mandatory.

Total Annual Burden: 3,148 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as a new collection to the Office of Management and Budget (OMB) in order to obtain the full three year clearance.

The Commission is requesting review and approval of a new information collection requiring prepaid calling card providers to report quarterly the percentage of interstate, intrastate and international traffic and call volumes to carriers from which they purchase transport services. Prepaid calling card providers must also file quarterly certifications with the Commission that include the above information and a statement that they are contributing to

the federal Universal Service Fund (USF) based on all interstate and international revenue, except for revenue from the sale of prepaid calling cards by, to, or pursuant to contract with the Department of Defense (DoD) or a DoD entity.

The Commission has found that prepaid calling card providers are telecommunications service providers and therefore are subject to all of the regulations imposed on telecommunications service providers, including contributing to the USF. See FCC 06–79, WC Docket No. 05–68.

The Commission adopted new reporting and certification requirements to obtain information necessary to evaluate whether all prepaid calling card providers are properly contributing to the USF, pursuant to section 254 of the Telecommunications Act of 1996. All prepaid calling card providers will now have to maintain records and report on a quarterly basis, the percentage of interstate, intrastate and international traffic and call volumes to carriers from which they purchase transport services. The Commission believes that its reporting and certification requirements will not be burdensome for prepaid calling card providers, as they need to track such information for their own internal business purposes.

OMB Control No.: 3060–0743.

Title: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 4,471 respondents; 10,071 responses.

Estimated Time Per Response: .50–100 hours.

Frequency of Response: On occasion, quarterly and monthly reporting requirements, recordkeeping requirement and third party disclosure requirement.

Nature of Response: Mandatory.

Total Annual Burden: 161,337 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension of a currently approved collection to the Office of Management and Budget (OMB) in order to obtain the full three year clearance.

The Commission promulgated rules and reporting requirements implementing section 276 of the Telecommunications Act of 1996. Among other things, the rules: (1) Establish fair compensation for every completed intrastate and interstate payphone calls; (2) discontinue intrastate and interstate access charge payphone service elements and payments, and intrastate and interstate payphone subsidies from basic exchange services; and (3) adopt guidelines for use by the states in establishing public interest payphones to be located where there would otherwise not be a payphone. The information collected is provided to third parties and to ensure that interexchange carriers, payphone service providers (''PSP'') LECs, and the states comply with their obligations under the 1996 Act.

OMB Control No.: 3060–0745.

Title: Implementation of the Local Exchange Carrier Tariff Streamlining Provisions in the Telecommunications Act of 1996, CC Docket No. 96–187.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 67 respondents; 159 responses.

Estimated Time Per Response: 1–55.9 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Nature of Response: Mandatory.

Total Annual Burden: 4,028 hours.

Total Annual Cost: $775,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (no change in reporting, recordkeeping or third party disclosure requirements) to the Office of Management and Budget (OMB) in order to obtain the full three year clearance.

In CC Docket No. 96–187, the Commission adopted measures to streamline tariff filing requirements for local exchange carriers (LECs) of the Telecommunications Act of 1996. In order to achieve a streamlined and deregulatory environment for LEC tariff filings, LECs are required to file tariffs electronically. Other carriers are permitted to file their tariffs electronically. There are six information collection requirements under this OMB Control Number. They are: (1) Electronic filing requirement; (2) requirement that carriers desiring tariffs proposing decreases to be effective in seven days must be filed in separate transmittals; (3) requirement that carriers identify transmittals filed pursuant to the streamlined provisions of the Telecommunications Act of 1996; (4) requirement that price cap LECs file their Tariff Review Plans (TRPs) prior to filing their annual access tariffs; (5) petitions and replies; and (6) standard protective orders.

The information collected under the program of electronic filing will facilitate access to tariff and associated documents by the public, especially by interested persons who do not have ready access to the Commission's public reference room, and state and federal regulators. Ready electronic access to carrier tariffs should also facilitate the compilation of aggregate data for industry analysis purposes without imposing new reporting requirements on carriers. The Commission adopted its proposal to require that carriers desiring tariffs proposing rate decreases to be effective in seven days must be filed in a separate transmittal. This requirement will ensure that a tariff filing proposing a rate decrease is given the shortest notice period possible under the 1996 Act. The Commission also adopted the requirement that carriers identify transmittals filed pursuant to the streamlining provisions of the Telecommunications Act of 1996. All of the requirements would be used to ensure that LECs comply with their obligations under the Communications Act of 1934, as amended and that the Commission be able to ensure compliance within the streamlined timeframes established by the 1996 Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–19465 Filed 11–21–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

November 7, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to

any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments January 22, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Allison E. Zaleski, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–6466, or via fax at 202–395–5167, or via the Internet at *Allison_E._Zaleski@eop.omb.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission (FCC), Room 1–B441, 445 12th Street, SW., Washington, DC 20554. To submit your comments by e-mail send them to: *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection after the 60 day comment period, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0757.

Title: FCC Auctions Customer Survey.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households and business or other for-profit.

Number of Respondents: 2,000.

Estimated Time Per Response: .25 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 500 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance. There is no change in respondents or burden hours/costs.

Section 309(j) gives the Commission express authority to employ competitive bidding procedures to choose among mutually exclusive applications for initial licenses. Section 309(j)(3) of the Communications Act requires the Commission to establish a competitive bidding methodology for each class of licenses or permits that the Commission grants through the use of a competitive bidding system. The Commission is further directed to test alternative methodologies under appropriate circumstances in order to promote, among other things, ''the development and rapid deployment of new technologies, products and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays.'' The Commission is likewise directed to promote ''economic opportunity and competition, ensuring that new and innovative technologies are readily accessible to the American people by avoiding excess concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies and businesses owned by members of minority groups and women.'' In addition, Section 309(j)(12) requires the Commission to evaluate the methodologies established by the Commission for conducting competitive bidding, comparing the advantages and disadvantages of such methodologies in terms of attaining these objectives.

The FCC Auctions Customer Survey is an important step in meeting these Congressional requirements. By seeking input from auction participants, the Commission expects to gather information to evaluate the effectiveness of competitive bidding methodologies used to date, and to improve the competitive bidding methodologies used in future auctions. Finally, the Commission Auctions Customer Survey will provide useful feedback in determining the extent to which the Commission is meeting its goal of providing participants in competitive bidding with the highest level of customer satisfaction through information dissemination and the responsiveness of the Commission staff to customer inquiries. The information in the FCC Auctions Customer Survey is voluntary. The customer survey will be conducted by mail and will include all participants in completed auctions. Respondents may return the survey information by mail, fax, telephone, etc. The survey will be conducted by contracted staff and will occur at the end of an auction. Contracted staff will also record responses received on the survey. In the alternative, customer surveys may be conducted by posting the survey either on the Commission's electronic computer auction system or on the Internet. Responses will be received electronically, either via the Commission's electronic computer auction system or via the Internet. Those bidders who do not participate in the Commission's auction by computer will be polled by mail. The decision of which alternative to employ in each information collection will be based on an analysis of maximizing convenience and minimizing burden for participants. Information technology will be used to the maximum extent consistent with this standard.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–19467 Filed 11–21–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 9, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the

information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 22, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0029.

Title: Application for TV Broadcast Station License; Application for Construction Permit for Reserved Channel Noncommercial Educational (NCE) Broadcast Station; Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station.

Form Number: FCC Forms 302–TV, 340 and 349.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit entities and institutions; State, local or tribal government.

Number of Respondents: 2,785.

Estimated Time per Response: 0.50–4 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement; Third party disclosure requirement.

Total Annual Burden: 8,370 hours.

Total Annual Cost: $19,253,725.

Nature of Response: Required to obtain or retain benefits.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On November 3, 2006, the Commission adopted the *Report and Order* (''*R&O*''), Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, MB Docket 05–210, FCC 06–163. In this *R&O*, the Commission extended to noncommercial educational FM licensees and permittees the same ability to request changes of community of license by first come-first served minor modification application as was being granted to other commercial full-service AM standard band and FM licensees and permittees. Previously, because a change in an NCE station's community of license was considered a major modification in the station's facilities, an NCE applicant had to await the opening of an announced Noncommercial Educational (NCE) new and major change application filing window. Filing on a first-come first-served basis will significantly reduce the risk of application mutual exclusivity. The application of this new procedure to NCE stations was not proposed in the Notice of Proposed Rule Making in this proceeding, but the Commission found it to be a logical outgrowth of a proposal in that proceeding based on comments received, and accordingly adopted the change in the *R&O*. Thus, the Commission proposes to revise FCC Form 340 to accommodate NCE applicants who seek to change their NCE station's community of license by minor modification application.

Specifically, the Commission revises the FCC Form 340 to reflect the requirement that NCE applicants employing this procedure must include an exhibit demonstrating that the proposed community of license change comports with the fair, efficient and equitable distribution of radio service policies under Section 307(b) of the Communications Act of 1934, as amended. NCE applicants proposing a change in community of license must provide Section 307(b) information demonstrating the merits of locating the station in the new community, as opposed to the current community of license. This form, FCC Form 340, is the only form being revised by the FCC's action in this information collection. FCC Forms 302–TV and 349 remain unchanged.

FCC Form 302–TV is used by licensees and permittees of TV broadcast stations to obtain a new or modified station license and/or to notify the Commission of certain changes in the licensed facilities of these stations.

FCC 340 is used to apply for authority to construct a new noncommercial educational FM or TV station or to make changes in the existing facilities of such a station. The FCC 340 is to be used if the broadcast station will operate on a channel that is reserved exclusively for noncommercial educational use and on non-reserved channels if the applicant proposes to build and operate a NCE station.

FCC Form 349 is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make changes in the existing facilities of such stations. This form also includes the third party disclosure requirement of 47 CFR 73.3580 (3060–0031). Section 73.3580 requires local public notice in a newspaper of general circulation of all application filings for new or major change in facilities. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application.

There is no need for confidentiality with this collection of information.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–19468 Filed 11–21–06; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 06–104; Report No. AUC–06–69–B (Auction No. 69); DA 06–2014]

Auction of 1.4 GHz Band Licenses Scheduled for February 7, 2007; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 69

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of licenses in the paired 1392–1395 MHz and 1432–1435 MHz bands, and in the unpaired 1390–1392 MHz band. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Bidding for Auction No. 69 is scheduled to begin on February 7, 2007.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions Spectrum and Access Division:* For legal questions: Howard Davenport at (202) 418–0660. For general auction questions: Roy Knowles or Barbara Sibert at (717) 338–2868.

Mobility Division: For questions: Erin McGrath or Michael Connelly (legal) or Keith Harper (technical) and Bettye Woodward (licensing) at (202) 418–

0620. To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 69 Procedures Public Notice* released on November 2, 2006. The complete text of the *Auction No. 69 Procedures Public Notice*, including attachments, as well as related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 69 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–488–5300, facsimile 202–488–5563, or Web site: *http://www.BCPIWEB.com*. When ordering documents from BCPI please provide the appropriate FCC document number, for example, DA 06–2014 for the *Auction No. 69 Procedures Public Notice*. The *Auction No. 69 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/69/*.

I. General Information

A. Introduction

1. The Federal Communications Commission (Commission) announces the procedures and minimum opening bid amounts for the upcoming auction of 1.4 GHz band licenses in the paired 1392–1395 MHz and 1432–1435 MHz bands, and in the unpaired 1390–1392 MHz band scheduled to begin on February 7, 2007 (Auction No. 69). On August 28, 2006, the Wireless Telecommunications Bureau (Bureau) released a public notice seeking comment on reserve prices or minimum opening bid amounts and the procedures to be used in Auction No. 69 for this spectrum reallocated for non-government use to provide fixed and mobile services, except for aeronautical mobile services. The Bureau received two comments and no reply comments in response to the *Auction No. 69 Comment Public Notice* 71 FR 51817, August 31, 2006.

2. In the *Auction No. 69 Comment Public Notice*, the Bureau proposed to include all 64 1.4 GHz band licenses in a single auction using the Commission's standard simultaneous multiple-round (SMR) auction format. The Bureau sought comment on the feasibility and desirability of allocating the 1.4 GHz band licenses using the Commission's package bidding format. Based on the record and the particular circumstances of the auction of 1.4 GHz band licenses, the Bureau will include all 64 1.4 GHz licenses in a single auction using the Commission's standard SMR format, as proposed. Package bidding will not be used in Auction No. 69.

3. The Bureau also sought comment in the *Auction No. 69 Comment Public Notice* on whether to implement procedures that would withhold certain information on bidder interests, and bidder identities that typically has been revealed prior to and during past Commission auctions. In particular, the Bureau asked commenters to indicate what factors weigh for or against limiting disclosure of bidder interests and identities, and whether the Commission should condition the use of any disclosure limits on a measure of competition in the auction.

4. For Auction No. 69, the Bureau will determine the information procedures based primarily on the eligibility ratio, a measure of likely competition in the auction. The eligibility ratio is defined as the total number of bidding units of eligibility purchased by bidders through their upfront payments, divided by the total number of bidding units for the licenses in the auction. Specifically, if the eligibility ratio equals or exceeds three, the Bureau will use the information procedures typically used in past FCC auctions, since with sufficient likely competition, the anti-competitive behavior that limited information procedures aim to deter is unlikely to be successful. If the eligibility ratio is less than three, in general the Bureau will withhold certain information on bidder interests and bidder identities. However, if the eligibility ratio is less than three, the Commission reserves the discretion to use information procedures typically used in past FCC auctions if circumstances indicate that limited information procedures would not be an effective tool for deterring anti-competitive behavior.

5. In the event that the conditions described above result in the use of procedures under which certain information is withheld, the Bureau will release: (1) Each bidder's eligibility and upfront payment made prior to the start of the auction; and (2) the amounts of all gross bids for each license (including the losing bids) after each round, but not the identities of the bidders placing the bids. The Bureau believes this provides bidders with information regarding license valuations without compromising the goal of reducing the potential for anti-competitive outcomes.

6. Pursuant to these procedures, information on the license selections of auction applicants will be withheld, at least until the upfront payment deadline has passed and the Commission determines the information procedures that will be used for the auction. Therefore, to enable applicants to comply with the Commission's anti-collusion rules, once the Bureau has conducted its initial review of applications to participate in Auction No. 69, each applicant with a short-form application to participate in the pending auction will receive a letter that lists the applicants in Auction No. 69 that have applied for licenses in any of the same geographic areas as the applicant. The list will identify the applicants by name but will not provide the license selections of the applicants.

7. *Spectrum Relocation Fund*. The upper half of paired frequencies for 1.4 GHz band licenses, i.e., 1432–1435 MHz, is spectrum covered by a Congressional mandate that requires that auction proceeds fund the estimated relocation costs of incumbent federal entities and restricts the conclusion of an auction of affected spectrum, based on 110 percent of the estimated relocation costs. On December 27, 2005, pursuant to the Commercial Spectrum Enhancement Act (CSEA), 71 FR 26245, May 4, 2006, the National Telecommunications and Information Administration (NTIA) notified the Commission that there are no costs associated with relocating federal operations from the 1432–1435 MHz band. Thus, the CSEA revenue requirement will not affect the Commission's ability to conclude Auction No. 69.

i. Background of Proceeding

8. In its *Report and Order*, 67 FR 41847, June 20, 2002, the Commission adopted service rules to govern the licensing of the paired 1392–1395 MHz and 1432–1435 MHz bands, and the unpaired 1390–1392 MHz band. The Commission provided for the assignment of the 1390–1392 MHz band by Major Economic Areas, and the 1392–1395 MHz and 1432–1435 MHz bands by Economic Area Groups (EAGs). Further, the Commission allowed open eligibility for initial licenses assigned by geographic area licensing, and adopted technical

standards that were consistent with the part 27 rules and provide licensees flexibility. The Commission set a ten-year license term from the date of grant. Licensees must demonstrate that they are providing substantial service when they file their renewal application. The Commission allowed licensees to partition and/or disaggregate their licenses and applied the general competitive bidding rules set forth in 47 CFR part 1, Subpart Q.

ii. Licenses to be Auctioned

9. Auction No. 69 will offer 64 licenses: 12 Economic Area Grouping (EAG) licenses and 52 Major Economic Area (MEA) licenses. A complete list of the 1.4 GHz band licenses available in Auction No. 69 is included in Attachment A of the *Auction No. 69 Procedures Public Notice*.

B. Rules and Disclaimers

i. Relevant Authority

10. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules set forth in 47 CFR part 1, including recent amendments and clarifications; rules relating to the 1.4 GHz band contained in Title 47 CFR part 27; and rules relating to applications, practice and procedure contained in Title 47 CFR part 1. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions contained in the *Auction No. 69 Procedures Public Notice* and the Commission's decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.

11. The procedures, terms and conditions contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

ii. Prohibition of Collusion; Compliance with Antitrust Laws

12. To ensure the competitiveness of the auction process, 47 CFR 1.2105(c) prohibits applicants competing for licenses in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Forms 175) as parties with whom they have entered into agreements pursuant to § 1.2105(a)(2)(viii). In Auction No. 69, the rule would apply to any applicants bidding for the same EAG or MEA. The rule would also apply to applicants bidding for licenses in overlapping EAGs and MEAs, such as a situation when one applicant applies for an EAG and a second applicant applies for a MEA covering any area within that EAG. The rule would preclude applicants that apply to bid for all markets from communicating with all other applicants. Thus, applicants that have applied for the same markets (unless they have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii)) must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy, which may include communications regarding the post-auction market structure. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.

13. For purposes of this prohibition, § 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

14. Applicants for licenses for any of the same geographic license areas must not communicate directly or indirectly about bids or bidding strategy. Accordingly, such applicants are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization a violation similarly could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. A violation of the anti-collusion rule could occur in other contexts, such as an individual serving as an officer for two or more applicants. Moreover, the Commission has found a violation of the anti-collusion rule where a bidder used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets, and has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions. Bidders are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. The Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly. Applicants are hereby placed on notice that public disclosure of information relating to bidder interests and bidder identities that typically has been revealed prior to and during past Commission auctions, but is confidential in this auction at the time of disclosure, may violate the anti-collusion rule. Thus, communication by an applicant to another applicant for one or more of the same licenses of the applicant's license selections on its short-form application, or of the fact that the applicant does nor does not hold provisionally winning bids on particular licenses, may well violate the anti-collusion rule. Bidders should use caution in their dealings with other individuals, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information. For example, where limited information disclosure procedures are in place, as in this auction, an applicant's statement to the press that it has lost bidding eligibility and stopped bidding in the auction could give rise to a finding of an anti-collusion violation.

15. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their

short-form application. If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants after the short-form filing deadline.

16. By electronically submitting its short-form application, each applicant certifies its compliance with § 1.2105(c). However, the Bureau caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated the anti-collusion rule may be subject to sanctions.

17. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws. Compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws. To the extent the Commission becomes aware of specific allegations that may give rise to violations of the federal antitrust laws the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

18. As required by 47 CFR 1.65, an applicant must maintain the accuracy and completeness of information furnished in its pending application and must notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by § 1.65 to report to the Commission any communications they have made to or received from another applicant after the short-form filing deadline that affect or have the potential to affect bids or bidding strategy unless such communications are made to or received from parties to agreements identified under § 1.2105(a)(2)(viii). In addition, § 1.2105(c)(6) provides that any applicant that makes or receives a communication prohibited by § 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.

19. As required by 47 CFR 1.2107(d), applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint ventures, partnerships, agreements and other arrangements entered into relating to the competitive bidding process.

iii. Protection of Incumbent Government and Non-Government Operations

20. Potential applicants are advised that there are several government operations that will continue to operate in these bands.

21. *The 1390–1392 MHz Band*. Radio astronomy observations may be assigned in the 1350–1400 MHz band on an unprotected basis at the 16 radio astronomy observatories identified at 47 CFR 2.106 note US311. In the 1390–1400 MHz band, government operations authorized as of March 22, 1995, at the 17 sites identified at 47 CFR 2.106 note US351 will continue to operate on a fully protected basis until January 1, 2009. All other government operations, except for medical telemetry (1395–1400 MHz), will operate on a non-interference basis to authorized non-Government operations and shall not hinder implementation of any non-Government operations.

22. The *1392–1395 MHz and 1432–1435 MHz Bands*. Radio astronomy observations may be assigned in the 1350–1400 MHz band on an unprotected basis at the 16 radio astronomy observatories identified at 47 CFR 2.106 note US311. In the 1390–1400 MHz band, government operations authorized as of March 22, 1995, at the 17 sites identified at 47 CFR 2.106 note US351 will continue to operate on a fully protected basis until January 1, 2009. All other government operations, except for medical telemetry (1395–1400 MHz), will operate on a non-interference basis to authorized non-Government operations and shall not hinder implementation of any non-Government operations. In the 1432–1435 MHz band, government stations in the fixed and mobile services may operate indefinitely on a primary basis at the 23 sites identified at 47 CFR 2.106 note US361. All other Government stations in the fixed and mobile services shall operate on a primary basis until re-accommodated in accordance with the National Defense Authorization Act of 1999.

a. International Coordination.

23. Operations in the paired 1392–1395 MHz and 1432–1435 MHz bands and in the unpaired 1390–1392 MHz band must not cause harmful interference across the borders with Mexico and Canada. Until such time as agreements between the United States, Mexico and Canada become effective, the same technical restrictions at the border that are adopted for operation between geographic service areas will apply, to the extent they are not in violation of current bilateral agreements and arrangements. When interim arrangements or agreements between the United States, Mexico and Canada are final and become effective, licensees in the paired 1392–1395 MHz and 1432–1435 MHz bands and in the unpaired 1390–1392 MHz band must comply with these agreements. In addition, if these agreements are modified in the future, licensees in the paired 1392–1395 MHz and 1432–1435 MHz bands and in the unpaired 1390–1392 MHz band must comply with these modifications. Current agreements and coordination arrangements between the United States and Canada or Mexico may be found on the Commission's Web site under *http://www.fcc.gov/ib/sand/agree/welcome.html*.

b. Quiet Zones.

24. As specified at 47 CFR 1.924, 1.4 GHz Band licensees must protect the radio quiet zones set forth in the Commission's rules. Licensees are cautioned that they must receive the appropriate approvals directly from the relevant quiet zone entity prior to operating within the areas described in the Commission's rules.

iv. Due Diligence

25. The Bureau cautions potential applicants formulating their bidding strategies to investigate and consider the extent to which 1.4 GHz band frequencies are occupied. Applicants and their investors should also understand that Commission rules and requirements place limitations on the ability of 1.4 GHz band licensees to use this spectrum. Government and non-government incumbent operations in the 1.4 GHz band must be protected. These limitations may restrict the ability of 1.4 GHz band geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their

geographic license areas. Bidders should become familiar with the status of these operations, applicable Commission rules, orders and any pending proceedings related to the service, in order to make reasoned, appropriate decisions about their participation in Auction No. 69 and their bidding strategy.

26. 1.4 GHz band licensees must comply with the pertinent rule sections set forth in 47 CFR part 27. Potential bidders should be aware that as part of the 2007 World Radio Communications Conference, WRC–07, NTIA has proposed more stringent out-of-band emission limits than presently specified in 47 CFR 27.53(i) in the bands 1350–1400 MHz and 1427–1452 MHz. The potential for stricter emission limits could impact the operations in these bands.

27. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the 1.4 GHz band licenses in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in the 1.4 GHz band subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

28. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction No. 69 in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision regarding participation in the auction. Participants in Auction No. 69 are strongly encouraged to continue such research throughout the auction. In addition, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific license, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

29. Applicants should also be aware that certain pending and future proceedings, including applications (including those for modification), petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review, before the Commission may relate to particular applicants or incumbent licensees or the licenses available in Auction No. 69. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent licensees, or the licenses available in Auction No. 69. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in this auction.

30. Applicants should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned and that could have an impact on the availability of spectrum for Auction No. 69. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the beginning of bidding in the auction.

31. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degrees to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 69. Potential applicants are strongly encouraged to physically inspect any prospective sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with environmental review obligations.

32. Applicants may obtain information about non-Federal Government incumbent licenses that may have an effect on availability of licenses in Auction No. 69 through the Bureau's licensing databases at *http://wireless.fcc.gov/uls.*

33. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, applicants may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

v. Use of Integrated Spectrum Auction System

34. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction No. 69 over the Internet using the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

vi. Bidder Alerts

35. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 69 to deceive and defraud unsuspecting investors. Information about deceptive telemarketing investment schemes is available from the Commission as well as the Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC). Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center.

vii. Environmental Review Requirements

36. Licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's environmental rules for each such facility. The Commission's environmental rules require, among other things, that the licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facilities

construction on historic properties, the licensee must follow the provisions of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, 47 CFR part 1, Appendix C. The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

37. Bidding in Auction No. 69 will begin on Wednesday, February 7, 2007. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Auction Title

38. Auction No. 69—1.4 GHz band

iii. Bidding Methodology

39. As discussed in more detail below, the bidding methodology for Auction No. 69 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone. All telephone calls are recorded.

iv. Pre-Auction Dates and Deadlines

40. Dates and Deadlines.

Auction Seminar November 29, 2006
Short-Form Application (FCC Form 175) Filing Window Opens—November 29, 2006; 12 noon ET.
Short-Form Application (FCC Form 175) Filing Window Deadline—December 11, 2006; 6 p.m. ET.
Upfront Payments (via wire transfer)—January 12, 2007; 6 p.m. ET.
Mock Auction—February 5, 2007.
Auction Begins—February 7, 2007.

v. Requirements for Participation

41. Those wishing to participate in the auction must: (1) Submit a short-form application (FCC Form 175) electronically prior to 6 p.m. Eastern Time (ET), December 11, 2006, following the electronic filing procedures set forth in Attachment C to the *Auction No. 69 Procedures Public Notice*; (2) submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, January 12, 2007; and (3) comply with all provisions outlined in the *Auction No. 69 Procedures Public Notice* and applicable Commission rules.

II. Short-Form Application (FCC Form 175) Requirements

42. An application to participate in an FCC auction provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase of this process, parties desiring to participate in the auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on the applicants' short-form applications and certifications as well as their upfront payments. In the second phase of the process, winning bidders file a more comprehensive long-form application.

43. Entities seeking licenses available in Auction No. 69 must file a short-form application electronically via the FCC Auction System prior to 6 p.m. ET on December 11, 2006, following the procedures prescribed in Attachment C of the *Auction No. 69 Procedures Public Notice.* If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read the instructions set forth in Attachment C carefully and should consult the Commission's rules to ensure that, in addition to the materials described below, all the information that is required under the Commission's rules is included with their short-form applications.

44. An entity may not submit more than one short-form application for a single auction. In the event that a party submits multiple short-form applications, only one application will be accepted for filing.

45. Applicants also should note that submission of a short-form application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

A. Preferences for Small Businesses and Others

i. Size Standards for Bidding Credits

46. A bidding credit represents the amount by which a bidder's winning bid will be discounted. For Auction No. 69, bidding credits will be available to small businesses and very small businesses, and consortia thereof, as follows: (1) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; and (2) a bidder with attributed average annual gross revenues that do not exceed $15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid. Bidding credits are not cumulative; a qualifying applicant receives either the 15 percent or 25 percent bidding credit on its winning bid, but not both.

47. Every applicant that claims eligibility for a bidding credit as either a small business or a very small business, or a consortium of small businesses or very small businesses, will be required to provide information regarding revenues attributable to the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests on its FCC Form 175 short-form application to establish that it satisfies the applicable eligibility requirement. Applicants claiming eligibility as a designated entity in Auction No. 69 should review carefully the *CSEA/Part 1 Designated Entity FNPRM*, 71 FR 6992, February 10, 2006, and the *Designated Entity Second Report and Order*, 71 FR 26245, May 4, 2006. In that connection, the Commission adopted rules governing eligibility for designated entity benefits

in the *Designated Entity Second Report and Order*. The Commission's new rules regarding applicants seeking eligibility for designated entity benefits requires the disclosure of a list of all parties with which the applicant has entered into arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum; and a list, separately and in the aggregate, of the gross revenues of entities with which the applicant has an attributable material relationship, as defined in 47 CFR 1.2110(b)(3)(iv)(B). Certain otherwise attributable material relationships may not be attributable pursuant to the provisions of 47 CFR 1.2110(b)(3)(iv)(C)(2).

ii. Tribal Lands Bidding Credit

48. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit.

iii. Installment Payments

49. Installment payment plans will not be available in Auction No. 69.

B. License Selection

50. In Auction No. 69, applicants must select the licenses on which they want to bid from the eligible licenses list. In Auction No. 69, the FCC Form 175 will include a filtering mechanism that allows an applicant to filter the available licenses. The applicant will make selections for one or more of the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may select all the licenses in the customized list or select individual licenses from the list. Applicants also will be able to select licenses from one customized list and then create additional customized lists to select additional licenses. There will be no opportunity to change license selection after the short-form filing deadline. It is critically important that an applicant confirm its license selections before submitting its short-form application because the FCC Auction System will not accept bids on licenses that an applicant has not selected on its FCC Form 175.

C. Disclosure of Bidding Arrangements

51. Applicants will be required to identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements relating to post-auction market structure. Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.

52. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction-related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Further, compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.

D. Ownership Disclosure Requirements

53. All applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the applicant. The ownership disclosure standards for the short form are prescribed in §§ 1.2105 and 1.2112. Each applicant is responsible for information submitted in its short-form application being complete and accurate.

54. An applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. Applicants are responsible for ensuring that the information submitted in their FCC Form 175 for Auction No. 69 is complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Applicants can update any information that was entered automatically and needs to be changed directly in the short-form application.

E. Bidding Credit Revenue Disclosures

55. To determine which applicants qualify for bidding credits as small businesses or very small businesses, the Commission considers the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. Therefore, entities applying to bid as small businesses or very small businesses (or consortia of small businesses or very small businesses) will be required to disclose on their FCC Form 175 short-form applications the gross revenues of each of the following for the preceding three years: (1) The applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests. Certification that the average annual gross revenues of such entities and individuals for the preceding three years do not exceed the applicable limit is not sufficient. In order to comply with the Commission's disclosure requirements for bidding credit eligibility, an applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, the gross revenues for each of the preceding three years. If the applicant is applying as a consortium of small businesses or very small businesses, this information must be provided for each consortium member.

56. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of at least 50.1 percent of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis. The following are some common indicia of de facto control: (1) The entity constitutes or appoints more than 50 percent of the board of directors or management committee; (2) the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and (3)

the entity plays an integral role in management decisions.

57. Officers and directors of an applicant are also considered to have controlling interest in the applicant. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, and the applicant and its affiliates will be counted in determining small business eligibility.

58. In recent years the Commission has made modifications to its rules governing the attribution of gross revenues for purposes of determining small business eligibility. These changes include exempting the gross revenues of the affiliates of a rural telephone cooperative's officers and directors from attribution to the applicant if certain specified conditions are met. The Commission has also clarified that, in calculating an applicant's gross revenues under the controlling interest standard, it will not attribute the personal net worth, including personal income, of its officers and directors to the applicant. However, to the extent that the officers and directors of the applicant are controlling interest holders of other entities, the gross revenues of those entities will be attributed to the applicant.

59. A consortium of small businesses or very small businesses is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business or very small business as those terms are defined in the service-specific rules. Thus, each member of a consortium of small or very small businesses that applies to participate in Auction No. 69 must individually meet the definition of small business or very small business adopted by the Commission for the 1.4 GHz band. Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium's eligibility as a small business or very small business, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium. Significantly, the *CSEA/Part 1 Report and Order* modified the procedure by which a consortium that is a winning bidder will apply for a license. Applicants applying as consortia should review that order, as well as 47 CFR 1.2107(g) and 1.2110(b)(3), for this license application procedure.

F. Provisions Regarding Former and Current Defaulters

60. Each applicant must state under penalty of perjury on its short-form application whether or not the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110, have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must certify under penalty of perjury on its short-form application that as of the short-form filing deadline, the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by § 1.2110, are not in default on any payment for a Commission license (including downpayments) and that they are not delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

61. Former defaulters—*i.e.*, applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of its controlling interests, that in the past have defaulted on any Commission license or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 69, provided that they are otherwise qualified. However, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

62. Current defaulters—*i.e.*, applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that are in default on any payment for any Commission license (including downpayments) or are delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for applications to participate in this auction—are not eligible to bid in Auction No. 69.

63. Applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the short-form application process. For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of §§ 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline. However, even where Commission rules expressly permit late payment subject to payment of an additional late fee, and do not impose a final payment deadline, the Commission may in some cases issue a demand for payment by a date certain. Failure to comply with the terms of a particular demand letter in the time period provided may render the subject debt delinquent, notwithstanding rules generally permitting late payments.

64. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the red light rule, that implement the Commission's obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States. Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of §§ 1.2105 and 1.2106, with regard to current and former defaults or delinquencies. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of § 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's red light

status is not necessarily determinative of its eligibility to participate in this auction or of its upfront payment obligation.

65. Prospective applicants in Auction No. 69 should note that any long-form applications filed after the close of competitive bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. Applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR 1.2104(g) and 1.2109(c).

G. Other Information

66. Applicants owned by member of minority groups and/or women, as defined in § 1.2110(c)(3), may identify themselves in filling out their short-form applications regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation in its auctions of designated entities, which include rural telephone companies.

H. Minor Modifications to Short-Form Applications (FCC Form 175)

67. As of the deadline for filing short-form applications (FCC Forms 175) at 6:00 p.m. ET on December 11, 2006, applicants are permitted to make only minor changes to their applications. Applicants are not permitted to make major modifications to their applications (*e.g.*, change their license selections, change control of the applicant, change the certifying official, or claim eligibility for a higher bidding credit). Permissible minor changes include deletion and addition of authorized bidders and revision of addresses and telephone numbers of the applicants and their contact persons.

68. Any application amendment and related statements of fact must be certified by: (1) The applicant, if the applicant is an individual, (2) one of the partners if the applicant is a partnership, (3) an officer, director, or duly authorized employee, if the applicant is a corporation, (4) by a member who is an officer, if the applicant is an unincorporated association, (5) the trustee if the applicant is an amateur radio service club, or (6) a duly elected or appointed official who is authorized to make such certifications under the laws of the applicable jurisdiction, if the applicant is a governmental entity.

69. An applicant must make permissible minor changes to its short-form application as such changes are defined by 47 CFR 1.2105(b), electronically, using the FCC Auction System. Applicants must click on the Submit button in the FCC Auction System for the changes to be submitted and considered by the Commission. Note: After the filing window has closed, the auction system will not permit applicants to make certain changes, such as legal classification, and bidding credit.

70. In addition, an applicant should submit a letter briefly summarizing the changes and subsequently update their short-form applications in ISAS as soon as possible. Any letter describing changes to an applicant's short-form application should be submitted by electronic mail to the following address: *auction69@fcc.gov.* The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 69 and the name of the applicant. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

71. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS), which was used for submitting comments regarding Auction No. 69 procedures.

I. Maintaining Current Information in Short-Form Applications (FCC Form 175)

72. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Changes that cause a loss of or reduction in eligibility for a bidding credit must be reported immediately. If an amendment reporting substantial changes is a major amendment, as defined by 47 CFR 1.2105, the amendment will not be accepted and may result in the dismissal of the short-form application.

73. After the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. Applicants must click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. In addition, applicants must submit a letter, briefly summarizing the changes, by electronic mail at the following address: *auction69@fcc.gov.* The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 69 and the name of the applicant. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

74. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS) into the record of the proceeding concerning Auction No. 69 procedures.

III. Pre-Auction Procedures

A. Auction Seminar—November 29, 2006

75. On Wednesday, November 29, 2006, the FCC will sponsor a free seminar for parties interested in participating in Auction No. 69 at the FCC headquarters, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, completing FCC Form 175, auction conduct, the FCC Auction System, auction rules, and the 1.4 GHz band rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff concerning the auction, auction procedures, filing requirements and other matters related to this auction.

76. To register, please provide the information listed on Attachment B of the *Auction No. 69 Procedures Public Notice* by Monday, November 27, 2006. Registrations are accepted on a first-come, first-served basis.

77. For individuals who are unable to attend, an Audio/Video webcast of this seminar will be available from the FCC's Auction No. 69 Web page at *http://wireless.fcc.gov/auctions/69/.*

B. Short-Form Application (FCC Form 175)—Due Prior to 6 p.m. ET on December 11, 2006

78. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application electronically via the FCC Auction System. This application must be received at the Commission prior to 6 p.m. ET on December 11, 2006. Late applications will not be accepted. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment.

79. Applications may generally be filed at any time beginning at noon ET on November 29, 2006, and the filing window will close at 6 p.m. ET on December 11, 2006. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their applications multiple times until the filing deadline on December 11, 2006.

80. Applicants must always click on the SUBMIT button on the Certify & Submit screen of the electronic form to successfully submit their FCC Form 175's or modifications. Any form that is not submitted will not be reviewed by the FCC. Information about accessing, completing, and viewing the FCC Form 175 is included in Attachment C of the *Auction No. 69 Procedures Public Notice.* FCC Auctions Technical Support is available.

C. Application Processing and Minor Corrections

81. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) Those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for resubmitting corrected applications.

82. After the short-form filing deadline on December 11, 2006, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change control of the applicant, change certifying official, or claim eligibility for a higher bidding credit).

D. Upfront Payments—Due January 12, 2007

83. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and sent by facsimile to Mellon Bank in Pittsburgh, PA. All upfront payments must be received in the proper account at Mellon Bank by 6 p.m. ET on January 12, 2007.

i. Making Auction Payments by Wire Transfer

84. Wire transfer payments must be received by 6 p.m. ET on January 12, 2007. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

85. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must send by facsimile a completed FCC Form 159 (Revised 2/03) to Mellon Bank at (412) 209–6045. On the facsimile cover sheet, the applicant must write Wire Transfer—Auction Payment for Auction No. 69. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account before the deadline. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.

86. Please note that: (1) All payments must be made in U.S. dollars; (2) all payments must be made by wire transfer; (3) upfront payments for Auction No. 69 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments; and (4) failure to deliver the upfront payment by the January 12, 2007 deadline, will result in dismissal of the application and disqualification from participation in the auction.

ii. FCC Form 159

87. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be sent by facsimile to Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment D of the *Auction No. 69 Procedures Public Notice.* The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Upfront Payments and Bidding Eligibility

88. In the *Auction No. 69 Comment Public Notice,* the Bureau proposed that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. In order to bid on a license, otherwise qualified bidders that selected that license on Form 175 must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses selected on its Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses the applicant selected on its Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold provisionally winning bids at any given time. Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round.

89. In the *Auction No. 69 Comment Public Notice,* the Bureau proposed to calculate upfront payments for Auction No. 69 on a license-by-license basis using the following formula:

$0.005 * MHz * License Area Population with a minimum of $1,000 per license. The Bureau set forth the specific upfront payments and bidding units for each license in Attachment A of the *Auction No. 69 Comment Public Notice* and sought comment on this proposal. The Bureau received no comments in response to the proposed upfront payments. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 69 Procedures Public Notice.*

90. Applicants must make upfront payments sufficient to obtain bidding eligibility on the licenses on which they will bid. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline. In some cases, a qualified bidder's maximum eligibility may be less than the amount of its upfront payment because the qualified bidder, pursuant to 47 CFR 1.2106(a), has either previously been in default on a Commission license or delinquent on a non-tax debt owed to a Federal agency, or has submitted an upfront payment that exceeds the total amount of bidding units associated with the licenses the applicant selected on its FCC Form 175 application.

91. In the *Part 1 Fifth Report and Order,* 65 FR 52323, August 29, 2000, the Commission ordered that applicants that are former defaulters be required to pay upfront payments 50 percent greater than non-former defaulters. For purposes of this calculation, the applicant includes the applicant itself, its affiliates, its controlling interests,

and affiliates of its controlling interests, as defined by 47 CFR 1.2110. Accordingly, former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units on which they wish to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the licenses applied for on its Form 175, the applicant will not be eligible to participate in the auction.

92.

iii. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

93. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as specified in the *Auction No. 69 Procedures Public Notice* be supplied to the FCC. For example, the Commission must be provided with a Taxpayer Identification Number (TIN) before it can disburse refunds. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted. (Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should not be included in an FCC Form 175.) Wire Transfer Instructions can also be manually sent by facsimile to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise.

E. Auction Registration

94. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid.

95. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® cards that will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.

96. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Thursday, February 1, 2007, should call (717) 338–2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

97. In the event that SecurID® cards are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacement registration material. Qualified bidders requiring the replacement of these items must call Technical Support.

F. Remote Electronic Bidding

98. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically and telephonically. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175. In either case, each authorized bidder must have its own SecurID® card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID® cards, the telephonic bidding telephone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID® card is tailored to a specific auction; therefore, SecurID® cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 69.

G. Mock Auction—February 5, 2007

99. All qualified bidders will be eligible to participate in a mock auction on Monday, February 5, 2007. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

100. The first round of bidding for Auction No. 69 will begin on Wednesday, February 7, 2007. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to be released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

101. In the *Auction No. 69 Comment Public Notice,* the Bureau proposed to auction all 1.4 GHz band licenses in a single auction using the Commission's standard simultaneous multiple-round (SMR) auction format. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses. Typically, bidding remains open on all licenses until bidding stops on every license, unless a modified stopping rule is invoked.

102. The Bureau also sought comment on using a simultaneous multiple-round with package bidding (SMR–PB) format for Auction No. 69. A commenter advocated in its brief comments that the Bureau employ package bidding because bidders likely will wish to aggregate licenses to put together nationwide coverage or coverage of substantial parts of the country. However, the SMR format addresses such a need to aggregate spectrum licenses. The Bureau does not believe that the circumstances of Auction No. 69 present significant conflicting complementarities that could weigh more strongly in favor of package bidding.

103. Two comments were filed suggesting that package bidding be used and recommending modifications to the SMR–PB format as programmed in the FCC Auction System, noting that the current package bidding format may be too complex. The Bureau is not persuaded that the economic characteristics of the 1.4 GHz Band weigh in favor of package bidding and therefore, the Bureau will not use an SMR–PB format for Auction No. 69. As a result, the Bureau did not address the specifics of the SMR–PB format in the *Auction No. 69 Procedures Public Notice.*

104. The Bureau concludes that the standard SMR auction format will meet the needs of bidders in Auction No. 69, and the Bureau adopted its proposal to use a simultaneous multiple-round auction format without package bidding. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction until bidding stops

on every license. This approach, the Bureau believes, allows bidders to take advantage of synergies that exist among licenses.

ii. Information Available to Bidders Before and During the Auction

105. In the *Auction No. 69 Comment Public Notice,* the Bureau sought comment on whether to implement procedures that would limit the disclosure of information on bidder interests and identities relative to the information procedures that have typically been used for Commission auctions. In that connection, the Bureau sought comment on whether technological considerations or the likely level of competition in Auction No. 69 weigh in favor of or against limiting the disclosure of information on bidder interests and identities relative to most past Commission spectrum auctions, or whether the Commission should condition the implementation of such limits on a measure of the competitiveness of the auction, such as the eligibility ratio or a modified version of the eligibility ratio. The Bureau received no comments on this issue.

106. Although the Commission has the option to limit the availability of information on an auction-by-auction basis, in the past, the Commission generally has elected not to limit such information. However, as discussed by the Commission in connection with Auction No. 66, there are potential harms as well as benefits from publicly revealing all information during the auction process. The potential harms from anti-competitive behavior facilitated by the release of certain information are likely to be greater when the auction is less competitive—that is, when the number of bidders and the level of upfront payments are relatively low compared to the number of licenses offered. Therefore, for Auction No. 69, the Bureau will use limited information procedures if it appears likely that the competitiveness of the auction will be low, and if the Bureau believes that limited information procedures will be effective in making anti-competitive behavior less likely to be successful. Alternatively, if the Bureau determines that the auction is likely to be sufficiently competitive, and therefore, that the risk of successful collusion is low, the Bureau will make available bidding information that the Bureau typically has made available in previous Commission auctions.

107. Specifically, the Bureau will estimate the likely level of competition in the auction by considering the eligibility ratio, defined as the total number of bidding units of eligibility purchased by bidders through their upfront payments divided by the total number of bidding units for the licenses in the auction. If the eligibility ratio equals or exceeds three, the Bureau will use the information procedures typically used in past FCC auctions. If the eligibility ratio is less than three, in general the Bureau will withhold certain information on bidder interests and bidder identities.

108. However, if the eligibility ratio is less than three, the Bureau reserves the discretion to use information procedures typically used in past FCC auctions if circumstances indicate that limited information procedures would not be an effective tool for deterring anti-competitive behavior. The Bureau anticipates announcing the information disclosure procedures to be used at or about the time that the Bureau releases a public notice announcing the applicants that are qualified to participate in the bidding.

109. If it is determined that limited information procedures will be used, the Bureau will make available prior to the auction the total eligibility level for the auction as well as the eligibility of each bidder, but will not identify bidders' license selections. After each round of bidding, the amounts of each bid placed will be made available, but not the identities of the bidders. This information will give bidders an indication of demand for the licenses, so that bidders and their investors will be able to assess whether their bids are likely to be consistent with the valuations of other bidders, mitigating fear of the winner's curse. In addition, after each round bidders logged in to the FCC Auction System will be able to access reports indicating whether their own bids are provisionally winning.

110. *Other Issues.* The Bureau does not believe that the information disclosure procedures established for this auction will interfere with the administration of or compliance with the Commission's anti-collusion rule, 47 CFR 1.2105(c). In Auction No. 69, the Commission will not disclose information regarding license selection at least until the upfront payment deadline has passed and the Commission determines the information disclosure procedures to be used for the auction. The Commission will disclose the other portions of applicants' short-form applications, through its on-line database and certain application-based information through public notices. Thus, even without information regarding license selection, applicants would be able to comply with § 1.2105(c) by not disclosing bids or bidding strategies to any other applicants in the auction. This approach, however, could inhibit otherwise lawful communications with applicants for licenses in other geographic license areas, which the Commission's rule permits. Consequently, the Bureau will notify separately each applicant with short-form applications to participate in a pending auction, including but not limited to Auction No. 69, whether applicants in Auction No. 69 have applied for licenses in any of the same geographic areas as that applicant. Specifically, after the Bureau conducts its initial review of applications to participate in Auction No. 69, each applicant with a short-form application to participate in a pending auction will receive a letter that lists the applicants in Auction No. 69 that have applied for licenses in any of the same geographic areas as the applicant. The list will identify the Auction No. 69 applicant(s) by name but will not list the license selections of the Auction No. 69 applicant(s).

111. For purposes of the anti-collusion rule, the term applicant is defined in 47 CFR 1.2105(c)(7) to include all controlling interests, all parties with ownership interests greater than 10%, and all officers and directors of the applicant. As in past auctions, additional information regarding applicants in Auction No. 69 that is needed to comply with § 1.2105(c), such as, the identifies of controlling interests in the applicant and ownership interests greater than 10%, will be available through the publicly accessible on-line short-for application database.

iii. Eligibility and Activity Rules

112. In the *Auction No. 69 Comment Public Notice,* the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the initial (maximum) eligibility (as measured in bidding units) for each bidder. The Bureau received no comments on this issue.

113. The Bureau adopted the proposed use of upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction No. 69. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 69 Procedures Public Notice* on a bidding unit per dollar basis. Bidding units for a given license do not change as prices rise during the

auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any of the licenses selected on its FCC Form 175 as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

114. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

115. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions, the Bureau adopted them for Auction No. 69. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place bids in the auction.

iv. Auction Stages

116. In the *Auction No. 69 Comment Public Notice,* the Bureau proposed to conduct the auction in two stages and employ an activity rule. The Bureau further proposed that, in each round of Stage One, a bidder desiring to maintain its current bidding eligibility would be required to be active on licenses representing at least 80 percent of its current bidding eligibility. Finally, the Bureau proposed that in each round of Stage Two, a bidder desiring to maintain its current bidding eligibility would be required to be active on at least 95 percent of its current bidding eligibility. The Bureau received no comments on this proposal.

117. The Bureau adopted its proposals for the activity rules and stages. As explained further in the *Auction No. 69 Procedures Public Notice,* during Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by five-fourths (5/4). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths (20/19). Because the procedures have proven successful in maintaining the proper pace in previous auctions, the Bureau adopted them for Auction No. 69.

118. Because activity requirements increase in Stage Two, bidders must check carefully their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirements. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have lost bidding eligibility inadvertently or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by logging into the FCC Auction System.

v. Stage Transitions

119. In the *Auction No. 69 Comment Public Notice,* the Bureau proposed that the auction would generally advance to the next stage (i.e., from Stage One to Stage Two) when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately 20 percent or lower for three consecutive rounds of bidding. The Bureau further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. This determination, the Bureau proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau received no comments on this issue. The Bureau believes that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 69. The Bureau adopted its proposal. Thus, the auction will start in Stage One and will generally advance to Stage Two when, in each of three consecutive rounds of bidding, the provisionally winning bids have been placed on 20 percent or less of the licenses being auctioned (as measured in bidding units). (However, the stage of the auction does not affect the auction stopping rules; the auction may conclude in Stage One.) The Bureau will retain the discretion to regulate the pace of the auction by announcement.

vi. Activity Rule Waivers

120. In the *Auction No. 69 Comment Public Notice,* the Bureau proposed that each bidder in the auction be provided with three activity rule waivers. The Bureau received no comments on this issue. The Bureau is satisfied that providing three waivers over the course of the auction will give bidders a sufficient number of waivers and flexibility, while also safeguarding the integrity of the auction. Therefore, the Bureau adopted its proposal that each bidder be provided three activity rule waivers.

121. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity rule waivers can be either applied proactively by the bidder (a proactive waiver) or applied automatically by the FCC Auction System (an automatic waiver) and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

122. The FCC Auction System assumes that bidder with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If a bidder has no waivers remaining and does not satisfy the activity requirement, the FCC Auction

System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

123. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility even if the round has not yet closed.

124. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity waiver during a bidding round in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals, or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be unsubmitted, even if the round has not yet closed.

vii. Auction Stopping Rules

125. For Auction No. 69, the Bureau proposed to employ a simultaneous stopping rule approach. The Bureau also sought comment on a modified version of the simultaneous stopping rule (modified stopping rule). The modified stopping rule would close the auction for all licenses after the first round in which no bidder applies a waiver, places a withdrawal, or submits any new bids on any license on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

126. The Bureau further proposed retaining the discretion to keep the auction open even if no new bids or proactive waivers are submitted and no provisionally winning bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

127. In addition, the Bureau proposed that it reserve the right to declare that the auction will end after a specified number of additional rounds (special stopping rule). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) and the auction will close.

128. The Bureau proposed to exercise these options only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time.

129. The Bureau believes that the proposed stopping rules are appropriate for Auction No. 69, because experience in prior auctions demonstrates that these stopping rules balance interests of administrative efficiency and maximum bidder participation. The Bureau received no comments concerning the auction stopping rules. Therefore the Bureau adopted the stopping rule proposals made in the *Auction No. 69 Comment Public Notice*. Auction No. 69 will begin under the simultaneous stopping rule approach, and the Bureau will retain the discretion to employ the other versions of the stopping rule. Moreover, the Bureau will retain the discretion to use the modified stopping rule with or without prior announcement during the auction.

viii. Auction Delay, Suspension, or Cancellation

130. In the *Auction No. 69 Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding. The Bureau received no comment on this issue.

131. Because the Bureau's approach to notification of delay during an auction has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopted its proposals regarding auction delay, suspension, or cancellation. The Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

132. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day.

133. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price and Minimum Opening Bids

a. Reserve Price.

134. Congress recently required the Commission to revise existing regulations regarding reserve prices for auctions involving eligible frequencies subject to CSEA. CSEA defines eligible frequencies as including frequencies from 1432–1435 MHz. Thus, twelve 1.4 GHz band licenses authorize use of frequencies half of which are subject to CSEA requirements. In CSEA, Congress directed the Commission to make revisions that would prescribe methods by which the total cash proceeds from any auction of licenses authorizing use of eligible frequencies shall equal at least 110 percent of the total estimated relocation costs provided to the Commission pursuant to CSEA. Accordingly, the Commission recently revised its reserve price rule.

135. CSEA also imposes other related requirements regarding the proceeds from an auction involving eligible frequencies. Pursuant to CSEA, the total cash proceeds attributable to eligible spectrum must be at least 110 percent of the total estimated relocation costs before the Commission may conclude the auction. If this condition is not met, CSEA requires that the Commission shall cancel the auction. Finally, in CSEA, Congress also directed that cash proceeds attributable to the auction of any eligible frequencies * * * shall be deposited in the Spectrum Relocation Fund created by CSEA. Pursuant to CSEA, on December 27, 2005, NTIA notified the Commission that there are

no costs associated with relocating federal operations from the 1432–1435 MHz band. Accordingly, a reserve price will not be used for this auction to cover relocation costs under CSEA.

b. Minimum Opening Bids.

136. The Bureau proposed in the *Auction No. 69 Comment Public Notice* to establish minimum opening bids for each license, while retaining discretion to lower the minimum opening bids. Specifically, for Auction No. 69, the Bureau proposed the following formula for calculating license-by-license minimum opening bids:

$0.005 * MHz * License Area Population with a minimum of $1,000 per license. The Bureau sought comment on this proposal and, in the alternative, whether, the public interest would be served by having no minimum opening bid.

137. In Commission auctions, minimum opening bids are intended to serve as useful starting points for bidding. Minimum opening bids are not intended to be estimates of final auction prices or to reflect all differences between license values. Accordingly, differences in license characteristics, such as population density, that may result in different final prices do not always necessitate different minimum opening bids for the licenses.

138. A commenter proposed that the minimum opening bids should be reduced substantially, claiming that the proposed minimum opening bids do not take into account the amount of spectrum being auctioned. The commenter asserted that the proposed minimum opening bid levels are relatively high as compared with other auctions and will discourage bidders from participating. The commenter further suggested the value of this spectrum is constrained by other factors, such as the need to protect the radioastronomy service. Finally, the commenter argues that the proposed minimum opening bids for this auction are higher than those used for the auction of Multiple Address Systems spectrum (Auction No. 59), which, in the commenter's view, is more valuable spectrum than the 1.4 GHz band licenses offered here. The Bureau, however, was not persuaded that the commenter's comparison is apt in that it compares two completely different services with different bandwidth, geographic areas and band plans. The Bureau continued to believe that the previously-proposed minimum opening bids for this auction are reasonable. Accordingly, the Bureau adopted its proposal and set the minimum opening bids using the proposed formula of $0.005 * MHz * license area population.

139. The Bureau did not receive any comments addressing its proposal that it retain the discretion to reduce minimum opening bid amounts. The Bureau adopted this proposal. The minimum opening bid amounts adopted for Auction No. 69 are reducible at the discretion of the Bureau. The Bureau emphasized, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all activity waivers. During the course of the auction, the Bureau will not entertain requests to reduce the minimum opening bid amount on specific licenses. The Bureau noted further that effectively the minimum opening bids operate as reserve prices.

140. The specific minimum opening bid amounts for each license available in Auction No. 69 calculated pursuant to the procedure describe above are set forth in Attachment A of the *Auction No. 69 Procedures Public Notice.*

iii. Bid Amounts

141. In the *Auction No. 69 Comment Public Notice*, the Bureau proposed that in each round, eligible bidders be able to place a bid on a given license in any of nine different amounts, if the bidder has sufficient eligibility to place a bid on the particular license. Under the proposal, the FCC Auction System interface will list the nine acceptable bid amounts for each license, unless rounding produces duplicate bid amounts. The Bureau received no comment on this issue. Based on experience in prior auctions, the Bureau adopted its proposals for Auction No. 69.

142. The first of the nine acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid for the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus a percentage of that bid amount calculated using the specified formula. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.

143. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (the additional percentage) is calculated at the end of each round, based on an activity index which is a weighted average of the number of bids in that round and the activity index from the prior round. (Because there is no prior round, for Round 1 calculations, the activity index from the prior round is zero.) Specifically, the activity index is equal to a weighting factor times the number of bids on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round. The Commission will initially set the weighting factor at 0.5, the minimum percentage at 0.1 (10%), and the maximum percentage at 0.2 (20%). Hence, at these initial settings, the minimum acceptable bid for a license will be between 10% and 20% higher than the provisionally winning bid, depending upon the bidding activity for the license. Equations and examples are shown in Attachment E of the *Auction No. 69 Procedures Public Notice.*

144. The eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is 5 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.05), rounded, or (minimum acceptable bid amount) * 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.1, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.15, rounded; etc. The Bureau will round the results of these calculations, as well as the calculations to determine the minimum acceptable bid amounts, using its standard rounding procedures. For Auction No. 69, the Bureau proposed to use a bid increment percentage of 5 percent to calculate the eight additional acceptable bid amounts. The Bureau received no comment on this issue and will begin the auction

with a bid increment percentage of 5 percent.

145. The Bureau did not receive any comments on its proposal to retain the discretion to change the minimum acceptable bid amounts, the parameters of the formula to determine the percentage of the provisionally winning bid used to determine the minimum acceptable bid, and the bid increment percentage if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Auction System during the auction if circumstances warrant. The Bureau adopted this proposal.

iv. Provisionally Winning Bids

146. At the end of each bidding round, a provisionally winning bid will be determined based on the highest bid amount received for each license. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same license at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

147. In the *Auction No. 69 Comment Public Notice*, the Bureau proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a license in a given round (*e.g.* tied bids). No comments were received on this proposal. Therefore, the Bureau adopted its proposal. A pseudo-random number generator based on the L'Ecuyer algorithms will be used to assign a random number to each bid. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. The remaining eligible bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to close with no other bids being placed, the winning bidder would be the one that placed the selected provisionally winning bid.

148. During a round, a bidder may submit bids for as many licenses as it wishes (providing that it is eligible to bid), withdraw provisionally winning bids from previous rounds, remove bids placed in the current bidding round, or permanently reduce eligibility. Bidders also have the option of submitting and removing multiple bids and withdrawing multiple provisionally winning bids (subject to the limitation on withdrawal rounds discussed below) during a round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's current activity.

149. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction No. 69. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, five to ten minutes are necessary to complete a telephonic bid submission.

150. A bidder's ability to bid on specific licenses is determined by two factors: (1) the licenses selected on the bidder's FCC Form 175 and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those licenses the bidder selected on its FCC Form 175.

151. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID® card and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

152. In each round, if there is sufficient eligibility to place a bid on the particular license, an eligible bidder will be able to place bids on a given license in any of nine different amounts. (In the event of duplicate bid amounts due to rounding, however, the FCC Auction System will omit the duplicates and will list fewer than nine acceptable bid amounts for the license.) For each license, the FCC Auction System will list the nine acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an upload function that allows bidders to upload text files containing bid information.

153. Until a bid has been placed on a license, the minimum acceptable bid amount for that license will be equal to its minimum opening bid amount. Once there are bids on a license, minimum acceptable bids for a license will be determined.

154. Finally, bidders are cautioned to select their bid amounts carefully because, bidders that withdraw a provisionally winning bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

v. Bid Removal and Bid Withdrawal

155. In the *Auction No. 69 Comment Public Notice*, the Commission proposed bid removal and bid withdrawal procedures. With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The round in which withdrawals are used would be at each bidder's discretion. The Bureau received no comments on this issue. In previous auctions, the Bureau has detected bidder conduct that, arguably, may have constituted anti-competitive behavior through the use of bid withdrawals. While the Bureau continues to recognize the important role that bid withdrawals may play in an auction, *i.e.*, reducing risk associated with efforts to secure various licenses in combination, the Bureau concluded that, for Auction No. 69, adoption of a limit on the use of withdrawals to two rounds per bidder is appropriate and a reasonable compromise that will allow bidders to use withdrawals. The Bureau based its decision on this issue upon experience with bid withdrawals in prior auctions. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds.

156. *Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the REMOVE BIDS function in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is removed does not count toward bidding activity. These procedures will enhance bidder flexibility during the auction, and therefore the Bureau adopted them for Auction No. 69.

157. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw provisionally winning bids from previous rounds using the WITHDRAW BIDS function in the FCC Auction System (assuming that the bidder has not already withdrawn bids in a previous round). A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Once a withdrawal is submitted during a round,

that withdrawal cannot be unsubmitted even if the round has not yet ended.

158. The rounds in which a bidder may withdraw its bids will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

159. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the license, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid. To set the additional bid amounts, the second highest bid amount also will be used in place of the provisionally winning bid in the formula used to calculate bid increment amounts. The Commission will serve as a place holder provisionally winning bidder on the license until a new bid is submitted on that license. The Bureau retains the discretion to lower the minimum acceptable bid on such licenses in the next round or in later rounds.

160. *Calculation of Bid Withdrawal Payment*. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the provisionally winning bid in the same or subsequent auction(s). Pursuant to 47 CFR 1.2104(g)(1), the payment will equal the lower of: (1) The difference between the net withdrawn bid and the subsequent net wining bid, or (2) the difference between the gross withdrawn bid and the subsequent gross wining bid.

161. In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

162. The payment obligations of a bidder that withdraws a high bid on a license during the course of an auction is specified in 47 CFR 1.2104(g)(1), which also provides for the assessment of interim bid withdrawal payments. In the *Auction No. 69 Comment Public Notice*, the Bureau proposed to establish the percentage at ten percent (10%) for the 1.4 GHz band auction and sought comment on the proposal. The Bureau received no comments on this issue and adopted its proposal. The Commission will assess an interim withdrawal payment equal to 10 percent of the amount of the withdrawn bids. The 10 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license.

vi. Round Results

163. The identities of parties that are qualified to bid in Auction No. 69 will be available before the auction. Thus, bidders will know in advance of this auction the identities of the parties against which they may be bidding in the auction. If information is withheld in accordance with the procedures described in the *Auction No. 69 Procedures Public Notice*, limited information about the results of a round will be made public after the conclusion of the round. Specifically, after a round closes, the Bureau will make available for each license, its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, the amounts of all bids placed on the license during the round, and whether the license is FCC held. The reports will be publicly accessible. Moreover, after the auction, the Bureau will make available complete reports of all bids placed during each round of the auction, including bidder identities.

164. If, however, limited information procedures are not used, more information will be provided after each round in the auction. Bids placed during a round, including bidder identities, will be made public at the conclusion of that round. Specifically, after a round closes, the Bureau will compile reports of all bids placed and which bidders made them, current provisionally winning bids, new minimum acceptable bid amounts, and bidder eligibility status (bidding eligibility and activity rule waivers) and will post the reports for public access.

vii. Auction Announcements

165. The Commission will use auction announcements to announce items such as schedule changes and stage transitions. All auction announcements will be available by clicking a link in the FCC Auction System.

V. Post-Auction Procedures

A. Down Payments

166. After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments and final payments due.

167. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 69 to 20 percent of the net amount of its winning bids (gross bids less any applicable small business or very small business bidding credits).

B. Final Payments

168. Each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the deadline for submitting down payments.

C. Long-Form Application (FCC Form 601)

169. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) for each license won through Auction No. 69. Winning bidders that are small businesses or very small businesses must demonstrate their eligibility for a small business or very small business bidding credit. Further filing instructions will be provided to auction winners at the close of the auction.

170. The *CSEA/Part 1 Report and Order* modifies the procedure by which a consortium that is a winning bidder in Auction No. 69 will apply for a license. In particular, (a) each member or group of members of a winning consortium seeking separate licenses will be required to file a separate long-form application for its respective license(s) and, in the case of a license to be partitioned or disaggregated, the member or group filing the applicable long-form application shall provide the parties' partitioning or disaggregation agreement in its long-form application; (b) two or more consortium members seeking to be licensed together shall first form a legal business entity; and (c) any such entity must meet the applicable

eligibility requirements in Commission rules for small business status. Applicants applying as consortia should review the *CSEA/Part 1 Report and Order* in detail and monitor any relevant future proceedings to understand how the members of the consortia will apply for a license in the event they are winning bidders.

D. Ownership Disclosure Information Report (FCC Form 602)

171. At the time it submits its long-form application (FCC Form 601), each winning bidder also must comply with the ownership reporting requirements as set forth in 47 CFR 1.913, 1.919 and 1.2112. An ownership disclosure record is automatically created in ULS for any applicant that submits an FCC Form 175. However, winning bidders will be required to review and confirm that it is complete and accurate as of the date of filing Form 601. Further instructions will be provided to auction winning bidders at the close of the auction.

E. Tribal Lands Bidding Credit

172. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85 percent is eligible to receive a tribal lands bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

173. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit after winning the auction when it files its long-form application (FCC Form 601). When initially filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal lands bidding credit, for each market won in the auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the applicant will have 180 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f)(3)(vi).

174. For additional information on the tribal lands bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal lands bidding credits and related public notices.

F. Default and Disqualification

175. Any winning bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Pursuant to recent modifications to the rule governing default payments, the percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the *Auction No. 69 Comment Public Notice*, the Bureau proposed to set the additional default payment for the auction of 1.4 GHz band licenses at ten percent (10%) of the applicable bid. The Bureau sought comment on its proposal.

176. No comments were received on this issue. The Bureau therefore adopted its proposal and set the additional default payment for the auction of 1.4 GHz band licenses at ten percent (10%) of the applicable bid.

177. Finally, the Bureau noted that in the event of a default, the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

G. Refund of Remaining Upfront Payment Balance

178. All applicants that submit upfront payments but after the close of the auction are not winning bidders for a license in Auction No. 69 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

179. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a provisionally winning bid during the auction may also be eligible for a refund of their upfront payment before the close of the auction. If an applicant has completed the refund instructions electronically, the refund will be sent automatically. If an applicant has not completed the refund instructions electronically, the applicant must submit a written request for the refund and include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund requests to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser, 445 12th Street, SW., Room 1–C864, Washington, DC 20554.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. E6–19744 Filed 11–21–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 003121f.

Name: Aj International, Inc.

Address: 1300 Midland Avenue—B55, P.O. Box 818, Yonkers, NY 10704.

Date Revoked: October 27, 2006.

Reason: Surrendered License Voluntarily.

License Number: 003635f.

Name: F. Angel & Associates, Inc.

Address: 15231 SW 26th Terrace, Miami, FL 33185.

Date Revoked: November 6, 2006.

Reason: Failed To Maintain a Valid Bond.

Peter J. King,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. E6–19778 Filed 11–21–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Rescission of Order of Revocations

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License Number: 015708N.

Name: Blue Moon Express Limited.

Address: Room 1901, 19/F., C C Wu Bldg., 302–308, Hennessy Rd, Wanchai Hong Kong

Order Published: FR: 11/01/06 (Volume 71, No. 211, Pg. 64281).

Peter J. King,

Deputy Director Bureau of Certification and Licensing.

[FR Doc. E6–19780 Filed 11–21–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC. 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants:

Herbie & Son's Brokers & Shipping Int. Co., 6660 Sunset Strip, Unit #4, Sunrise, FL 33313. Officer: Victor Thomas, President (Qualifying Individual).

Aerocosta Global Systems, Inc., 189–33 46 Road 1 FL, Flushing, NY 11358. Officers: Hyun Joon Chung, President (Qualifying Individual).

DLR International, Foster Avenue Industrial Park 822 Foster Avenue, Bensenville, IL 60606. Officer: Danna Rozehnal, President (Qualifying Individual).

Aqualine International, Inc., 17326 Edwards Road, Suite A207, Cerritos, CA 90703–2465. Officers: Makiko Yamamoto Nomoto, President (Qualifying Individual), Lo Hung Tien, Director.

Platinum Ocean Logistics, Inc., 2285 Michael Faraday Drive, Suite 13, San Diego, CA 92154. Officers: Jeffrey Wobbrock, President (Qualifying Individual).

Trust Moving, Marketing & Logistics, Inc. dba TMM, Logistics, 3533 NW 58th Street, Miami, FL 33142. Officers: Jose Tarcisio De Oliveira, President (Qualifying Individual), Milton Cursage, Vice President.

Sallaum Group SA, 47371 Darkhollow Falls, Sterling, VA 20165. Officers: Ghassan Sakallah, Vice President (Qualifying Individual), Ibrahim Sallaum, President.

Global Advantage ALS, 161–18 59 Avenue, Fresh Meadows, NY 11365. Officer: Yichun Xu, President (Qualifying Individual).

Lloyds Global Logistics, Inc. dba Lloyds Cargo, 615 N. Street, Suite #303, El Segundo, CA 90245. Officers: Uwe Steuernagel, Treasurer/CFO (Qualifying Individual), Renee Maser, President.

IQ Global Logistics Corp, 22580 Glenn Drive, Suite 10, Sterling, VA 20164. Officers: Kirk Michael Weibel, President (Qualifying Individual).

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Stonepath Logistics Domestic Services, Inc., 1150 Gateway Drive, Shakopee, MN 55379. Officers: Charles R. Cain, Vice President (Qualifying Individual), Dennis L. Pelino, Chairman.

Stonepath Logistics Government Services, Inc., 45070 Old Ox Road, Suite 100, Sterling, VA 20166. Officers: Charles R. Cain, Chief Operating Officer (Qualifying Individual), Robert Arovas, President.

RCB Logistics Corp., 67 West Merrick Road, Valley Stream, NY 11580. Officers: Salvatore DiStefano, President (Qualifying Individual), Vincenzo Matranga, Vice President.

Global Transportation Management, LLC dba GTM-Global Transportation Management, LLC, 35790 Northline Road, Suite C, Romulus, MI 4817. Officer: Mark Brodie, Managing Member (Qualifying Individual).

Midwest Motor Express, Inc. dba MME Global Lines, 314 North 27th Street, Fargo, ND 58102. Officers: Ronald I. Martin, Dir. Of Int'l. Logistics (Qualifying Individual), Martin Kling, President.

Trans-Alliance International Forwarding Co., Inc. dba Nova Ocean Line, 310 Cedar Lane, Third Floor, Teaneck, NJ 07666. Officers: Enrique Vera, President (Qualifying Individual), Olga Vera, Secretary.

Express Cargo USA LLC, 1675 York Avenue, Suite 31–B, New York, NY 10128. Officer: Ami Steinfeld, President (Qualifying Individual).

Intercontinental Forwarding USA, Corp. dba ICF USA, 3671 NW 81 Street, Miami, FL 33147. Officers: Byron Baez, Vice President (Qualifying Individual), Geovanny Coellar N., President

Aerostar Global Logistics, Inc., 824 S. Kay Avenue, Addison, IL 60101. Officer: Anthony Flacchino, President (Qualifying Individual).

Priority Freight Corp., 377 Oyster Point Blvd., Unit #14, So. San Francisco, CA 94080. Officer: Bernard Liu, President (Qualifying Individual).

Damca International, LLC, 9600 NW 25th Street, Suite 6B, Miami, FL 33172. Officers: Nils Ekman, President (Qualifying Individual), Nelson Montilla, Vice President

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Denizabel Shipping, Inc., 6903 W. 36 Avenue, Suite No. 2, Hialeah, FL 33018. Officers: Isabel Ramirez, Vice President (Qualifying Individual), Denizabel Ramirez, President.

Jumar International Corp., 1890 NW 82nd Avenue, Suite 103, Miami, FL 33126. Officers: Marlen Estevez, Vice President (Qualifying Individual), Juan E. Estevez, President.

Toptrans USA Inc., 777 E. Valley Blvd., Apt. #4, Alhambra, CA 91801. Officer: Fu-Chiu (Fred) Chou, President (Qualifying Individual).

Dated: November 17, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–19776 Filed 11–21–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1269]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved the private sector adjustment factor (PSAF) for 2007 of $132.5 million and the 2007 fee schedules for Federal Reserve priced services and electronic access. These actions were taken in accordance with the requirements of the Monetary Control Act of 1980, which requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the PSAF. The Board has also approved maintaining the current earnings credit rate on clearing balances.

DATES: The new fee schedules and earnings credit rate become effective January 2, 2007.

FOR FURTHER INFORMATION CONTACT: For questions regarding the fee schedules: Jack K. Walton II, Associate Director, (202/452–2660); Jeffrey S.H. Yeganeh, Manager, Retail Payments, (202/728–5801); Edwin J. Lucio, Senior Financial Services Analyst, (202/736–5636),

Division of Reserve Bank Operations and Payment Systems. For questions regarding the PSAF and earnings credits on clearing balances: Gregory L. Evans, Assistant Director, (202/452–3945); Brenda L. Richards, Manager, Financial Accounting, (202/452–2753); Jonathan Mueller, Senior Financial Analyst, (202/530–6291); or Jonathan Senner, Senior Financial Analyst, (202/452–2042), Division of Reserve Bank Operations and Payment Systems. For users of Telecommunications Device for the Deaf (TDD) only, please call 202/263–4869. Copies of the 2007 fee schedules for the check service are available from the Board, the Federal Reserve Banks, or the Reserve Banks' financial services Web site at *http://www.frbservices.org.*

SUPPLEMENTARY INFORMATION:

I. Private Sector Adjustment Factor and Priced Services

A. *Background*—Each year, as required by the Monetary Control Act of 1980 (MCA), the Reserve Banks set fees for priced services provided to depository institutions. These fees are set to recover, over the long run, all direct and indirect costs and imputed costs, including financing costs, taxes, and certain other expenses, as well as return on equity (profit) that would have been earned if a private business firm provided the services. The imputed costs and imputed profit are collectively referred to as the PSAF. Similarly, investment income is imputed and netted with related direct costs associated with clearing balances to estimate net income on clearing balances (NICB). From 1996 through 2005, the Reserve Banks recovered 98.4 percent of their total expenses (including special project costs and imputed costs) and targeted after-tax profits or return on equity (ROE) for providing priced services.[1]

B. *Discussion*—Table 1 summarizes 2005, 2006 estimated, and 2007 budgeted cost recovery rates for all priced services. Cost recovery is estimated to be 108.2 percent in 2006, which does not include the effects of FAS 158 discussed below, and budgeted to be 101.5 percent in 2007. The performance of the check service heavily influences the aggregate cost recovery rates because the check service accounts for approximately 80 percent of the total cost of priced services. The electronic services (FedACH℠, the Fedwire® Funds Service and National Settlement Service (NSS), and the Fedwire® Securities Service) account for approximately 20 percent of total costs.[2]

On September 29, 2006, the Financial Accounting Standards Board (FASB) issued a statement that significantly affects the Reserve Banks' priced services pro forma balance sheet as well as cost recovery in 2006 and thereafter. Statement of Financial Accounting Standards No. 158: *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans* (FAS 158) requires affected employers to record the actual funded status of their benefit plans on their balance sheets effective December 31, 2006, and any changes to the funded status in subsequent years. FAS 158 does not change the method used to periodically recognize these changes to the funded status of employers' benefit plans in the income statement. Because the Reserve Banks' benefit plans have net unrecognized losses, the existing ''shareholders'' will incur a loss of value upon the initial adoption of FAS 158, which will be reflected in cost recovery beginning in 2006.[3, 4]

These gains or losses that now must be recognized on the balance sheet stem from amendments to benefit plans, changes in actuarial and earnings assumptions, and differences between actuarial assumptions and actual experience. These factors can be highly volatile in any given year and, as a result, recognizing them could cause cost recovery to be significantly above or below 100 percent. To avoid short-run volatility in priced-services fees and their impact on the financial industry, past changes to these unrecognized gains or losses under FAS 158 will not be considered when setting priced-services fees, but they will continue to be factored into the fee setting process to the extent that they are recognized through the systematic approach required by GAAP. Future changes to these unrecognized gains or losses cannot be predicted and, therefore, cannot be considered in 2007 budgeted cost recovery. In light of the recent adoption of FAS 158, the Board will continue to study how incorporating these gains or losses affects its assessment of the Federal Reserve Banks' compliance with MCA's long-run cost recovery requirement.

TABLE 1.—AGGREGATE PRICED SERVICES PRO FORMA COST AND REVENUE PERFORMANCE [a]

[$ millions]

Year	1 [b] Revenue	2 [c] Total expense	3 Net income (ROE) [1 − 2]	4 [d] Target ROE	5 [e] Recovery rate after target ROE [1/(2 + 4)] (percent)
2005	994.7	834.7	160.0	103.0	106.1
2006 (estimate)	1,020.2	871.0	149.2	72.0	108.2
2007 (budget)	980.2	885.0	95.2	80.4	101.5

[a] Calculations in this table and subsequent pro forma cost and revenue tables may be affected by rounding.

[b] Revenue includes net income on clearing balances (NICB). Clearing balances are assumed to be invested in a broad portfolio of investments, such as Treasury securities, government agency securities, commercial paper, municipal and corporate bonds, and money market and mutual funds. To impute income, a constant spread is determined from the historical average return on this portfolio and applied to the rate used to determine the cost of clearing balances. NICB equals the imputed income from these investments less earnings credits granted to holders of clearing balances. The cost of earnings credits is based on the discounted three-month Treasury bill rate.

[c] The calculation of total expense includes operating, imputed, and other expenses. Imputed and other expenses include taxes, FDIC insurance, Board of Governors' priced services expenses, the cost of float, and interest on imputed debt, if any. Credits or debits related to the accounting for pensions under FAS 87 are also included.

[d] Target ROE is the after-tax ROE included in the PSAF.

[1] The ten-year recovery rate is based upon the pro forma income statements for the Federal Reserve Banks' priced services published in the Board's *Annual Report.*

[2] FedACH and Fedwire are registered servicemarks of the Reserve Banks.

[3] As used in this context, the term ''shareholder'' does not refer to the actual member banks of the Federal Reserve System, but rather to the implied shareholders who would have an ownership interest if the Federal Reserve priced services were provided by a private firm.

[4] Before FAS 158, generally accepted accounting principles (GAAP) required employers with pension and other postretirement benefit plans to disclose the funded status of the plans in their financial statement footnotes.

[e] Cost recovery is estimated to be 77.2 percent in 2006, including the estimated loss of $378 million resulting from the implementation of FAS 158. Future changes to these unrecognized items cannot be estimated.

Table 2 presents an overview of cost recovery by service line for 2005 through 2007.

TABLE 2.—PRICED SERVICES COST RECOVERY

[percent]

Priced service	2005	2006 Budget	2006 Estimate [a]	2007 Budget [b]
All services	106.1	102.6	108.2	101.5
Check	106.1	102.4	109.1	101.5
FedACH	106.4	101.0	101.1	101.6
Fedwire Funds and NSS	106.7	105.4	109.1	102.3
Fedwire Securities	104.7	105.6	103.7	101.6

[a] Including the FAS 158 effect, the reported recovery rates are: All services—77.2%, Check—78.0%, FedACH—72.6%, Fedwire Funds and NSS—78.6%, and Fedwire Securities—65.1%.

[b] 2007 budget figures reflect the most recent data from Reserve Banks. The Reserve Banks will transmit final budget data to the Board in November 2006, for Board consideration in December 2006.

1. *2006 Estimated Performance*—The Reserve Banks estimate that they will recover 108.2 percent (77.2 percent including the effects of FAS 158) of the costs of providing priced services, including imputed expenses and targeted ROE, compared with a budgeted recovery rate of 102.6 percent, as shown in table 2. The Reserve Banks estimate that they will exceed $1 billion in revenue for the first time and that all services will achieve full cost recovery, excluding the effects of FAS 158. The Reserve Banks estimate that they will fully recover actual and imputed expenses and earn net income of $149.2 million compared with the target of $72.0 million. The greater-than-expected net income is largely driven by the performance of the check service, which had greater-than-expected Check 21 and paper return volumes, as well as greater-than-expected net income on clearing balances.

Other than the effects of FAS 158, greater-than-expected Check 21 volume has been the single most significant factor influencing priced services cost recovery as additional fee revenue has exceeded the costs of processing the unexpected volumes. The Reserve Banks have also continued their efforts to downsize their paper check-processing infrastructure as paper check volumes continue to decline nationwide. The Reserve Banks have already reduced the number of sites at which they process checks from forty-five in 2003 to twenty-two in 2006 and will discontinue processing checks at four other offices by early 2008. These check restructuring efforts have enabled the Reserve Banks to return to full cost recovery by reducing costs in line with the decline in revenues associated with paper check processing.

2. *2007 Private Sector Adjustment Factor*—The 2007 PSAF for Federal Reserve priced services is $132.5 million. This amount represents an increase of $14.8 million from the 2006 PSAF of $117.7 million. This increase is primarily due to an increase in the cost of equity.[5]

3. *2007 Projected Performance*—The Reserve Banks project a priced services cost recovery rate of 101.5 percent. The 2007 fees for priced services are projected to result in a net income of $95.2 million compared with the $80.4 million required to achieve full cost recovery. The major risks to the Reserve Banks' ability to achieve their budget targets are a greater decline in the Reserve Banks' paper check volume than the projected 24.0 percent, unanticipated problems with technological upgrades that could result in significant cost overruns, and lower-than-expected electronic payments volumes due to competition. In light of these risks, the Reserve Banks will continue to refine their business and operational strategies to improve efficiency and reduce excess capacity and other costs. These efforts should position the Reserve Banks to achieve their financial and other payment system objectives and statutory requirements over the long run.

4. *2007 Pricing*—The following summarizes the changes in the Reserve Banks' fee schedules for priced services in 2007:

Check

- The Reserve Banks will raise paper check fees for forward collection check products 5.0 percent, return check products 9.6 percent, and payor bank check products 8.1 percent.
- The Reserve Banks will decrease Check 21 fees for FedForward products delivered to electronic endpoints 12.5 percent but to increase Check 21 fees for FedForward products delivered to substitute-check endpoints 3.1 percent. The Reserve Banks also will offer a restructured deposit discount of $0.003 for each check presented through FedReceipt products. FedReturn fees will remain unchanged.
- With the 2007 fee changes, the price index for the check service will have increased 57 percent since 1997.

FedACH

- The Reserve Banks will increase the monthly subscription fee for the Informational Extract File from $10 to $20.
- With the 2007 fee change, the price index for the FedACH service will have decreased 65 percent since 1997.

Fedwire Funds and National Settlement Services

- The Reserve Banks will raise the surcharge for offline funds transfers from $20 to $30 and to decrease the online transfer fee by one cent in all pricing tiers.
- With the 2007 fee changes, the price index for the Fedwire Funds and National Settlement Services will have decreased 55 percent since 1997.

Fedwire Securities Service

- The Reserve Banks will increase the online transfer fee by two cents, the monthly maintenance fee from $15 to $16, and the surcharge for offline securities transfers from $50 to $60.
- With the 2007 fee changes, the price index for the Fedwire Securities Service

[5] The cost of equity increased due to an increase in the ROE, which is slightly offset by a reduction in imputed equity.

will have decreased 46 percent since 1997.

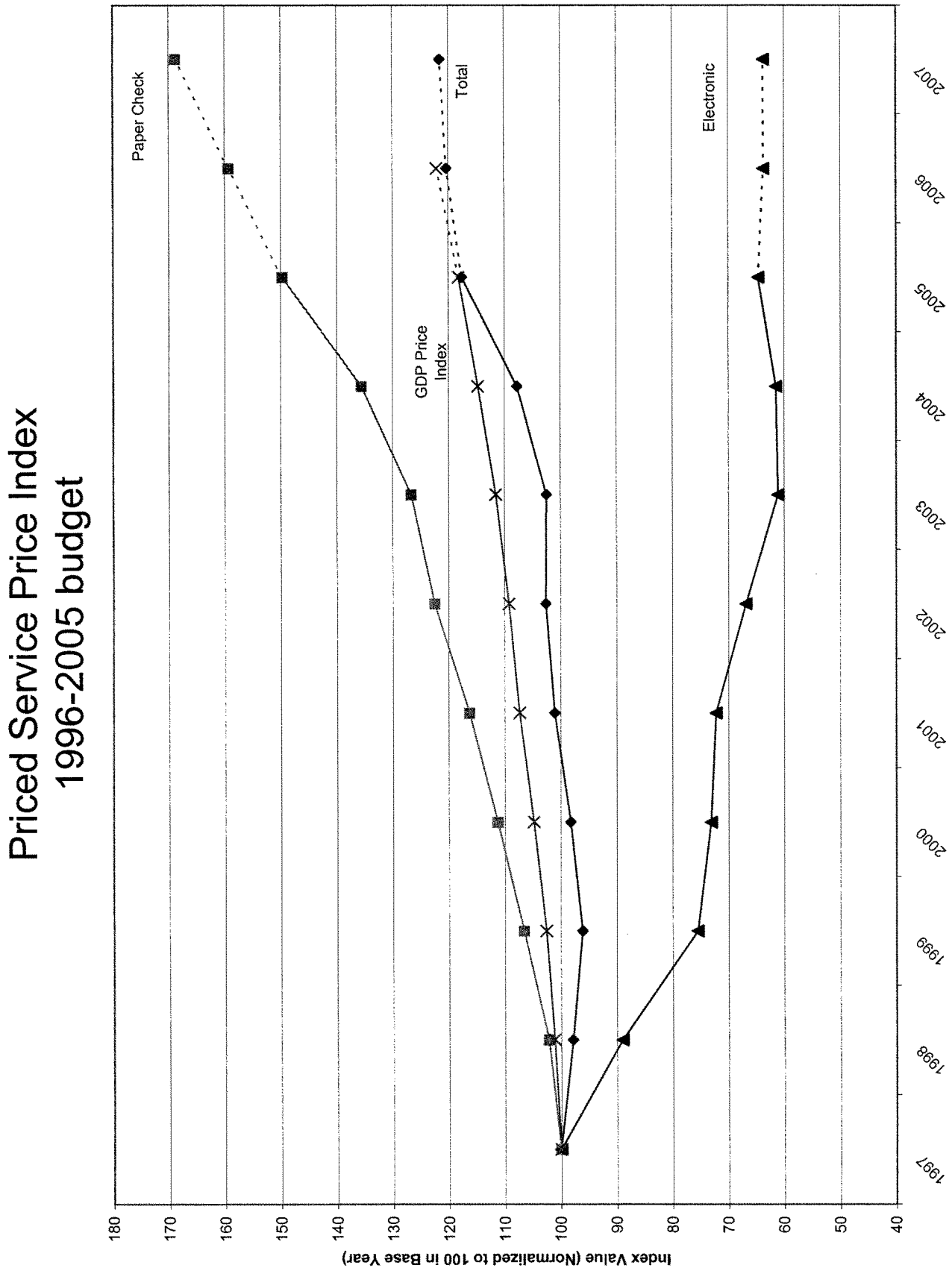
5. *2007 Price Index*—Figure 1 compares indexes of fees for the Reserve Banks' priced services with the GDP price index. The price index for all Reserve Bank priced services is projected to increase 1.0 percent in 2007, compared with the 2.3 percent growth anticipated in 2006. The price index for paper check and electronic payment services in 2007 are projected to increase 6.0 percent and 0.1 percent, respectively. Based on 2006 data available to date, the price index for all priced services is expected to increase an estimated 20.3 percent from 1997 to 2006, compared with an estimated 22.0 percent growth in the GDP price index over the same period.[6]

BILLING CODE 6210–01–P

FIGURE 1

PRICE INDEXES FOR FEDERAL RESERVE PRICED SERVICES

[6] In the first half of 2006, the GDP price index grew at an annualized rate of 3.3 percent.



C. *Private Sector Adjustment Factor*—The method for calculating the financing and equity costs in the PSAF requires determining the appropriate levels of debt and equity to impute and then applying the applicable financing

rates. In this process, a pro forma priced services balance sheet using estimated Reserve Bank assets and liabilities associated with priced services is developed, and the remaining elements that would exist if the Reserve Banks' priced services were provided by a private business firm are imputed. The same generally accepted accounting principles that apply to commercial entity financial statements also apply to the relevant elements in the priced services pro forma financial statements.

The amount of the Reserve Banks' assets that will be used to provide priced services during the coming year is determined using Reserve Bank information on actual assets and projected disposals and acquisitions. The priced portion of assets is determined based on the allocation of the related depreciation expense. The priced portion of actual Reserve Bank liabilities consists of balances held by Reserve Banks for clearing priced-services transactions (clearing balances), and other liabilities such as accounts payable and accrued expenses.

Long-term debt is imputed only when core clearing balances and long-term liabilities are not sufficient to fund long-term assets or if the interest rate risk sensitivity analysis, which measures the interest rate effect of the difference between interest rate sensitive assets and liabilities, indicates that a 200 basis point change in interest rates would change cost recovery more than two percentage points.[7] Short-term debt is imputed only when short-term liabilities and clearing balances not used to finance long-term assets are insufficient to fund short-term assets. Equity is imputed to meet the FDIC definition of a well-capitalized depository institution for insurance premium purposes and represents the market capitalization, or shareholder value, for priced services.[8] [9]

1. *Financing rates*—Equity financing rates are based on the target return on equity (ROE) result of the capital asset pricing model (CAPM). In the CAPM, the required rate of return on a firm's equity is equal to the return on a risk-free asset plus a risk premium. To implement CAPM, the risk-free rate is based on the three-month Treasury bill, the beta is assumed to be equal to 1.0, which approximates the risk of the market as a whole, and the monthly returns in excess of the risk-free rate over the most recent 40 years are used as the market risk premium. The resulting ROE influences the dollar level of the PSAF because this is the return a shareholder would expect in order to invest in a private business firm.

For simplicity, given that federal corporate income tax rates are graduated, state income tax rates vary, and various credits and deductions can apply, a specific income tax expense is not calculated for Reserve Bank priced services. Instead, the Board targets a pre-tax ROE that would provide sufficient income to fulfill its income tax obligations.[10] To the extent that the actual performance results are greater or less than the targeted ROE, income taxes are adjusted using an imputed income tax rate. Because the Reserve Banks provide similar services through their correspondent banking activities, including payment and settlement services, and equity is imputed to meet the FDIC requirements of a well-capitalized depository institution, the imputed income tax rate is the median of the rates paid by the top fifty bank holding companies (BHCs) based on deposit balance over the past five years adjusted to the extent that they invested in tax-free municipal bonds.

2. *Other Costs*—The PSAF also includes the estimated priced services-related expenses of the Board of Governors and imputed sales taxes based on Reserve Bank estimated expenditures. An assessment for FDIC insurance, when required, is imputed based on current FDIC rates and projected clearing balances held with the Federal Reserve.

3. *Net Income on Clearing Balances*—The NICB calculation is made each year along with the PSAF calculation and is based on the assumption that Reserve Banks invest clearing balances net of imputed reserve requirements and balances used to finance priced-services assets. Using these net clearing balance levels, Reserve Banks impute a constant spread, determined by the return on a portfolio of investments, over the three-month Treasury bill rate.[11] [12] The calculation also involves determining the priced-services cost of earnings credits (amounts available to offset service fees) on contracted clearing balances held, net of expired earnings credits, based on a discounted Treasury bill rate. Rates and clearing balance levels used in the NICB estimate are based on the most-recent rates and clearing balance levels.[13] Because clearing balances are held for clearing priced-services transactions or offsetting priced-services fees, they are directly related to priced services. The net earnings or expense attributed to the investments and the cost associated with holding clearing balances, therefore, are considered net income for priced services activities.

4. *Adopting FAS 158*—On September 29, 2006, FASB issued FAS 158: *Employers'' Accounting for Defined Benefit Pension and Other Postretirement Plans*. This statement, effective for fiscal years ending after December 15, 2006, requires affected employers to show the actual funded status of their benefit plans by recognizing the deferred elements related to pension and postretirement accounting as adjustments to the related assets or liabilities on their balance sheets. These deferred elements include unrecognized gains or losses (resulting from changes in actuarial assumptions, such as the discount rate, and differences between these assumptions and actual experience) and prior service costs or credits (resulting from amendments to existing benefit plans).[14] FAS 158 does not change the method used to periodically recognize these deferred elements in the income statement.

Because the Reserve Banks offer employees defined benefit pension and other postretirement benefits, the adoption of FAS 158 will affect the Reserve Banks' 2006 balance sheets and financial statement disclosures. Given that these benefits are provided to employees involved in priced services,

[7] A portion of clearing balances is used as a funding source for priced-services assets. Long-term assets are partially funded from core clearing balances, which are currently $4 billion. Core clearing balances are considered the portion of the balances that has remained stable over time without regard to the magnitude of actual clearing balances.

[8] As mentioned in footnote 3, the term ''shareholder'' does not refer to the actual member banks of the Federal Reserve System, but rather to the implied shareholders who would have an ownership interest if the Federal Reserve priced services were provided by a private firm.

[9] The FDIC requirements for a well-capitalized depository institution are (1) a ratio of total capital to risk-weighted assets of 10 percent or greater; and (2) a ratio of Tier 1 capital to risk-weighted assets of 6 percent or greater; and (3) a leverage ratio of Tier 1 capital to total assets of 5 percent or greater. The Federal Reserve priced services balance sheet has no components of Tier 1 or total capital other than equity; therefore, requirements 1 and 2 are essentially the same measurement.

[10] Other taxes, such as sales taxes, are included in priced-services actual or imputed costs.

[11] The investment portfolio is composed of investments comparable to a BHC's investment holdings, such as short-term Treasury securities, government agency securities, commercial paper, long-term corporate bonds, and money market funds. See table 7 for the investments imputed in 2007.

[12] NICB is projected to be $139.6 million for 2007 using a constant spread of 29 basis points over the three-month Treasury bill, and applying this rate to the clearing balance levels used in the 2007 pricing process. The 2006 NICB estimate is $113.2 million.

[13] July 2006 rates and balances were used to estimate the 2007 NICB.

[14] Previously, GAAP required employers with pension and other postretirement benefit plans to disclose these deferred elements in their financial statement footnotes.

the effects of the new accounting standard must also be included in the pro forma priced services balance sheet.[15] The current estimate is net unrecognized losses for the December 31, 2006, deferred elements.

To reflect the funded status of the Reserve Banks' benefit plans on the 2006 pro forma priced services balance sheet as required by FAS 158, the Reserve Banks will record a reduction in the prepaid pension asset.[16] The offset to the asset reduction will be twofold: The amount by which the pension asset is reduced, net-of-tax, will be reported as a negative component of equity called accumulated other comprehensive income (AOCI), while the remainder will be reported as a deferred tax asset.[17] Similarly, the full unfunded status of the postretirement benefits liability must be recognized by increasing the liability on the priced services pro forma balance sheet, with the offsetting net-of-tax portion of this entry reflected in AOCI and the balance assigned to the deferred tax asset.[18] Because priced-services equity is imputed at the minimum level necessary to meet the FDIC definition of a well-capitalized depository institution, any direct reduction to equity through AOCI as a result of FAS 158 will require the Reserve Banks to impute additional equity.[19, 20]

It is unclear whether a private firm with a similar balance sheet would actually raise additional equity to offset the FAS 158 balance sheet changes. Because most BHCs hold capital balances in excess of the minimum level to be considered well-capitalized, and because their pension assets and liabilities represent a comparatively small share of total equity, they may be able to absorb the FAS 158 adjustments and still maintain adequate regulatory capital levels.

For the purpose of measuring priced-services cost of equity, the Reserve Banks assume that existing shareholders will sustain an economic loss of value as a result of implementing the FAS 158 accounting changes.[21] This assumption implies that these shareholders will expect a return on only the remaining portion of their investment (original investment amount less AOCI reduction) and that the new equity investors will expect a similar return on their investment. This will leave the cost of equity, and overall PSAF, virtually unchanged from what it was before the application of FAS 158, because the existing shareholder investment that was eliminated by the AOCI reduction will be replaced by the new equity required to replenish total equity to 5 percent of total assets and remain well-capitalized according to FDIC guidelines. NICB will increase, however, because this new equity will be available for investment.

Because the Reserve Bank benefit plans have net unrecognized losses, the Reserve Bank priced services will recognize this reduction in value in cost recovery for 2006. The Reserve Bank priced services assume that existing shareholders incur these losses upon the initial implementation of FAS 158, with the losses flowing to the shareholders rather than to the firm itself. Prices for 2007 and thereafter, however, will be set to achieve full cost recovery over the long run before the annual FAS 158 adjustments, with a measure of cost-recovery performance provided for each year that includes the FAS 158 adjustment. This approach will limit the increased year-to-year price volatility that would result from including annual FAS 158 adjustments in the setting of priced-services fees. It is also consistent with the FASB's systematic approach of deferring recognition of prior service costs or credits and actuarial gains or losses to reduce the inherent volatility of these deferred items on current expense.

Including the annual FAS 158 adjustment in a measurement of priced services cost recovery, however, could produce highly variable actual cost recovery results from year-to-year that exceed or fall short of 100 percent. One component of the annual FAS 158 entry is unrecognized prior service cost, which arises from certain amendments to existing benefit plans and is amortized according to GAAP over a specific period (usually twelve to fifteen years). This factor will have a negligible effect on reported long-run cost recovery because the initial recognition of prior service cost (a negative adjustment to cost recovery) should eventually be offset by positive adjustments to cost recovery as this cost is amortized over time and incorporated into the price-setting process. The other component of the annual FAS 158 entry, unrecognized gains or losses, results from changes in actuarial assumptions (discount rates, return on plan assets, demographic changes, and so on) and differences between these assumptions and actual experience. These actuarial gains or losses could be highly volatile and may or may not offset each other for as long as the Federal Reserve continues to offer pension and postretirement benefits. For this reason, GAAP does not require the recognition of these gains or losses until they exceed a corridor of 10 percent of the greater of the benefit obligations or assets. In addition, because these factors and the resulting year-to-year changes in the associated assets and liabilities are not measured until after year-end and cannot be estimated for pricing purposes, long-run cost recovery could be greater or less than 100 percent depending on the amount of the actuarial gains or losses that are recognized each year.

5. *Analysis of the 2007 PSAF*—The increase in the 2007 PSAF is primarily due to an increase in the required ROE result provided by the CAPM, which offsets an overall reduction in imputed equity.

a. *Asset Base*—The estimated 2007 Federal Reserve assets, reflected in table 3, have decreased $1,303.0 million. There is a decline in imputed investments in marketable securities of $1,118.1 million and in imputed reserve requirements of $163.5 million, which are imputed based on the estimated level of clearing balances held, and in the prepaid pension asset of $446.9 million as a result of the FAS 158 accounting changes. These declines are slightly offset by an increase in items in process of collection of $262.2 million, due to higher estimated float receivables, and in the deferred tax asset associated with implementing FAS 158 of $159.3 million.

As shown in table 4, the assets financed through the PSAF have decreased. Short-term assets funded with short-term payables and clearing

[15] The costs associated with pension and postretirement benefits as recognized under GAAP have always been allocated to the priced services income statement as direct or indirect expense items.

[16] Although recognizing the deferred elements will result in a decrease to the pension asset and equity in 2006, the Reserve Banks could have increases or decreases to these balance sheet items in future years.

[17] Other financial accounting standards require that future tax consequences of events be recognized in an entity's financial statements. FAS 158 requires employers to compute the AOCI adjustment net-of-tax.

[18] Although recognizing the deferred elements would result in an increase to the benefits liability and decrease to equity in 2006, the Reserve Banks could have increases or decreases to these balance sheet items in future years.

[19] Under current reporting requirements, FAS 158 adjustments to equity via AOCI would be included in the calculation of Tier 1 capital for regulatory purposes, thus reducing priced-services equity to below the well-capitalized threshold.

[20] The Federal Reserve priced services could elect to restore equity to an adequate, but less than well-capitalized, level and incur the resulting FDIC assessment.

[21] The value of equity reported in the pro forma priced services balance sheet is assumed to equal the market value of equity. Because priced-services fees are set to maintain this implied shareholder value (that is, not to substantially over or underrecover), the targeted ROE equals the market return these shareholders would expect priced services to earn, or recover, each year.

balances total $10.2 million. This represents an $18.2 million decrease from the short-term assets funded in 2006 due to an increase in expected short-term payables. Long-term liabilities and equity are greater than long-term assets; therefore, no core clearing balances are used to fund long-term assets.

b. *Debt and Equity Costs and Taxes*—As previously mentioned, core clearing balances are available as a funding source for priced-services assets. Table 4 shows that $10.2 million in clearing balances is used to fund priced-services assets in 2007. The interest rate sensitivity analysis in table 5 indicates that a 200 basis point decrease in interest rates affects the ratio of rate-sensitive assets to rate-sensitive liabilities and produces a decrease in cost recovery of 1.4 percentage points, while an increase of 200 basis points in interest rates increases cost recovery by 1.5 percentage points. The established threshold for a change in cost recovery is two percentage points; therefore, interest rate risk associated with using these balances is within acceptable levels and no long-term debt is imputed.

Table 6 shows the imputed PSAF elements, the pretax ROE, and other required PSAF costs for 2006 and 2007. The increase in ROE is primarily caused by an increase in the risk-free rate of return. Sales taxes increased from $7.7 million in 2006 to $8.5 million in 2007. The effective income tax rate used in 2007 increased to 31.5 percent from 29.8 percent in 2006. The priced-services portion of the Board's expenses decreased $0.8 million from $7.5 million in 2006 to $6.7 million in 2007.

c. *Capital Adequacy and FDIC Assessment*—As shown in table 3, the amount of equity imputed for the 2007 PSAF is $742.9 million, a decrease of $65.1 million versus the imputed equity for 2006. This includes additional imputed equity of $361.0 million to offset the FAS 158 reduction to AOCI.

In 2007, the capital to total assets ratio and the capital to risk-weighted assets ratio both meet or exceed regulatory guidelines as required by the FDIC definition of a well-capitalized depository institution for insurance premium purposes. Equity is based on 5 percent of total assets, and capital to risk-weighted assets is 15.0 percent. Based on the final regulations recently adopted by the FDIC, the Reserve Bank priced services estimate a one-time assessment credit of $16.6 million. Because the estimated assessment for 2007 does not exceed the one-time assessment credit, no net FDIC assessment is imputed for 2007.

Table 3
Comparison of Pro Forma Balance Sheets
for Federal Reserve Priced Services
(millions of dollars – average for year)

	2007	2006	Change
Short-term assets			
Imputed reserve requirement on clearing balances	$ 823.4	$ 986.9	$ (163.5)
Receivables	70.1	67.0	3.1
Materials and supplies	1.1	1.0	0.1
Prepaid expenses	30.2	26.8	3.4
Items in process of collection[22]	5,388.9	5,126.7	262.2
Total short-term assets	6,313.7	6,208.4	105.3
Imputed investments	$ 7,444.5	$ 8,562.6	$ (1,118.1)
Long-term assets			
Premises[23]	395.2	385.8	9.4
Furniture and equipment	138.7	122.7	16.0
Leasehold improvements and long-term prepayments	56.6	84.6	(28.0)
Prepaid pension costs	349.1	796.0	(446.9)
Deferred tax asset	159.3	0.0	159.3
Total long-term assets	1,098.9	1,389.1	(290.2)
Total assets	$ 14,857.1	$ 16,160.1	$ (1,303.0)
Short-term liabilities[24]			
Clearing balances and balances arising from early credit of uncollected items	$ 8,322.7	$ 9,801.5	$ (1,478.8)
Deferred credit items[22]	5,300.3	5,194.2	106.1
Short-term payables	91.2	66.4	24.8
Total short-term liabilities	13,714.2	15,062.1	(1,347.9)
Long-term liabilities[24]			
Postemployment/retirement benefits	400.0	290.0	110.0
Total liabilities	14,114.2	15,352.1	(1,237.9)
Equity[25]	742.9	808.0	(65.1)
Total liabilities and equity	$ 14,857.1	$ 16,160.1	$ (1,303.0)

[22] Represents float that is directly estimated at the service level.

[23] Includes allocations of Board of Governors' assets to priced services of $1.4 million for 2006 and $1.2 million for 2007.

[24] No debt is imputed because clearing balances are used as an available funding source.

[25] The effect of the initial AOCI entry on the 2006 AOCI average daily balance is immaterial because this entry is made on December 31, 2006. The 2007 AOCI average daily balance is $(361.0) million.

Table 4
Portion of Clearing Balances Used
to Fund Priced-Services Assets
(millions of dollars)

	2007		2006	
A. Short-term asset financing				
Short-term assets to be financed:				
Receivables	$ 70.1		$ 67.0	
Materials and supplies	1.1		1.0	
Prepaid expenses	30.2		26.8	
Total short-term assets to be financed	$ 101.4		$ 94.8	
Short-term funding sources:				
Short-term payables	91.2		66.4	
Portion of short-term assets funded with clearing balances[26]		$ 10.2		$ 28.4
B. Long-term asset financing				
Long-term assets to be financed:				
Premises	$ 395.2		$ 385.8	
Furniture and equipment	138.7		122.7	
Leasehold improvements and long-term prepayments	56.6		84.6	
Prepaid pension costs	349.1		796.0	
Deferred tax asset	159.3		0.0	
Total long-term assets to be financed	$ 1,098.9		$ 1,389.1	
Long-term funding sources:				
Postemployment/retirement benefits liability	400.0		290.0	
Imputed equity[27]	742.9		808.0	
Total long-term funding sources	$ 1,142.9		$ 1,098.0	
Portion of long-term assets funded with core clearing balances[26]		$ 0.0		$ 291.1
C. Total clearing balances used for funding priced-services assets		$ 10.2		$ 319.5

[26] Clearing balances shown in table 3 are available for financing priced-services assets. Using these balances reduces the amount available for investment in the NICB calculation. Long-term assets are financed with long-term liabilities and with core clearing balances; a total of $4 billion in balances is available for this purpose. Short-term assets are financed with clearing balances not used to finance long-term assets. No short- or long-term debt is imputed.

[27] See table 6 for calculation of required imputed equity amount.

Table 5
2007 Interest Rate Sensitivity Analysis[28]
(millions of dollars)

	Rate sensitive	Rate insensitive	Total
Assets			
Imputed reserve requirement on clearing balances		$ 823.4	$ 823.4
Imputed investments	$ 7,444.5		7,444.5
Receivables		70.1	70.1
Materials and supplies		1.1	1.1
Prepaid expenses		30.2	30.2
Items in process of collection[29]	88.6	5,300.3	5,388.9
Long-term assets		1,098.9	1,098.9
Total assets	$ 7,533.1	$ 7,324.0	$ 14,857.1
Liabilities			
Clearing balances and balances arising from early credit of uncollected items[30]	$ 6,509.7	$ 1,813.0	$ 8,322.7
Deferred credit items		5,300.3	5,300.3
Short-term payables		91.2	91.2
Long-term liabilities		400.0	400.0
Total liabilities	$ 6,509.7	$ 7,604.5	$ 14,114.2

Rate change results	200 basis point decrease in rates	200 basis point increase in rates
Asset yield ($7,533.1 x rate change)	$ (150.7)	$ 150.7
Liability cost ($6,509.7 x rate change)	(130.2)	130.2
Effect of 200 basis point change	$ (20.5)	$ 20.5
2007 budgeted revenue	$ 980.2	$ 980.2
Effect of change	(20.5)	20.5
Revenue adjusted for effect of interest rate change	$ 959.7	$ 1,000.7
2007 budgeted total expenses	$ 826.0	$ 826.0
2007 budgeted PSAF	139.3	139.3
Tax effect of interest rate change ($ change x 31.5%)	(6.4)	6.4
Total recovery amounts	$ 958.9	$ 971.7
Recovery rate before interest rate change	101.5%	101.5%
Recovery rate after interest rate change	100.1%	103.0%
Effect of interest rate change on cost recovery[31]	(1.4)%	1.5%

[28] The interest rate sensitivity analysis evaluates the level of interest rate risk presented by the difference between rate-sensitive assets and liabilities. The analysis reviews the ratio of rate-sensitive assets to rate-sensitive liabilities and the effect on cost recovery of a change in interest rates of up to 200 basis points.

[29] The amount designated rate-sensitive represents the amount of cash items in process of collection that have been credited to customers prior to settlement.

[30] The amount designated rate-insensitive represents clearing balances on which earnings credits are not paid.

[31] The effect of a potential change in rates is less than a 2 percentage point change in cost recovery; therefore, no long-term debt is imputed for 2007.

Table 6
Derivation of the 2007 and 2006 PSAF
(millions of dollars)

		2007			2006	
A. Imputed elements						
Short-term debt[32]		$ 0.0			$ 0.0	
Long-term debt[33]		$ 0.0			$ 0.0	
Equity						
Total assets from table 3	$ 14,857.1			$ 16,160.1		
Required capital ratio[34]	5%			5%		
Total equity		$ 742.9			$ 808.0	
B. Cost of capital						
1. Financing rates/costs						
Short-term debt		N/A			N/A	
Long-term debt		N/A			N/A	
Pretax return on equity		15.8%			12.7%	
2. Elements of capital costs						
Short-term debt			$ 0.0			$ 0.0
Long-term debt			0.0			0.0
Equity[35]	$ 742.9 x	15.8% =	117.3	$ 808.0 x	12.7% =	102.5
			$ 117.3			$ 102.5
C. Other required PSAF costs						
Sales taxes		$ 8.5			$ 7.7	
Federal Deposit Insurance Corporation assessment		0.0			0.0	
Board of Governors expenses		6.7			7.5	
			15.2			15.2
D. Total PSAF			$ 132.5			$ 117.7
As a percent of assets			0.9%		0.7%	
As a percent of expenses[36]			16.3%		15.8%	
E. Tax rates			31.5%		29.8%	

[32] No short-term debt is imputed because clearing balances are used as a funding source for those assets that are not financed with short-term payables.

[33] No long-term debt is imputed because clearing balances are used as a funding source.

[34] Based on the FDIC's definition of a well-capitalized institution for purposes of assessing insurance premiums.

[35] The 2007 ROE is equal to a risk-free rate plus a risk premium (beta*market risk premium). The 2007 after-tax CAPM ROE is calculated as 5.18% + (1*5.64%) = 10.82%. Using a tax rate of 31.5%, the after-tax ROE is converted into a pretax ROE, which results in a pretax ROE of (10.82% / (1-31.5%)) = 15.8%.

[36] System 2007 budgeted priced services expenses less shipping are $811.1 million.

Table 7
Computation of 2007 Capital Adequacy
for Federal Reserve Priced Services
(millions of dollars)

	Assets	Risk Weight	Weighted Assets
Imputed reserve requirement on clearing balances	$ 823.4	0.0	$ 0.0
Imputed investments:			
1 – year Treasury note[37]	4,481.1	0.0	0.0
Commercial paper (1 month)[37]	2,305.1	1.0	2,305.1
Commercial paper (3 months)[37]	367.6	1.0	367.6
GNMA mutual fund[38]	290.7	0.2	58.1
	$ 8,267.9		$ 2,730.8
Receivables	70.1	0.2	14.0
Materials and supplies	1.1	1.0	1.1
Prepaid expenses	30.2	1.0	30.2
Items in process of collection	5,388.9	0.2	1,077.8
Premises	395.2	1.0	395.2
Furniture and equipment	138.7	1.0	138.7
Leasehold improvements and long-term prepayments	56.6	1.0	56.6
Prepaid pension costs	349.1	1.0	349.1
Deferred tax asset	159.3	1.0	159.3
Total	$ 14,857.1		$ 4,952.8
Imputed equity for 2007	$ 742.9		
Capital to risk-weighted assets	15.0 %		
Capital to total assets	5.0 %		

[37] The imputed investments are assumed to be similar to those for which rates are available on the Federal Reserve's H.15 statistical release, which can be located at http://www.federalreserve.gov/releases/h15/data.htm.

[38] The imputed mutual fund investment is based on Vanguard's GNMA Fund Investor Shares fund, which was chosen based on the investment strategies articulated in its prospectuses. The fund returns can be located at https://flagship.vanguard.com/VGApp/hnw/FundsByType.

D. *Earnings Credits on Clearing Balances*—The Board has approved maintaining the current rate of 80 percent of the three-month Treasury bill rate to calculate earnings credits on clearing balances.[39] The Reserve Banks

[39] Two adjustments are applied to the earnings credit rate so that the return on clearing balances at the Federal Reserve is comparable to what the depository institution (DI) would have earned had it maintained the same balances at a private-sector correspondent. The "imputed reserve requirement" adjustment is made because a private-sector

will continue to calculate earnings credits (amounts available to offset service fees) for the marginal reserve requirement adjusted portion of clearing balances at the federal funds rate.[40]

Clearing balances were introduced in 1981, as a part of the Board's implementation of the Monetary Control Act, to facilitate access to Federal Reserve priced services by institutions that did not have sufficient reserve balances to support the settlement of their payment transactions. The earnings credit calculation uses a percentage discount on a rolling thirteen-week average of the annualized coupon equivalent yield of three-month Treasury bills in the secondary market. Earnings credits, which are calculated monthly, can be used only to offset charges for priced services and expire if not used within one year.[41]

E. *Check Service*—Table 8 below shows the 2005, 2006 estimate, and 2007 budgeted cost recovery performance for the commercial check service.

TABLE 8.—CHECK PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1 − 2]	4 Target ROE	5 Recovery rate after target ROE [1/(2 + 4)] (Percent)
2005	817.5	688.7	128.7	82.0	106.1
2006 (estimate)	837.4	710.8	126.6	57.1	[a] 109.1
2007 (budget)	784.3	709.9	74.4	63.2	101.5

[a] Including FAS 158, the estimated cost recovery for the check service is 78.0%.

1. *2006 Estimate*—For 2006, the Reserve Banks estimate that the check service will recover 109.1 percent of total expenses and targeted ROE, compared with the budgeted recovery rate of 102.4 percent. The Reserve Banks expect to recover all actual and imputed expenses of providing check services and earn net income of $126.6 million (see table 8).

The higher-than-budgeted cost recovery is the result of revenue that was $103.0 million higher than expected, which was partially offset by expenses that were $50.7 million greater than budgeted. The higher revenue is due to greater-than-budgeted electronic check collection and paper check return volumes, as well as greater-than-expected NICB. The higher costs were largely due to greater-than-budgeted personnel and materials costs related to Check 21 substitute check printing, pension costs, and imputed taxes.

The greater-than-expected electronic check volume can be attributed to faster-than-anticipated adoption of Check 21 products. The number of checks deposited and presented electronically has grown steadily in 2006 (see table 9). Year-to-date through August 2006, 10.3 percent of the Reserve Banks'' volume was deposited and 2.2 percent was presented using Check 21 products.[42] Depository institutions have been slower to accept check presentments electronically because financial incentives are generally stronger for electronic check deposit and because integrating electronic presentments into back-office processing and risk-management systems can be a complex and expensive undertaking.

Year-to-date figures, however, understate the current penetration rate of Check 21 products, as volume has increased throughout 2006. In August 2006, the Check 21 deposit penetration rate rose to 16.6 percent. This volume represents 42 percent of the value of checks collected through the Reserve Banks because many depository institutions are using Check 21 products to collect their higher value checks more rapidly. Recent trends, however, indicate that the average value of checks deposited using Check 21 products will decline because an increasing number of depository institutions are choosing to clear all of their checks using these products.

correspondent would be required to hold reserves against the respondent's balance with it. As a result, the correspondent would reduce the balance on which it would base earnings credits for the respondent because it would be required to hold a portion, determined by its marginal reserve ratio, in the form of non-interest-bearing reserves. For example, if a DI held $1 million in clearing balances with a correspondent bank and the correspondent had a marginal reserve ratio of 10 percent, then the correspondent bank would be required to hold $100,000 in reserves, and it would typically grant credits to the respondent based on 90 percent of the balance, or $900,000. This adjustment imputes a marginal reserve ratio of 10 percent to the Reserve Banks.

The ''marginal reserve requirement'' adjustment accounts for the fact that the respondent can deduct balances maintained at a correspondent, but not the Federal Reserve, from its reservable liabilities. This reduction has value to the respondent when it frees up balances that can be invested in interest-bearing instruments, such as federal funds. For example, a respondent placing $1 million with a correspondent rather than the Federal Reserve would free up $30,000 if its marginal reserve ratio were 3 percent.

The formula used by the Reserve Banks to calculate earnings credits can be expressed as

$$e = [\, b * (1 - FRR) * r] + [\, b * (MRR) * f]$$

Where e is total earnings credits, b is the average clearing balance maintained, FRR is the assumed Reserve Bank marginal reserve ratio (10 percent), r is the earnings credit rate, MRR is the marginal reserve ratio of the DI holding the balance (either 0 percent, 3 percent, or 10 percent), and f is the average federal funds rate. A DI that meets its reserve requirement entirely with vault cash is assigned a marginal reserve requirement of zero.

[40] This calculation adjusts earnings credits as though account holders could adjust their reserve requirement for a ''due from deduction'' for clearing balances held with a Reserve Bank.

[41] A band is established around the contracted clearing balance to determine the maximum balance on which credits are earned as well as any deficiency charges. The clearing balance allowance is 2 percent of the contracted amount, or $25,000, whichever is greater. Earnings credits are based on the period-average balance maintained up to a maximum of the contracted amount plus the clearing balance allowance. Deficiency charges apply when the average balance falls below the contracted amount less the allowance, although credits are still earned on the average maintained balance.

[42] The Reserve Banks also offer non-Check 21 electronic presentment products. In August 2006, 26.0 percent of the Reserve Banks' deposit volume was presented to paying banks using these products. The majority of checks presented through non-Check 21 electronic presentment products are delivered to the paying banks.

[43] The Reserve Banks' Check 21 product suite includes FedForward, FedReturn, and FedReceipt. FedForward is the electronic alternative to forward check collection; FedReturn is the electronic alternative to paper check return; and FedReceipt products are electronic receipt of Check 21 items. Under FedReceipt, the Reserve Banks electronically present only the checks that were deposited electronically or that were deposited in paper form and converted into electronics by the Reserve Banks. Under FedReceipt Plus, the Reserve Banks electronically present all checks drawn on the customer.

TABLE 9.—CHECK 21 PRODUCT PENETRATION RATES [43]

[Percent] [a]

	2005	August 2006 year-to-date	August 2006 actual
Deposit	1.9	10.3	16.6
FedForward	1.6	9.4	15.5
Paper to Check 21	0.3	0.9	1.0
Presentment	0.0	2.2	4.8
FedReceipt	0.0	0.1	0.1
FedReceipt Plus	0.0	2.1	4.7
Return:			
FedReturn	3.7	14.5	21.4

[a] Deposit and presentment statistics are calculated as a percentage of total forward collection volume. Return statistics are calculated as a percentage of total return volume.

For full-year 2006, the Reserve Banks estimate that paper forward-collection volume will decline 17.1 percent compared with a budgeted decline of 14.0 percent as more volume is deposited electronically (see table 10). Through August, paper forward-collection volume has decreased 16.6 percent compared with the same period in 2005. Through August, paper return check volume has decreased 17.5 percent from the same period in 2005. The Reserve Banks estimate that paper return volume will decline 21.2 percent for the full year compared with a budgeted decline of 31.7 percent.

TABLE 10.—PAPER CHECK PRODUCT VOLUME CHANGES

[Percent]

	Budgeted 2006 change	Actual change through August 2006	Estimated 2006 change
Total forward collection	−14.0	−16.6	−17.1
Returns	−31.7	−17.5	−21.2

2. *2007 Pricing*—In 2007, the Reserve Banks project that the check service will recover 101.5 of total expenses and targeted ROE.

Revenue is projected to be $784.3 million, a decline of 6.2 percent compared with the 2006 estimate. This decline is driven by a $121.7 million drop in paper check fee revenue that is partially offset by a $52.7 million increase in Check 21 fee revenue.

Total expenses for the check service are projected to be $709.9 million, representing a $0.9 million decline. Increases in the pension costs and one-time expenses associated with the Check 21 initiative and the consolidation of check-processing offices will be offset by ongoing cost savings associated with projected declines in paper-check volume and efficiency improvements at restructuring sites. These cost reductions should enable the Reserve Banks to maintain full cost recovery. A key driver in the reduction of local check costs is the planned restructuring of four more check-processing sites by the second quarter of 2008.[44]

The Reserve Banks project that paper-check volume for forward products will decrease 24.0 percent, volume for return products will decrease 21.3 percent, and volume for payor bank products will decrease 5.5 percent. These expected volume declines will be partially offset by a projected increase in Check 21 volumes (see table 11). The Reserve Banks project that FedForward volume will increase 97.1 percent, FedReturn volume will increase 112.3 percent and FedReceipt Plus volume will increase 342.8 percent. The Reserve Banks' projected increase in Check 21 volume will result in a 49.5 percent increase in Check 21 product revenue to about $159 million. Board and Reserve Bank staff believe that the key to realizing Check 21 cost efficiencies for the System continues to be the widespread acceptance of electronic check presentments by paying banks.

TABLE 11.—CHECK 21 VOLUME

	2007 Budgeted volume (millions of items)	Growth from 2006 estimate (percent)
FedForward	2,636.4	97.1
FedReturn	44.7	112.3
FedReceipt Plus	1,686.8	342.8

[44] In February 2003, the Reserve Banks announced an initiative to reduce the number of sites at which they process checks from forty-five to thirty-two. The Reserve Banks announced further rounds of restructurings in August 2004, May 2005, and May 2006. By the end of these announced restructurings in early 2008, the Reserve Banks will have eighteen check processing sites.

In 2007, the Reserve Banks will continue to encourage the adoption of electronic check collection and presentment alternatives through price increases to paper-check products and price reductions for strategic electronic products. The price increases for paper products generally are distributed across most product categories, with generally higher price increases for nonstrategic product lines. The Reserve Banks also will continue to narrow the price ranges for similar products across the System. In addition, the Reserve Banks will offer depository institutions greater incentives to deposit and accept checks electronically. As the use of Check 21-related products increases, the prices of paper products may be raised further to encourage adoption of electronic check collection and presentment alternatives.

For 2007, the Reserve Banks are targeting an overall price increase for paper-check services of 6.0 percent, including a 5.0 percent increase in forward-check collection fees and a 9.6 percent increase in return-services fees (see table 12). In addition, prices for payor bank services will increase 8.1 percent. To encourage further the adoption of electronic presentment, the Reserve Banks will decrease 12.5 percent the price for Check 21 items that are presented electronically, and increase 3.1 percent the price for Check 21 items that are presented as substitute checks. In addition, the Reserve Banks will offer a $0.003 discount per check presented through FedReceipt products to further encourage their adoption. This discount will be applied to fees for checks deposited with the Reserve Banks.

TABLE 12.—2007 FEE CHANGES

[Percent]

Product	Fee change
Paper check	6.0
Forward collection	5.0
Returns	9.6
Payor bank services	8.1
Check 21:	
FedForward (electronic endpoints)	−12.5
FedForward (substitute check endpoints)	3.1
FedReturn	0.0
FedReceipt products	[a] −$0.003

[a] FedReceipt customers will receive a $0.003 discount per check presented. The discount can be used to offset fees for checks they deposit with the Reserve Banks.

The primary risks to meeting the Reserve Banks' budgeted 2007 cost recovery are higher-than-expected declines in paper check volume and slower-than-expected adoption by paying banks of FedReceipt products, as the manual processes associated with printing substitute checks and preventing duplicate checks from entering the processing environment will exert upward pressure on staffing levels and costs. Competitive pressure from direct electronic exchanges also poses a risk to the Reserve Banks' projected cost recovery. Other risks include unanticipated problems with check office restructurings or other major initiatives that may result in significant cost overruns.

F. *FedACH Service*—Table 13 below shows the 2005, 2006 estimate, and 2007 budgeted cost recovery performance for the commercial FedACH service.

TABLE 13.—FEDACH PRO FORMA COST AND REVENUE PERFORMANCE

[$ Millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1 − 2]	4 Target ROE	5 Recovery rate after target ROE [1/(2 + 4)] (percent)
2005	87.4	72.2	15.2	10.0	106.4
2006 (estimate)	89.7	81.2	8.5	7.5	[a] 101.1
2007 (budget)	99.9	89.5	10.4	8.8	101.6

[a] Including FAS 158, the estimated cost recovery for the FedACH service is 72.6%.

1. *2006 Estimate*—The Reserve Banks estimate that the FedACH service will recover 101.1 percent of total expenses and targeted ROE, compared with the budgeted recovery rate of 101.6 percent. The Reserve Banks expect to recover all actual and imputed expenses of providing FedACH services and earn net income of $8.5 million. Through August, FedACH commercial origination volume is 11.9 percent higher than the same period last year. For full-year 2006, the Reserve Banks estimate that FedACH originations will grow 12.4 percent, compared with the budgeted growth of 7.6 percent, because of greater-than-expected volume from Electronic Payments Network (EPN), the other ACH operator.

2. *2007 Pricing*—The Reserve Banks will maintain processing and service fees at current levels with one exception. The monthly subscription fee for the Information Extract File will increase from $10 to $20.[45] Pricing for this service has remained at $10 since its inception in 1998, and the higher price more accurately reflects the value of the file to the receiving depository institution.

The Reserve Banks project that the FedACH service will recover 101.6 percent of total expenses and targeted ROE in 2007. Total revenue is budgeted to increase $10.2 million from the 2006 estimate. Nationwide ACH volumes are expected to continue growing at double digit rates. This expected growth is largely attributable to volume increases associated with electronic check conversion applications—including checks converted at lockboxes or at the point of purchase. In early 2007, ACH rule changes will permit checks to be converted in processing centers or back offices, spurring further growth in ACH check conversion volume. The Reserve Banks expect FedACH commercial origination volume to grow by 12.0 percent. The primary risk to meeting the Reserve Banks' budgeted 2007 cost recovery is the loss of large ACH originators to EPN. Total expenses are budgeted to increase $8.3 million over the 2006 estimate. The Reserve Banks have budgeted increased costs for product development and service

[45] The Information Extract File provides depository institutions with a file containing financial electronic data interchange information if their service providers cannot process and translate such information.

initiatives, such as FedACH risk management services.

G. *Fedwire Funds and National Settlement Services*—Table 14 below shows the 2005, 2006 estimate, and 2007 budgeted cost recovery performance for the Fedwire Funds and National Settlement Services.

TABLE 14.—FEDWIRE FUNDS AND NATIONAL SETTLEMENT SERVICES PRO FORMA COST AND REVENUE PERFORMANCE

[$ Millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1 − 2]	4 Target ROE	5 Recovery rate after target ROE [1/(2 + 4)] (percent)
2005	67.3	55.2	12.1	7.9	106.7
2006 (estimate)	71.3	59.7	11.6	5.6	[a] 109.1
2007 (budget)	72.7	64.7	8.0	6.3	102.3

[a] Including FAS 158, the estimated cost recovery for the Fedwire Funds and National Settlement Services is 78.6%.

1. *2006 Estimate*—The Reserve Banks estimate that the Fedwire Funds and National Settlement Services will recover 109.1 percent of total expenses and targeted ROE, compared with a 2006 budgeted recovery rate of 105.4 percent. The greater-than-expected recovery rate is primarily attributed to higher-than-expected electronic connection revenue and NICB, which offsets slightly lower-than-expected fee revenue, as well as lower-than-budgeted operating costs. Through August 2006, online funds volume was 1.2 percent higher than it was for the same period last year. For full-year 2006, the Reserve Banks estimate that online funds volume will remain flat, compared with a budgeted growth of 3.0 percent, as they lose market share to CHIPS, their primary competitor. With respect to the National Settlement Service, the Reserve Banks estimate that the volume of settlement entries processed during 2006 will be 4.3 percent higher than the 2006 budget projection of flat growth.

2. *2007 Pricing*—The Reserve Banks will decrease the online transfer fee by one cent in all pricing tiers and to raise the surcharge for offline transfers from $20 to $30. The one cent price reduction for online transfers should mitigate potential volume losses to CHIPS while the offline surcharge increase is intended to provide incentives for offline customers to migrate to online access.

In 2007, the Reserve Banks expect the Fedwire Funds and National Settlement Services to recover 102.3 percent of total expenses and targeted ROE. The Reserve Banks project 2007 total revenue to increase $1.4 million compared with the 2006 estimate. Total expenses for 2007 are budgeted to increase $5.0 million from the 2006 estimate primarily because of security and technology investments, including the cost of network modernization and enhancements to resiliency. Online volumes for 2007 are budgeted to remain flat compared with 2006 estimates.

H. *Fedwire Securities Service*—Table 15 shows the 2005, 2006 estimate, and 2007 budgeted cost recovery performance for the Fedwire Securities Service.[46]

TABLE 15.—FEDWIRE SECURITIES SERVICE PRO FORMA COST AND REVENUE PERFORMANCE

[$ Millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1 − 2]	4 Target ROE	5 Recovery rate after target ROE [1/(2 + 4)] (percent)
2005	21.3	17.4	3.8	2.9	104.7
2006 (estimate)	21.8	19.3	2.5	1.8	[a] 103.7
2007 (budget)	23.3	20.9	2.4	2.0	101.6

[a] Including FAS 158, the estimated cost recovery for the Fedwire Securities Service is 65.1%.

1. *2006 Estimate*—The Reserve Banks estimate that the Fedwire Securities Service will recover 103.7 percent of total expenses and targeted ROE, compared with a 2006 budgeted recovery rate of 105.6 percent. The lower-than-budgeted recovery is attributable to lower-than-expected fee revenue. The shortfall in fee revenue, however, is partially offset by higher-than-expected NICB revenue and lower-than-budgeted operating costs. Through August 2006, online securities volume was 3.3 percent lower than it was during the same period last year. For full-year 2006, the Reserve Banks estimate that online securities volume will be 3.0 percent lower than the 2006 budget projection. The lower-than-budgeted volume is due to a slowdown in mortgage financing.

2. *2007 Pricing*—The Reserve Banks will increase the online transfer fee by two cents, increase the monthly maintenance fee from $15 to $16, and raise the offline transfer origination and receipt surcharge from $50 to $60. The

[46] The Reserve Banks provide transfer services for securities issued by the U.S. Treasury, federal government agencies, government-sponsored enterprises, and certain international institutions. The priced component of this service, reflected in this memorandum, consists of revenues, expenses, and volumes associated with the transfer of all non-Treasury securities. For Treasury securities, the U.S. Treasury assesses fees for the securities transfer component of the service. The Reserve Banks assess a fee for the funds settlement component of a Treasury securities transfer; this component is not treated as a priced service.

increases will more closely align the fee and surcharges with the costs of providing these services.

The Reserve Banks project that the Fedwire Securities Service will recover 101.6 percent of total expense and targeted ROE in 2007. Total revenue is budgeted to increase $1.5 million from the 2006 estimate. Total expenses are expected to increase $1.6 million from the 2006 estimate. The Reserve Banks continue to invest in new technologies to migrate the Fedwire Securities Service applications to a distributed processing platform. Online and offline securities volumes in 2007 are projected to be unchanged against 2006 estimates.

I. *Electronic Access* —The Reserve Banks allocate the costs and revenues associated with electronic access to the Reserve Banks' priced services.[47] There are currently four types of electronic access channels through which customers can access the Reserve Banks' priced services: FedPhone®, FedMail®, FedLine®, and Computer Interface (mainframe to mainframe).[48] For 2007, the Reserve Banks will make changes to simplify the electronic access pricing structure by offering packaged solutions that include electronic access and accounting information services and eliminating a number of discrete service fees.

The Reserve Banks will offer seven electronic access packages that are supplemented by a number of premium (or à la carte) access and accounting information options. The first package provides access to information services through FedMail E-mail. The next two packages are FedLine Web packages, with three or five subscribers, that offer access to basic information and check services. The next two packages are FedLine Advantage packages, with three or five subscribers, that build upon the FedLine Web packages and offer access to FedACH and Fedwire services. The final two packages are FedLine Command and FedLine Direct, which allow for unattended connections over the Internet or through dedicated connections. FedLine Command is designed for FedACH functionality, while FedLine Direct, which is the replacement channel for Computer Interface customers, has both FedACH and Fedwire functionality. Both FedLine Command and FedLine Direct build upon the FedLine Advantage packages and include most accounting information services. The packaging of services will allow the Reserve Banks to eliminate many of the discrete fees associated with electronic access and accounting information services, such as setup fees, individual subscriber fees, and accounting report fees. The seven electronic access packages were developed based on current usage patterns and market studies.

In addition to the packaging of electronic access and accounting information services, the Reserve Banks will offer other changes to electronic access pricing for 2007. In particular, the Reserve Banks will begin charging $15 per month for FedMail E-mail for customers who only use the FedMail E-mail channel to access the Reserve Banks' priced services. Customers who access Reserve Banks' priced services through a FedLine connection will receive FedMail E-mail as part of their packaged solution. FedMail Fax will increase from $15 to $25 and will be offered only as a premium option. The Reserve Banks also will increase fees on FedLine Direct customers. The fee increases will be used, in part, to recover the costs of building and deploying the new Internet Protocol-based FedLine Direct access channel. FedLine Direct and the access channel that it is replacing, Computer Interface, are used by high volume customers, which are typically the largest depository institutions.

II. Analysis of Competitive Effect

All operational and legal changes considered by the Board that have a substantial effect on payments system participants are subject to the competitive impact analysis described in the March 1990 policy, ''The Federal Reserve in the Payments System.''[49] Under this policy, the Board assesses whether the proposed changes would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services because of differing legal powers or constraints or because of a dominant market position deriving from such legal differences. If the change creates such an effect, the Board must further evaluate the change to assess whether its benefits—such as contributions to payment system efficiency, payment system integrity, or other Board objectives—can be retained while minimizing the adverse effect on competition.

The Board believes that the 2007 fees, fee structures, or changes in service will not have a direct and material adverse effect on the ability of other service providers to compete effectively with the Reserve Banks in providing similar services. The changes should permit the Reserve Banks to earn an ROE that is comparable to overall market returns.

FEDACH SERVICE 2007 FEE SCHEDULE

[Effective January 2, 2007. Bold indicates changes from 2006 prices]

	Fee
Origination (per item or record):[50]	
Items in small files	$0.0030
Items in large files	0.0025
Addenda record	0.0010
Input file processing fee (per file):.	2.50
Receipt (per item or record):[51]	
Item	0.0025
Addenda record	0.0010
Risk Product:	
Risk service subscription	20.00/RTN/month
Risk origination monitoring criteria.	15.00/set of criteria/month
Risk origination monitoring batch.	0.0025/batch
Monthly fee (per routing number):	
Account servicing fee[52]	25.00
FedACH settlement[53]	20.00
Information extract file	**20.00**
FedLine Web origination returns and notification of change (NOC) fee:[54].	0.30
Voice response returns/NOC fee:[55].	2.00
Non-electronic input/output fee:[56]	
Tape input/output	25.00
Paper output	15.00
Facsimile exception returns/NOC[57].	15.00
Canadian cross-border fee:	
Cross-border item surcharge[58].	0.039
Return received from Canada[59].	0.77
Same-day recall of item at receiving gateway operator.	4.00
Same-day recall of item not at receiving gateway operator.	7.00
Trace of item at receiving gateway.	3.50
Trace of item not at receiving gateway.	5.00
Mexico service fee:	
Cross-border item surcharge[58].	0.67
Return received from Mexico[59].	0.69

[47] Certain electronic access fees are recorded as recoveries that offset the cost of providing these services. These fees are for ancillary services, such as training and vendor pass-through charges. Therefore, these fees are not listed in the electronic access 2007 fee schedule below.

[48] FedPhone, FedMail, and FedLine are registered servicemarks of the Reserve Banks. These connections may also be used to access nonpriced services provided by the Reserve Banks. FedPhone is a free access option. In 2007, Computer Interface will become part of the FedLine Direct package.

[49] Federal Reserve Regulatory Service (FRRS) 9–1558.

FEDACH SERVICE 2007 FEE SCHEDULE—Continued

[Effective January 2, 2007. Bold indicates changes from 2006 prices]

	Fee
Item trace	11.50
Transatlantic service fee:	
Cross-border item surcharge [58].	
Austria	2.00
Germany	2.00
The Netherlands	2.00
Switzerland	2.00
United Kingdom	2.00
Return received [59].	
Austria	5.00
Germany	8.00
The Netherlands	5.00
Switzerland	5.00
United Kingdom	8.00

FEDWIRE FUNDS AND NATIONAL SETTLEMENT SERVICES 2007 FEE SCHEDULE

[Effective January 2, 2007. Bold indicates changes from 2006 prices.]

	Fee
Fedwire Funds Service	
Basic volume-based transfer fee (originations and receipts).	
Per transfer for the first 2,500 transfers per month	**$0.29**
Per transfer for additional transfers up to 80,000 per month	**0.19**
Per transfer for every transfer over 80,000 per month	**0.09**
Surcharge for offline transfers (originations and receipts)	**30.00**
National Settlement Service	
Basic :	
Settlement entry fee	$0.80
Settlement file fee	14.00
Surcharge for offline file origination	25.00
Minimum monthly charge (account maintenance) [60]	60.00
Special settlement arrangements [61].	
Fee per day	100.00

FEDWIRE SECURITIES SERVICE 2007 FEE SCHEDULE (NON-TREASURY SECURITIES)

[Effective January 2, 2007. Bold indicates changes from 2006 prices.]

	Fee
Basic transfer fee.	
Transfer or reversal originated or received	**$0.34**
Surcharge.	
Offline transfer or reversal originated or received	**60.00**
Monthly maintenance fees.	
Account maintenance (per account)	**16.00**
Issues maintained (per issue/per account)	0.40
Claim adjustment fee	0.30
Joint custody fee	40.00

ELECTRONIC ACCESS 2007 FEE SCHEDULE

[Effective January 2, 2007 (unless otherwise indicated). Bold indicates changes from 2006 prices.]

Electronic Access Packages (monthly):	
FedMail E-mail	**$15.00**
FedLine Web W3 Includes:	**80.00**

[50] Small files contain fewer than 2,500 items and large files contain 2,500 or more items. These origination fees do not apply to items that the Reserve Banks receive from the private-sector ACH operator.

[51] Receipt fees do not apply to items that the Reserve Banks send to the private-sector ACH operator.

[52] The account servicing fee applies to routing numbers that have received or originated FedACH transactions. Institutions that receive only U.S. government transactions or that elect to use the other operator exclusively are not assessed the account servicing fee.

[53] The FedACH settlement fee is applied to any routing number with activity during a month. This fee does not apply to routing numbers that use the Reserve Banks for government transactions only.

[54] The fee includes the transaction and addenda fees.

[55] The fee includes the transaction fee in addition to the voice response fee.

[56] These services are offered for contingency situations only.

[57] The fee includes the transaction fee in addition to the conversion fee.

[58] This per-item surcharge is in addition to the standard domestic origination and input file processing fees.

[59] This per-item surcharge is in addition to the standard domestic receipt fees.

[60] This minimum monthly charge will only be assessed if total settlement charges during a calendar month are less than $60.

[61] Special settlement arrangements use Fedwire funds transfers to effect settlement. Participants in arrangements and settlement agents are also charged the applicable Fedwire funds transfer fee for each transfer into and out of the settlement account.

ELECTRONIC ACCESS 2007 FEE SCHEDULE—Continued

[Effective January 2, 2007 (unless otherwise indicated). Bold indicates changes from 2006 prices.]

FedMail E-mail.	
FedLine Web with three individual subscriptions.	
Service Charge Information (SCI).	
Account Management Information (AMI).	
* Premium options limited to FedMail Fax and electronic access training.	
FedLine Web W5 Includes:	**125.00**
FedMail E-mail.	
FedLine Web with five individual subscriptions.	
Service Charge Information (SCI).	
Account Management Information (AMI).	
Cash Management System Basic—Own report only.	
FedLine Advantage A3 Includes:	**300.00**
FedLine Web W3 package.	
FedLine Advantage with three individual subscriptions.	
Virtual Private Network (VPN) maintenance.	
* Premium options limited to FedMail Fax and electronic access training.	
FedLine Advantage A5 Includes:	**350.00**
FedLine Web W5 package.	
FedLine Advantage with five individual subscriptions.	
VPN maintenance.	
Intraday search download feature within AMI.	
FedLine Command Includes:	**650.00**
FedLine Advantage A5 package.	
One dedicated unattended connection over the Internet for ACH services	
Billing Data Format File (BDFF)	
Intra-Day File	
End-of-Day File (FIRD)	
Statement of Account Spreadsheet File (SASF)	
FedLine Direct D56, D256, DT1 Includes:	**D56 $2,000.00, D256 $3,000.00, and DT1 $3,500.00**
FedLine Command package	
One dedicated unattended connection for Computer Interface or FedLine Direct	
Premium Options:	
Electronic Access	
FedMail Fax (monthly per fax line)	**25.00**
Additional subscribers package (each package contains 5 additional subscribers).	**75.00**
Maintenance of additional VPN	**50.00**
Additional dedicated connections [62]	
Primary:	56K—750.00
	256K—1,750.00
	T1—2,250.00
Contingency:	56K—650.00
	256K—1,650.00
	T1—2,150.00
FedImage/Check 21 Large File Delivery	Various
Accounting Information Services	
Cash Management System	
Basic—Respondent and/or subaccount reports (per report/month)	7.00
Basic—Respondent/subaccount recap report (per month)	35.00
Plus—Own report up to six times a day (per month)	50.00
Plus—Fewer than 10 respondent and/or subaccounts and SASF (per month).	100.00
Plus—10 or more respondent and/or subaccounts and SASF (per month).	200.00
End-of-day reconcilement file (FIRD) (per month)	100.00
Statement of account spreadsheet file (SASF) (per month)	100.00
Intraday search download file (per month)	100.00

By order of the Board of Governors of the Federal Reserve System, November 14, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 06–9333 Filed 11–21–06; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notification and Obligation of the Federal Employee Antidiscrimination and Retaliation Act of 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the notification and obligation of the Federal Employee Antidiscrimination and Retaliation Act of 2002 (No Fear Act). This notice is in compliance with the notification provisions set forth in Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002. The No FEAR Act requires that all Federal agencies publish an initial notice in the **Federal Register** informing Federal employees, former Federal employees, and applicants of the rights and protections available to them under Federal antidiscrimination and whistleblower protection laws.

EFFECTIVE DATE: This notice is effective on September 18, 2006.

FOR FURTHER INFORMATION CONTACT: Arlene E. Austin, Director, Office of Equal Opportunity and Civil Rights, at (410) 786–5110 (voice), (410) 786–9549 (fax), or (410) 786–2456 (TTY); or Anita Pinder, Special Assistant, Office of Equal Opportunity and Civil Rights, at (410) 786–5493 (voice), (410) 786–9549 (fax), or (410) 786–2456 (TTY) (These are not toll free numbers).

Special Accomodations: This notice also is available in the following formats: Large print, audio tape, electronic file on computer disk, and on CMS's Web page *http://www.cms.hhs.gov.* Requests for this notice in an alternative format should be made to CMS's Office of Strategic Operations and Regulatory Affairs, Regulations Development Group at 1–800–743–3951 (voice), 1–866–226–1819 (TTY), or (410) 786–3064 (fax) (The fax is not a toll free number).

Additional Information: For additional information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate offices within your agency (for example, Office of Equal Opportunity and Civil Rights at 410–786–5110). Additional information regarding Federal antidiscrimination, whistleblower protection, and retaliation laws can be found at the EEOC Web site—*http://www.eeoc.gov* and the OSC Web site—*http://www.osc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 15, 2002, the Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as the No FEAR Act. One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' In support of this purpose, the Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' The No Fear Act also requires all agencies to provide this notice to Federal employees, former Federal employees, and applicants for Federal employment to inform employees or applicants of the rights and protections available under the Federal antidiscrimination and whistleblower protection laws.

II. Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b) (1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791, and 42 U.S.C. 2000e–16. If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin, or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with this Agency. See, for example, 29 CFR 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through this Agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

III. Whistleblower Protection Laws

A Federal employee who has authority with respect to personnel actions must not take action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of the information is specifically prohibited by law and the information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs. Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site—*http://www.osc.gov.*

IV. Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

V. Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and

[62] Network diversity supplemental charge of $1,000 a month may apply in addition to these fees.

Whistleblower Protection Laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

VI. Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands, or reduces any rights otherwise available to any employee, former employee, or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Authority: Title II of the No FEAR Act, Public Law 107–174; 5 CFR Part 724.

Dated: November 17, 2006.

Leslie Norwalk,

Acting Administrator.

[FR Doc. 06–9361 Filed 11–17–06; 4:32 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0002]

Guidance for Industry and Food and Drug Administration Staff; Saline, Silicone Gel, and Alternative Breast Implants; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Saline, Silicone Gel, and Alternative Breast Implants.'' This version of the guidance document updates preclinical, clinical, and labeling recommendations described in ''Guidance for Saline, Silicone Gel, and Alternative Breast Implants,'' dated January 13, 2004. The update is based on the latest scientific and medical information on breast implants, and clarifies the type and amount of scientific data that should be submitted to allow FDA to evaluate whether these devices are safe and effective.

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Saline, Silicone Gel, and Alternative Breast Implants'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Nada Hanafi, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 144.

SUPPLEMENTARY INFORMATION:

I. Background

On January 13, 2004, FDA issued a draft guidance document entitled, ''Saline, Silicone Gel, and Alternative Breast Implants'' to clarify the type and amount of scientific data that should be submitted to allow FDA to evaluate whether these devices are safe and effective. The comment period closed on April 12, 2004. FDA received over 50 comments. FDA is now issuing a finalized update to this guidance document that reflects the latest scientific and medical thinking pertaining to breast implants, and is based on the April 2005 General and Restorative Devices Panel meeting, FDA's review of two premarket approval applications for silicone gel-filled breast implants, and comments received on the 2004 draft guidance document. The primary changes to the guidance document since the 2004 draft version are to the Mechanical Data, Device Explant Analyses (formerly Modes and Causes of Rupture), and Core Study Clinical Data sections. FDA also combined the former two clinical sections. Some of the recommendations in this guidance document apply to all premarket approval applications for these devices, while others are specific to a type of breast implant (i.e., silicone gel-filled, saline-filled, or alternative). This guidance document supercedes ''Guidance for Saline, Silicone Gel, and Alternative Breast Implants,'' dated February 11, 2003.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on ''Saline, Silicone Gel, and Alternative Breast Implants.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. To receive ''Saline, Silicone Gel, and Alternative Breast Implants,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1239 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the

regulations governing premarket approval applications (21 CFR part 814, OMB control number 0910–0231). The labeling provisions addressed in the guidance have been approved by OMB under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 26, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–9325 Filed 11–17–06; 4:30 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D–0463]

Draft Guidance for Industry on Sinusitis: Designing Clinical Development Programs of Nonantimicrobial Drugs for Treatment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Sinusitis: Designing Clinical Development Programs of Nonantimicrobial Drugs for Treatment.'' Sinusitis is a common disease affecting an estimated 16 percent of the adult U.S. population annually. At present, other than antimicrobials, the treatment options for sinusitis are limited. This guidance is intended to assist the pharmaceutical industry in designing clinical development programs for nonantimicrobial drug products for the treatment of sinusitis.

DATES: Submit written or electronic comments on the draft guidance by January 22, 2007. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Dr. Badrul A. Chowdhury, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 3316, Silver Spring, MD 20993–0002, 301–796–2300.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Sinusitis: Designing Clinical Development Programs of Nonantimicrobial Drugs for Treatment.'' Sinusitis is a disease characterized by inflammation of one or more of the paranasal sinuses. It is one of the most commonly diagnosed diseases in the United States affecting an estimated 16 percent of the adult population annually. At present, other than antimicrobials, some of which have a label indication of acute bacterial sinusitis, the treatment options for sinusitis are limited. There is an interest within the pharmaceutical industry in the development of new drugs, including drugs other than antimicrobials, for the treatment of sinusitis.

This guidance focuses on the development of nonantibiotic drugs for the treatment of acute sinusitis as well as the development of drugs for other types of sinusitis. This guidance also focuses on the assessment of efficacy in phase 3 clinical studies of sinusitis. In addition, this guidance addresses chemistry, manufacturing, and controls issues and pharmacology and toxicology issues, because some of the products for sinusitis are developed for nasal delivery, and there are nuances to nasal route of delivery that should be considered for appropriate clinical study design.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on designing clinical development programs of nonantimicrobial drugs for the treatment of sinusitis. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: November 15, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–19689 Filed 11–21–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Children's Hospitals Graduate Medical Education Payment Program (CHGME PP)

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Children's Hospitals Graduate Medical Education Payment Program (CHGME PP) Conference Call.

SUMMARY: This document announces a scheduled CHGME PP conference call for Federal fiscal year (FY) 2007. The purpose of this conference call is to discuss new annual reporting requirements as required under Public Law (Pub. L.) 109–307 for children's hospitals participating in the CHGME PP.

DATES: The conference call will be held on Wednesday, December 6, 2006, from 2 p.m. to 4 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Ayah E. Johnson, Ph.D., telephone: (301) 443–1058; Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, 5600 Fishers Lane, Room 9A–05, Rockville, Maryland 20857; or by e-mail at: *ajohnson@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The CHGME PP, as authorized by section 340E of the Public Health Service Act (the Act) (42 U.S.C. 256e), provides funds to children's hospitals to address disparity in the level of Federal funding for children's hospitals that result from Medicare funding for graduate medical education. Pub. L. 109–307 amended the CHGME statute to extend the program through FY 2011.

The statute authorizes $330 million for both direct and indirect medical education payments for each of the FY 2007 through FY 2011. Congress appropriated $300 million in FY 2006 for the CHGME PP. These funds have supported over 4,000 residents receiving training in children's teaching hospitals in 31 states.

The agenda for the conference call will include but not be limited to: (1) Welcome and opening comments and (2) news releases/updates. Time will also be available for a question and answer period.

Interested parties must register, in advance, but not later than 5 days prior to the scheduled conference call. Conference call registration forms and information about the Program can be found on the CHGME PP Web site. The Web site address is: *http://bhpr.hrsa.gov/childrenshospitalgme.*

Dated: November 15, 2006.

Elizabeth M. Duke,

Administrator.

[FR Doc. E6–19688 Filed 11–21–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

RIN 1615–ZA44

[DHS Docket No. USCIS–2006–0066]

Changes to the Regional, District and Field Office Organizational Structure Within U.S. Citizenship and Immigration Services

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice informs the public of changes to U.S. Citizenship and Immigration Services' (USCIS') regional, district and field office organizational structure due to a recent realignment of the command and control responsibilities within USCIS' Domestic Operations Directorate, Field Operations Division. This action is necessary to balance the workload and personnel among USCIS field offices and improve customer service. USCIS does not plan to close any of its existing offices as a result of this realignment.

DATES: This notice is effective November 22, 2006.

FOR FURTHER INFORMATION CONTACT: David Gulick, Chief of Staff, Domestic Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone (202) 272–2700.

SUPPLEMENTARY INFORMATION:

I. Background.

Upon its establishment in 2003, USCIS inherited legacy Immigration and Naturalization Service's (legacy INS's) domestic field office structure consisting of 3 regions and 33 districts. USCIS' workload and workforce distribution, however, varies greatly from that of legacy INS. Consequently, the continuation of the legacy INS field office structure resulted in an unbalanced USCIS field office chain of command structure with one region having a larger workforce than the other two regions combined, and the largest districts having workforces up to 50 times larger than other districts.

In addition, within the pre-existing chain of command, in those districts with multiple field offices, the district director served as the office manager for one of the field offices while also managing the other field offices within the district. This dual role has been an obstacle to overall management of a district.

Moreover, under the pre-existing organizational structure, each regional office, district office, field office or sub-office had an assigned geographic area of responsibility. A field office manager could not exercise any power or authority over a matter that involved a customer whose place of residence or employment was located outside of his or her geographical area of responsibility, absent an express delegation of such authority by the appropriate USCIS official. In the adjudications context, rigid jurisdictional boundaries based on geography have led to situations where the USCIS office that is physically located closer to a customer's residence or place of employment does not have geographical jurisdiction to provide the customer with the requested service.

In view of the aforementioned considerations, USCIS has made a determination to realign the domestic operations field office command and control structure. This realignment is effective November 22, 2006.

II. Realignment

Under this realignment, the following are the changes to the command and control structure within USCIS Domestic Operations Directorate, Field Operations Division.

Field Offices, Districts, and Regions

The keystones of USCIS' in-person services are its local offices. USCIS field offices exist based on the geographic distribution of workload requiring in-person services. No USCIS field office will be closed as a result of this realignment, nor will this realignment change the locations of any of the existing USCIS local offices. For clarity, USCIS will refer to each of these offices as a ''field office,'' managed by a ''field office director,'' rather than ''district office,'' managed by a ''district director.'' Field offices will continue to be responsible for the administration and enforcement of the Immigration and Nationality Act and all other laws relating to immigration and naturalization.

Where USCIS determines that an interview is necessary, it will schedule the applicant's interview at the appropriate field office. While most information and customer services are provided through the USCIS Web-site and toll-free customer service telephone number, individuals who believe they need in-person service can also use their zip code to make an appointment on-line at the appropriate office. Individuals without internet access can contact any USCIS office in-person for assistance in making an appointment. Using zip codes, rather than the current geographic jurisdictional alignment, to determine service areas will allow USCIS to shift interviews and other in-person services to the most convenient field office.

While the realignment does not change the locations of USCIS field offices, it does change the command structure for managing these field offices. USCIS will maintain a district management structure to lead a network of field offices. Each field office will be managed by a field office director who reports to a District Director. In the previous structure, the district director was both the field office director as well

as the manager of a district that, in many cases, included additional field offices. The new structure allows the District Director to focus on the management of the district. Further, to achieve better balance in terms of the size of the operations managed by each district, the overall number of district offices will be reduced from 33 to 26. While primarily a consolidation of district management structures, the 26 district offices will include 2 new district offices created by splitting the existing San Francisco and Miami districts each into 2 districts.

Similarly, to achieve better balance and span of control, USCIS is increasing from 3 management regional offices to 4 management regional offices. The fourth regional office will be established in Orlando, Florida to manage USCIS operations in the Southeast. Establishing this new regional office also gives USCIS a regional office closer to the Caribbean, and thus improves USCIS capability to respond to events there.

Field Office Structure

Accordingly, the following is the USCIS' Domestic Operations field office management structure. While management districts will be identified by number rather than by location, the list also indicates (by asterisk) the city where the district manager will be located:

District 1

Boston, Massachusetts*
Manchester, New Hampshire
Portland, Maine
Providence, Rhode Island

District 2

Albany, New York
Buffalo, New York*
Hartford, Connecticut
St. Albans, Vermont

District 3

New York City, New York*

District 4

Mt. Laurel, New Jersey
Newark, New Jersey*

District 5

Philadelphia, Pennsylvania*
Pittsburgh, Pennsylvania

District 6

Baltimore, Maryland*

District 7

Fairfax, Virginia*
Norfolk, Virginia

District 8

Atlanta, Georgia*
Charleston, South Carolina
Charlotte, North Carolina
Raleigh, North Carolina (under development)

District 9

Charlotte Amalie, Virgin Islands
Miami, Florida*
San Juan, Puerto Rico

District 10

Jacksonville, Florida
Orlando, Florida
Tampa, Florida*
West Palm Beach, Florida

District 11

Fort Smith, Arkansas
Memphis, Tennessee
New Orleans, Louisiana*

District 12

Detroit, Michigan*

District 13

Cincinnati, Ohio
Cleveland, Ohio*
Columbus, Ohio
Indianapolis, Indiana
Louisville, Kentucky

District 14

Chicago, Illinois*
Milwaukee, Wisconsin

District 15

Des Moines, Iowa
Kansas City, Missouri*
Omaha, Nebraska
St. Louis, Missouri
St. Paul, Minnesota

District 16

Dallas, Texas*
Oklahoma City, Oklahoma

District 17

Houston, Texas*

District 18

El Paso, Texas
Harlingen, Texas
San Antonio, Texas*

District 19

Albuquerque, New Mexico
Boise, Idaho
Denver, Colorado*
Helena, Montana
Salt Lake City, Utah

District 20

Anchorage, Alaska
Portland, Oregon
Seattle, Washington*
Spokane, Washington
Yakima, Washington

District 21

San Francisco, California*
San Jose, California

District 22

Fresno, California
Sacramento, California*

District 23

Los Angeles, California*
San Bernardino, California
Santa Ana, California

District 24

San Diego, California*

District 25

Las Vegas, Nevada
Phoenix, Arizona *
Reno, Nevada
Tucson, Arizona

District 26

Hagatna, Guam
Honolulu, Hawaii

Regional Structure

USCIS will maintain its existing regional offices in:

- Burlington, VT, which will manage Districts 1 through 7, and be referred to as the Northeast Region;
- Dallas, TX, which will manage Districts 12 through 19, and be known as the Central Region; and in
- Laguna Niguel, CA, which will manage Districts 20 through 26, and be known as the Western Region.

USCIS will establish the new regional office in:

- Orlando, FL which will manage Districts 8 through 11, and will be known as the Southeast Region. While this regional office is in the process of being established, the Northeast Region will provide support.

Dated: November 15, 2006.

Jonathan Scharfen,

Deputy Director, U.S. Citizenship and Immigration Services.

[FR Doc. E6–19697 Filed 11–21–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5041–N–47]

Notice of Proposed Information Collection: Comment Request; Multifamily Default Status Report

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 22, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Lillian_L._Deitzer@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Kimberly R. Munson, Housing Project

Manager, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3730 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Multifamily Default Status Report.

OMB Control Number, if applicable: 2502–0041.

Description of the need for the information and proposed use: Mortgagees use this information collection to notify HUD that a project owner is more than 30 days past due on the mortgage payment. HUD Field Office and Headquarters staff use the data to: (a) Monitor mortgage compliance with HUD's loan servicing procedures and assignments; and (b) avoid mortgage assignments in the future. This information is submitted electronically via the Internet.

Agency form numbers, if applicable: HUD–92426.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 1,893; the number of respondents is 98 generating approximately 11,368 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is 10 minutes.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: November 15, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

[FR Doc. E6–19692 Filed 11–21–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5113–N–01]

Notice of HUD-Held Multifamily and Healthcare Loan Sale (MHLS 2006–2)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sale of mortgage loans.

SUMMARY: This notice announces HUD's intention to sell certain unsubsidized multifamily and healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive, sealed bid sale (MHLS 2006–2). This notice also describes generally the bidding process for the sale and certain persons who are ineligible to bid.

DATES: The Bidder's Information Package (BIP) will be made available to qualified bidders on or about October 31, 2006. Bids for the loans must be submitted on the bid date, which is currently scheduled for December 6, 2006. HUD anticipates that awards will be made on or before December 7, 2006. Closings are expected to take place on December 13, 2006.

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute, and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents will be available on the HUD Web site at *http://www.hud.gov/offices/hsg/comp/asset/mfam/mhls.cfm.* The executed documents must be mailed and faxed to The Debt Exchange, HUD's Transaction Specialist for the sale, at 133 Federal Street, 10th Floor, Boston, Massachusetts 02110, Attention: MHLS 2006–2 Sale Coordinator, Fax: (617) 531–3499.

FOR FURTHER INFORMATION CONTACT: John Lucey, Acting Deputy Director, Asset Sales Office, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 3136, Washington, DC 20410–8000; telephone (202) 708–2625, extension 3927 or Gregory Bolton, Senior Attorney, Office of Insured Housing, Multifamily Division, Room 9230; telephone (202) 708–0614, extension 5245. Hearing- or speech-impaired individuals may call (202) 708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell in MHLS 2006–2 certain unsubsidized mortgage loans (Mortgage Loans) secured by multifamily and healthcare properties located throughout the United States. The Mortgage Loans are comprised primarily of non-performing mortgage loans. A final listing of the Mortgage Loans will be included in the BIP. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Mortgage Loans will be stratified for bidding purposes into several mortgage loan pools. Each pool will contain Mortgage Loans that generally have similar performance, property type, geographic location, lien position and other characteristics. Qualified bidders may submit bids on one or more pools of Mortgage Loans or may bid on individual loans. A mortgagor who is a qualified bidder may submit an individual bid on its own Mortgage Loan. Interested Mortgagors should review the Qualification Statement to determine whether they may also be eligible to qualify to submit bids on one or more pools of Mortgage Loans or on individual loans in MHLS 2006–2.

The Bidding Process

The BIP will describe in detail the procedure for bidding in MHLS 2006–2. The BIP will also include a standardized nonnegotiable loan sale agreement (Loan Sale Agreement).

As part of its bid, each bidder must submit a deposit equal to the greater of $100,000 or 10% of the bid price. In the event the bidder's aggregate bid is less than $100,000.00, the minimum deposit shall be not less than fifty percent (50%) of the bidder's aggregate bid. HUD will evaluate the bids submitted and determine the successful bids in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price. Deposits will be returned to unsuccessful bidders. Closings are scheduled to occur on December 13, 2006.

These are the essential terms of sale. The Loan Sale Agreement, which will be included in the BIP, will contain additional terms and details. To ensure a competitive bidding process, the terms

of the bidding process and the Loan Sale Agreement are not subject to negotiation.

Due Diligence Review

The BIP will describe the due diligence process for reviewing loan files in MHLS 2006–2. Qualified bidders will be able to access loan information remotely via a high-speed Internet connection. Further information on performing due diligence review of the Mortgage Loans will be provided in the BIP.

Mortgage Loan Sale Policy

HUD reserves the right to add Mortgage Loans to or delete Mortgage Loans from MHLS 2006–2 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, in whole or in part, without prejudice to HUD's right to include any Mortgage Loans in a later sale. Mortgage Loans will not be withdrawn after the Award Date except as is specifically provided in the Loan Sale Agreement.

This is a sale of unsubsidized mortgage loans. Pursuant to the Multifamily Mortgage Sale Regulations, 24 CFR 290.30 *et seq.*, the Mortgage Loans will be sold without FHA insurance. Consistent with HUD's policy as set forth in 24 CFR 290.35, HUD is unaware of any Mortgage Loan that is delinquent and secures a project (1) for which foreclosure appears unavoidable, and (2) in which very-low income tenants reside who are not receiving housing assistance and who would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the Mortgage Loan. If HUD determines that any Mortgage Loans meet these criteria, they will be removed from the sale.

Mortgage Loan Sale Procedure

HUD selected a competitive sale as the method to sell the Mortgage Loans primarily to satisfy the Mortgage Sale Regulations. This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Eligibility

In order to bid in the sale, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. The following individuals and entities are ineligible to bid on any of the Mortgage Loans included in MHLS 2006–2:

(1) Any employee of HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household;
(2) any individual or entity that is debarred, suspended, or excluded from doing business with HUD pursuant to Title 24 of the Code of Federal Regulations, Part 24;
(3) any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for or on behalf of HUD in connection with MHLS 2006–2;
(4) any individual who was a principal, partner, director, agent or employee of any entity or individual described in subparagraph 3 above, at any time during which the entity or individual performed services for or on behalf of HUD in connection with MHLS 2006–2;
(5) any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 4 above to assist in preparing any of its bids on the Mortgage Loans;
(6) any individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in MHLS 2006–2;
(7) any mortgagor (or affiliate of a mortgagor) that failed to submit to HUD on or before November 29, 2006, audited financial statements for 1999 through 2005 for a project securing a Mortgage Loan; and
(8) any individual or entity and any Related Party (as such term is defined in the Qualification Statement) of such individual or entity that is a mortgagor in any of HUD's multifamily housing programs and that is in default under such mortgage loan or is in violation of any regulatory or business agreements with HUD, unless such default or violation is cured on or before November 29, 2006.

In addition, any entity or individual that serviced or held any Mortgage Loan at any time during the 2-year period prior to October 31, 2006, is ineligible to bid on such Mortgage Loan or on the pool containing such Mortgage Loan, but may bid on loan pools that do not contain Mortgage Loans that they have serviced or held at any time during the 2-year period prior to October 31, 2006. Also ineligible to bid on any Mortgage Loan are: (a) Any affiliate or principal of any entity or individual described in the preceding sentence; (b) any employee or subcontractor of such entity or individual during that 2-year period; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan.

Prospective bidders should carefully review the Qualification Statement to determine whether they are eligible to submit bids on the Mortgage Loans in MHLS 2006–2.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding MHLS 2006–2, including, but not limited to, the identity of any successful bidder and its bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sale of all the Mortgage Loans. Even if HUD elects not to publicly disclose any information relating to MHLS 2006–2, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to MHLS 2006–2 and does not establish HUD's policy for the sale of other mortgage loans.

Dated: November 15, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E6–19691 Filed 11–21–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Comprehensive Plan and Finding of No Significant Impact for D'Arbonne National Wildlife Refuge in Union and Ouachita Parishes, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service announces that a Final Comprehensive Conservation Plan and Finding of No Significant Impact for D'Arbonne National Wildlife Refuge in Union and Ouachita Parishes are available for distribution. The plan was prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National

Environmental Policy Act of 1969, and describes how the refuge will be managed for the next 15 years. The compatibility determinations for big game hunting, small game hunting, migratory bird hunting, fishing, wildlife observation and photography, environmental education and interpretation, trapping of selected furbearers, and horseback riding are also available within the plan.

ADDRESSES: A copy of the plan may be obtained by writing to the D'Arbonne National Wildlife Refuge, 11372 Highway 143, Farmerville, Louisiana 71241. The plan may also be accessed and downloaded from the Service's Web site *http://southeast.fws.gov/planning/*.

SUPPLEMENTARY INFORMATION: D'Arbonne National Wildlife Refuge, established in 1975, is located within the Lower Mississippi River floodplain in north Louisiana, approximately six miles of West Monroe, Louisiana. The refuge's 17,421 acres include deep overflow swamp, bottomland hardwood forest, and upland mixed-pine/hardwoods. D'Arbonne Refuge provides habitat for thousands of wintering waterfowl, wading and waterbirds, and year-round habitat for nesting wood ducks, squirrels, deer, river otters, and raccoons. Hunting and fishing opportunities are permitted on most areas of the refuge, which is open year-round for wildlife observation and wildlife photography.

The availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for a 30-day public review and comment period was announced in the **Federal Register** on April 11, 2006 (71 FR 18348). The plan and environmental assessment identified and evaluated three alternatives for managing the refuge over the next 15 years. Alternative A, the proposed alternative, emphasized natural ecological processes, enhancement of the biological program, restoration of biological integrity with management for endangered species, and more use of adaptive management primarily to benefit migratory birds and forests. Alternative B would focus resources toward obtaining biological information while providing an artificial habitat for the endangered red-cockaded woodpecker. There would be a reduction in visitor services. Alternative C, the ''status quo'' alternative, would continue management and public use.

Based on the environmental assessment and the comments received, the Service adopted Alternative A as its preferred alternative. This alternative was considered to be the most effective for meeting the purposes of the refuge—that of conserving bottomland hardwood forest for migratory birds and for providing wildlife-dependent public use. Alternative A best achieves national, ecosystem, and refuge-specific goals and objectives and positively addresses significant issues and concerns expressed by the public.

FOR FURTHER INFORMATION CONTACT: Kelby Ouchley, Refuge Manager, D'Arbonne National Wildlife Refuge, telephone: 318/726–4222; fax: 318/726–4667; e-mail: *Kelby_Ouchley@fws.gov;* or by writing to the Refuge Manager at the addresses in the **ADDRESSES** section.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: June 29, 2006.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 06–9344 Filed 11–21–06; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Mississippi Sandhill Crane National Wildlife Refuge in Jackson County, Mississippi; Availability of Draft Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service announces that a Draft Comprehensive Conservation Plan and Environmental Assessment for Mississippi Sandhill Crane National Wildlife Refuge are available for review and comment. This draft plan and environmental assessment were prepared pursuant to the National Wildlife Refuge System Administration Act, as amended, and the National Environmental Policy Act. The draft plan describes the Service's proposal for management of the refuge for 15 years.

DATES: Written comments must be received at the postal or electronic addresses listed below no later than December 22, 2006.

ADDRESSES: To provide written comments or to obtain a copy of the draft plan and environmental assessment, please write to the Mississippi Sandhill Crane National Wildlife Refuge, 7200 Crane Lane, Gautier, Mississippi 39553; Telephone 601/497–6322. Comments may also be submitted via electronic mail to *mike_dawson@fws.gov*. The plan and environmental assessment may be accessed and downloaded from the Service's Internet site: *http://southeast.fws.gov/planning/*.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires the Service to develop a plan for each refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

A meeting will be held to present the plan to the public. Mailings, newspaper articles, and posters will be the avenues to inform the public of the date and time for the meeting.

After the review and comment period for the draft plan and environmental assessment, all comments will be analyzed and considered by the Service. All comments received from individuals on the draft plan and environmental assessment become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and Service and Departmental policies and procedures.

Mississippi Sandhill Crane National Wildlife Refuge was established in 1975 to safeguard the critically endangered Mississippi sandhill crane and its unique disappearing habitat.

Significant issues addressed in the draft plan include: Threatened and endangered species; waterfowl management; neotropical migratory birds; savanna restoration; visitor services (e.g., fishing, wildlife observation, wildlife photography, and environmental education and interpretation); staffing; and cultural resources. The Service developed four alternatives for managing the refuge and chose Alternative D as the proposed alternative.

Under Alternative A, the No Action Alternative, present management would continue. Current approaches to managing and protecting cranes, other

wildlife and habitats, and allowing for public use would remain unchanged.

With regard to the endangered Mississippi sandhill crane, the refuge's objective would be to maintain a population of 110–130 individuals, including 20–25 nesting pairs, while fledging 2–4 young annually. Staff would cultivate 15–40 acres of chufa in multiple food plots to provide foraging areas for the cranes. The refuge would also maintain 14 existing ponds; these provide roosting, feeding, and release pen habitat for cranes. Predator control would need to continue, since predation is one of the key factors in retarding successful recruitment of young and achievement of a self-sustaining population. The refuge's objective would be to conduct sufficient predator control to allow for 40 percent hatching success, 25 percent fledging success, and 75 percent survival of after-hatch-year birds. Two to three red-tailed hawks, one of the principal predators of nestling and juvenile cranes, would be removed annually.

The refuge would continue to furnish incidental benefits for other native wildlife species. It would also maintain the current habitat mix for the benefit of other migratory birds, including waterfowl, shorebirds, marsh birds, and landbirds. Staff would continue existing amphibian surveys to monitor long-term population trends and health of these vertebrates. Managers would continue to record casual sightings of invertebrates, while maintaining incidental benefits to invertebrates from various management actions.

Habitat objectives are oriented toward providing benefits to wildlife, and thus overlap wildlife objectives to some extent. The main habitat the refuge strives to restore and manage is pine savanna, particularly wet pine savanna. Under Alternative A, refuge management would continue to provide 8,000–10,000 acres of savanna habitat to benefit the Mississippi sandhill crane and priority grassland bird species. The staff would maintain the current habitat mix to provide incidental benefits to other migratory birds, including waterfowl, shorebirds, marsh birds, and landbirds. Fire management, in particular prescribed fire, is an important ecological tool in maintaining savanna habitat against encroachment by woody vegetation and trees. The refuge would continue to aim for conducting prescribed fires on all compartments on a 2–3 year rotation, although attaining this objective would depend on weather conditions. Other habitats on the refuge would be maintained at current levels and in the same locations as at present: Approximately 9,000 acres in pine flatwood forest; 1,300 acres in forested wetlands; and 600 acres in open water.

Resource protection would continue to be carried out as it is currently. One hundred acres of cogongrass would be targeted for annual spraying to reduce infestations of this non-native weed. Tallow trees and other invasives would be controlled or eliminated as opportunities arise. The refuge's Private Lands program would remain the same, with passive management of 12 Farm Service Agency tracts totaling 2,203 acres (1,975 acres in fee title and 228 acres in easement). At present, the refuge has one collateral duty officer (0.25 FTE) and shares a law enforcement officer with Grand Bay National Wildlife Refuge. The refuge would follow standard Service protocol and procedures in conducting cultural resource surveys.

Existing public use and environmental education programs would be maintained. The refuge would continue to serve the public without being guided by a Visitor Services Management Plan, relying instead on experience and general Service mandates and practices. A new headquarters/visitor center would be constructed.

Current wildlife observation and wildlife photography programs and facilities would be maintained. These include guided crane tours in vans every January and February, two hiking/nature trails, and observation/photography blinds. The refuge would maintain environmental education and interpretation at their current levels, including participation in community events, on-site and off-site environmental education, guided tours, and interpretive trails. The refuge would technically remain closed to sport hunting and fishing, though the latter would continue to be available to anglers in watercraft (e.g., boats, canoes, and kayaks) entering the refuge on bayous under State jurisdiction and management.

Under Alternative B, the refuge would emphasize its biological program by applying maximum efforts to enhance habitat conditions and increase wildlife populations, particularly the endangered crane. The visitor services program would remain as it is at present. An assistant refuge manager would be hired for supervisory and administrative support.

With regard to the endangered Mississippi sandhill crane, the refuge's objective would be to provide for a self-sustaining crane population of 130 to 170 individuals, including 30–35 nesting pairs, fledging 10–15 young annually for at least 10 years. Chufa cultivation would expand to 40–60 acres, and winter cover crops and legumes would be planted on up to 20 acres within food plots. Staff would also create a food plot in the Fontainbleau Unit in addition to exploring opportunities with partners to protect existing and extend potential foraging areas off-refuge would continue to maintain 14 existing ponds, which provide roosting, feeding, and release pen habitat for cranes. In addition to these 14 ponds, 10 new small, shallow ponds would be created. Staff would clear overgrown interiors of five Grady ponds. An additional equipment operator would be hired to assist with construction and maintenance.

Under Alternative B, predator management for Mississippi sandhill crane survival would increase to allow for 60 percent hatching success, 67 percent fledging success, and over 80 percent survival of after-hatch-year birds. Up to 10 red-tailed hawks would be removed annually.

The refuge would also continue to furnish incidental benefits to other native wildlife species. It would provide 15,000–17,000 acres of savanna habitat to benefit priority grassland bird species, as well as the Mississippi sandhill crane. This would be an increase of 7,000 acres over Alternative A. Alternative B would aim to increase the refugee's knowledge about other migratory birds by developing and implementing monitoring programs. Staff would continue existing amphibian surveys to monitor long-term population trends and health of these vertebrates. The refuge would maintain and develop habitats and promote management actions that would support viable populations of both amphibians and reptiles.

The refuge would conduct periodic sampling to evaluate incidental benefits to invertebrates from various management actions. Management of invertebrates would increase overall by maintaining the native diversity of butterfly and dragonfly species as indicators of biodiversity, and by providing for high-quality orthoptera and related species numbers for food by the sandhill cranes and their young.

Under Alternative B, pine savanna acreage would increase. Fire management, particularly prescribed fire, is an important ecological tool in maintaining savanna habitat against encroachment by woody vegetation and trees. Under Alternative B, the refuge would continue to aim for conducting prescribed fires on all compartments on a 2–3 year rotation, although attaining this objective would depend on weather

conditions. Pine flatwood forests would be reduced to 2,000–5,000 acres (from 9,000 acres currently), because the majority of this habitat would be converted to pine savanna (i.e., opened up and thinned out), which is more desirable to cranes and other indigenous species of management concern. Forested wetlands would be maintained at current levels (1,300 acres) and the acreage of open water, that is, bayous and ponds, would increase somewhat from the construction of 10 new ponds.

Under Alternative B, resource protection would be intensified. The main invasive species at present is cogongrass, and the refuge's objective would be to reduce cogongrass by 90 percent within 5 years, to total no more than 15 acres. A program would also be developed to control tallow trees and other invasive species. In the refuge's Private Lands Program, staff would work with private landowners of the 12 Farm Service Agency tracts to manage and improve habitats. Staff would also reduce cogongrass on these areas and explore opportunities with partners to protect existing and extend potential foraging areas off-refuge. The refuge would partner with The Nature Conservancy and other nearby landowners on fire management issues and biological assistance.

Current wildlife observation, wildlife photography, and environmental education and interpretation programs would be maintained under the Alternative B. As in Alternative A, the refuge would technically remain closed to sport hunting and fishing.

Under Alternative C, management would focus on maximizing opportunities for public visitation, increasing both facilities and activities throughout the 15-year duration of the plan. Current approaches to managing and protecting cranes and other wildlife and habitats would remain unchanged. An assistant refuge manager would be hired for supervisory and administrative support.

One difference between Alternatives C and A is in the area of law enforcement: Alternative C would provide a full-time law enforcement officer to protect refuge resources and the public. With regard to cultural resources, including those of an archaeological or historical nature, within 15 years of the plan's approval, the refuge would develop and begin to implement a Cultural Resources Management Plan.

Public use and environmental education would increase under Alternative C. Within 3 years of plan completion, the refuge would develop a Visitor Services Management Plan to be used in expanding public use facilities and opportunities on the refuge. This step-down management plan would provide overall, long-term direction and guidance in developing and running a larger public use program. The Service would construct a new headquarters and a separate visitor center. The new visitor center would include a small auditorium for use in talks, meetings, films, videos, and other audiovisual presentations.

Alternative C would also increase opportunities for visitors by adding facilities such as photo-blinds, observation sites, and trails, including boardwalks. Two on-refuge auto tours would be developed as well.

Over the 15-year life of the plan, the staff would increase emphasis on environmental education and interpretation to lead to a better understanding of the importance of wildlife and habitat resources, especially sandhill cranes, savanna, fire ecology, invasive species, endangered species, and migratory birds. A public use specialist would be hired. Within 5 years of plan approval, the refuge would prepare a Fishing Plan that would outline permissible fishing opportunities within the refuge and a Hunting Plan that would allow for a limited deer hunt. The refuge would construct a fishing pier and canoe and kayak trail with access point.

Under Alternative D, the proposed alternative, the refuge would strive to optimize both its biological program and its visitor services program. Thus it would include certain elements of Alternative B, which emphasizes the biological program, and Alternative C, which focuses on the visitor services program. Alternative D recognizes that there may be tradeoffs and opportunity costs between the various elements of the biological and visitor services programs. Hence, Alternative D stresses the principle of optimization rather than maximization of wildlife, habitat, and public use outputs. An assistant refuge manager would be hired for supervisory and administrative support.

With regard to the endangered Mississippi sandhill crane, the refuge's objective would be the same as Alternative B. Also, objectives to furnish incidental benefits to other native wildlife species would be the same as Alternative B. The main habitat the refuge strives to restore and manage is pine savanna, particularly wet pine savanna. Under Alternative D, savanna acreage would increase.

Under Alternative D, resource protection at the refuge would be intensified from the level now maintained in Alternative A. Efforts to control invasive species would increase. The main invasive species at present is cogongrass, and the refuge's objective would be to reduce the species by 80 percent within 5 years. Tallow trees and other invasive species would continue to be controlled or eliminated as opportunities are available. In the refuge's Private Lands Program, staff would work with private landowners of the 12 Farm Service Agency tracts to manage and improve habitats. Staff would also explore opportunities with partners to protect existing and extend potential foraging areas off-refuge. The refuge would partner with The Nature Conservancy and other nearby landowners on fire management issues and biological assistance.

Alternative D would provide a full-time law enforcement officer, an equipment operator, a maintenance mechanic, and a wildlife technician. The refuge would develop and begin to implement a Cultural Resources Management Plan. Until such time as the plan is completed and implemented, the refuge would follow standard Service protocol and procedures in conducting cultural resource surveys.

Public use and environmental education would increase under Alternative D. Within 3 years of the plan's completion, the refuge would develop a Visitor Services Plan to be used in expanding public use facilities and opportunities on the refuge. This step-down management plan would provide overall, long-term direction and guidance in developing and running a larger public use program. Within the 15-year planning horizon, the Service would construct a new visitor center near the existing one and convert the existing visitor center into a refuge headquarters. The new visitor center would include a small auditorium for use in talks, meetings, films, videos, and other audiovisual presentations.

Alternative D would also increase opportunities for visitors by adding facilities such as photoblinds, observation sites, and trails, but would not include boardwalks. One or more on-refuge auto tours would be developed as well.

Over the 15-year life of the plan, the staff would increase emphasis on environmental education and interpretation to lead to a better understanding of the importance of wildlife and habitat resources, especially sandhill cranes, savanna, fire ecology, invasive species, endangered species, and migratory birds. Within 5 years of the plan's approval, the refuge would prepare a Fishing Plan that would outline permissible fishing opportunities within the refuge. The

refuge would also construct a fishing pier on the bayou and a canoe and kayak trail with access point. Staff would investigate opportunities for limited hunting possibilities.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: October 11, 2006.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 06–9343 Filed 11–21–06; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision of an information collection (1010–0154).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is notifying the public that it has submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements under the Endangered Species Act Biological Opinions, issued by the Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) and are titled: ''Notices to Lessees and Operators (NTLs)—Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program; Vessel Strike Avoidance and Injured/Dead Protected Species Reporting; and, Marine Trash and Debris Awareness and Elimination.'' This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by December 22, 2006.

ADDRESSES: You may submit comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior via OMB e-mail: (*OIRA_DOCKET@omb.eop.gov*); or by fax (202) 395–6566; identify with (1010–0154).

Submit a copy of your comments to the Department of the Interior, MMS, via:

- Public Connect on-line commenting system, *https://ocsconnect.mms.gov.* Follow the instructions on the website for submitting comments.
- E-mail MMS at *rules.comments@mms.gov.* Identify with Information Collection Number 1010–0154 in the subject line.
- Fax: 703–787–1093. Identify with Information Collection Number 1010–0154.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Information Collection 1010–0154'' in your comments.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the NTLs that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: Notices to Lessees and Operators (NTLs)—Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program; Vessel Strike Avoidance and Injured/Dead Protected Species Reporting; and, Marine Trash and Debris Awareness and Elimination.

OMB Control Number: 1010–0154.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

As a Federal agency, we have a continuing affirmative duty to comply with the Endangered Species Act (ESA). This includes a substantive duty to carry out any agency action in a manner that is not likely to jeopardize protected species as well as a procedural duty to consult with the FWS and NOAA Fisheries before engaging in a discretionary action that may affect a protected species.

The MMS follows these procedural requirements by conducting formal consultations with FWS and NOAA Fisheries prior to lease sales. Consultations on OCS lease sales 181, 184, and the 5-year multisale (2002–2007) program in the Central and Western Planning Areas of the Gulf of Mexico (GOM) resulted in no-jeopardy biological opinions from the FWS and NOAA Fisheries. In their biological opinions, NOAA Fisheries determined that some activities associated with the proposed action (lease sale and related exploration, development, and production activities) may adversely affect (harm) sperm whales and sea turtles in the action area and that certain reasonable and prudent measures are necessary to minimize the potential for incidental take of these animals. To be exempt from the prohibitions of Section 9 of the ESA (which prohibits taking listed species), MMS must implement and enforce nondiscretionary terms and conditions. The ESA also requires monitoring and reporting. Monitoring programs resulting from ESA interagency consultations are designed to (1) detect adverse effects resulting from a proposed action, (2) assess the actual level of incidental take in comparison with the level of anticipated incidental take documented in the biological opinion, (3) detect when the level of anticipated take is exceeded, and (4) determine the effectiveness of reasonable and prudent alternatives and their implementing terms and conditions.

To provide supplementary guidance and procedures, MMS issues Notices to Lessees and Operators (NTLs) on a regional or national basis. Regulation 30 CFR 250.103 allows MMS to issue NTLs to clarify, supplement, or provide more detail about certain requirements. To implement the nondiscretionary terms and conditions of these biological opinions, the MMS issued three NTLs, as follows (note that the NTL numbers were removed since they will be reissued after renewal):

- Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program,
- Vessel Strike Avoidance and Injured/Dead Protected Species Reporting,
- Marine Trash and Debris Awareness and Elimination.

It should be noted that it has now become common practice for OCS lessees and operators to subcontract the marine mammal observation and monitoring activities associated with the requirements of the Seismic Survey Mitigation Measures and Protected Species Observer Program NTL.

MMS has been working on rulemaking, 1010–AD10, to incorporate the requirements in the NTLs into our regulations. Once final rulemaking becomes effective, the burden hours for this collection will be consolidated into the primary collection of 30 CFR part 250 subpart B, 1010–0151. We will then submit to OMB a request to discontinue this collection.

MMS will use the information collected to report annually to NOAA Fisheries the effectiveness of mitigation, any adverse effects of the proposed action, and any incidental take, in accordance with 50 CFR 402.14(i)(3). MMS engineers, geologists, geophysicists, environmental scientists, and other federal agencies (FWS, NOAA Fisheries, etc.) also will analyze the information and data collected under these NTLs to better evaluate the potential impacts to listed species and to plan operations in a manner that will further reduce and/or avoid adverse impacts to protected species on the OCS.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR Part 2). No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion, annually, and on the 1st and 15th of each month for the marine mammal observation reports.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS lessees and operators.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The estimated annual ''hour'' burden for this information collection is a total of 1,002 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, MMS assumed that respondents perform certain requirements in the normal course of their activities. MMS considers these to be usual and customary and took that into account in estimating the burden.

NTL title	Reporting, posting, or recordkeeping requirement	Hour burden	Average No. of annual responses	Annual burden hours
Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program.	Submit to MMS observer training requirement materials and information.	½ hour	24 reports × 4 vessels = 96.	48
	Training certification and recordkeeping	½ hour	20	10
	If used, submit to MMS information on any passive acoustic monitoring system prior to placing it in service.	1 hour	3	3
	Submit to MMS marine mammal observation report(s). (This includes observer duty and training and are the occasional activities done in-house and not subcontracted out.).	345 hours*	2 reports	690
Vessel Strike Avoidance and Injured/Dead Protected Species Reporting.	Submit injured/dead protected species report.	½ hour	2 reports	1
Marine Trash and Debris Awareness and Elimination.	Submit request for training video	½ hour	100 requests	50
	Submit annual report to MMS on training process and certification.	½ hour	200 records	100
	Training recordkeeping	½ hour	200 records	100
	Post placards on vessels and structures. (Exempt from information collection burden because MMS is providing exact language for the trash and debris warning, similar to the ''Surgeon General's Warning'' exemption.)			0
Total Hour Burden			623 responses	1,002 hrs

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified three non-hour costs associated with this IC that were originally estimated as hour burdens. As previously explained, typically these activities are now subcontracted to other service companies with expertise in these areas. Therefore, in this submission we have significantly reduced the corresponding hours and put the majority of the costs associated with these requirements in the ''non-hour cost'' burden. To allow for the potential in-house reporting by lessees/operators, we have retained a minimal hour burden in the hour burden table. It should be noted that the costs identified are associated with the NTL: Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program.

- Observer training—8 hrs @ $37.50 hr = $300 × 72 observers = $21,600.
- Submit observation report/form—1 hr @ $52 hr = $52 × 200 reports/forms = $10,400.
- Observation duty—8 hrs × 3 observers = 24 × 4 vessels = 96 hrs × 365 days/yr = 35,040 hours × $52 hr = $1,822,080.

Therefore, we estimate that the annual non-hour cost burden is $1,854,080.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed

collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on May 10, 2006, we published a **Federal Register** notice (71 FR 27268) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We received several comments in response to these efforts. The following discusses the comments and MMS's responses.

Comment A: We request that the MMS demonstrate that the monitoring and reporting requirements of NTL 2004-G01, Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program, have in fact been approved by OMB under the PRA.

Response A: As a means to implement non-discretionary terms and conditions imposed by NOAA in their July 2002 biological opinion for Lease Sale 184 and subsequent Endangered Species Act section 7 consultations, MMS sought emergency information collection (IC) approval from OMB. OMB issued the emergency IC approval (OMB Control Number 1010–0154) on 3/26/2003, for 180 days with an expiration date of 9/30/2003. MMS issued NTL 2003-G08 ''Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program'' with an effective date of 6/5/2003. MMS then began the process of obtaining the standard 3-year OMB IC approval for the NTL. During that process, MMS expanded the scope of the NTL to cover additional marine mammals and water depths less than 200 meters in the Eastern Planning Area of the Gulf of Mexico. OMB IC approval for the NTL with revised scope was granted (1010–0154) on 12/05/03. MMS reissued the NTL (after the effective date of the OMB IC approval) in 2004, with a 2004 NTL number, NTL 2004-G01 (which means the first NTL issued by the Gulf of Mexico Regional Office in the year 2004).

Comment B: We request that MMS demonstrate that there are no costs to comply with the monitoring and reporting requirements of NTL 2004–G01.

Response B: The initial standard IC request for this NTL went out for public comment with a 60-day (68 FR 25905 May 14, 2003) and 30-day (68 FR 56313 September 30, 2003) **Federal Register** notice. In the standard IC request, MMS states ''* * * Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operations, maintenance, and purchase of service components * * *'' MMS did receive a comment expressing concern about the possible costs associated with these NTLs. However, the commenter did not identify any specific non-hour cost estimates associated with the activities. Therefore, in the 2003 submission to OMB requesting a standard three-year extension of the emergency approval, MMS reported that we had not identified any non-hour cost burdens associated with the NTLs. OMB granted the three-year approval with the current December 31, 2006, expiration date.

During this current 2006 renewal process, we again published the 60-day comment notice in the **Federal Register** (71 FR 27268, 5/10/2006). We received the above comment pertaining to the non-hour cost burdens. Based upon this comment, and the previous 2003 comment expressing concern over the costs associated with the requirements imposed by these NTLs, MMS has further investigated both the hour and non-hour cost burdens. Our findings revealed that lessees and operators now routinely subcontract the marine mammal observation and monitoring activities detailed in one of the NTLs. This results in ''non-hour'' cost burdens ($1,854,080) in the form of service contracts, rather than in-house company employees performing these duties with corresponding ''hour'' burden costs. Therefore, in this ICR we have adjusted all of our estimates accordingly for both the hour and non-hour cost burdens.

Comment C: We request that MMS confirm our understanding that the proposed extension of OMB No. 1010–0154 indicates that MMS does not intend or foresee any changes in the NTL 2004–G01 monitoring, reporting, and mitigation requirements. Any new requirements would require a new ICR, would require a new public comment period, and would have to pass the practical utility test.

Response C: After OMB renews this collection, MMS will reissue NTL 2004–G01 with no changes in requirements. Should MMS need to impose new requirements, MMS would seek OMB IC approval and provide notice for public comment. However, the NTL will be reissued with a current year NTL number (which will have either a 2006 or 2007 to signify the year that the NTL was issued, and a different G number, signifying the alphanumerical order of an NTL) and will display the new OMB approval expiration date and a revised PRA paragraph to reflect the re-estimated IC hour and non-hour cost burdens.

Comment D: One commenter posed a question concerning the validity of observers and their qualifications.

Response D: This comment does not pertain to the information collection burden of the requirements. But, in response, it should be noted that all visual observers must have completed a protected species observer training course. MMS will not sanction particular trainers or training programs. Training is offered by independent entities. However, basic training criteria have been established and must be adhered to by any entity that offers observer training. Operators may utilize observers trained by third parties, may send crew for training conducted by third parties, or may develop their own training program. All training programs offering to fulfill the observer training requirement must: (1) Furnish to MMS, at the address listed in the NTL titled, Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program, a course information packet that includes the name and qualifications (i.e., experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material; (2) furnish each trainee with a document stating successful completion of the course; and (3) provide MMS with names, affiliations, and dates of course completion of trainees. The training course must include the following elements: overview of the MMPA and the ESA as they relate to seismic acquisition and protection of marine mammals and sea turtles in the GOM; overview of seismic acquisition operations in the GOM; overview of seismic mitigation measures (NTLs) and the protected species observer program in the GOM; discussion of the role and responsibilities of the protected species observer in the GOM, including the

legal requirements (why you are here and what you do), professional behavior (code of conduct), integrity, authority of protected species observer to call for shut-down of seismic acquisition operations, assigned duties—what can/cannot be asked of the observer, reporting of violations and coercion; identification of GOM marine mammals and sea turtles, with emphasis on whales; cues and search methods for locating marine mammals, especially whales, and sea turtles; data collection and reporting requirements—forms and reports to MMS on the 1st and 15th of each month, whale in exclusion zone/shut-down report within 24 hours.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by December 22, 2006.

Public Comment Procedures: MMS's practice is to make comments, including the names and addresses of respondents, available for public review. Individual respondents may request that we withhold their address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure ''would constitute an unwarranted invasion of privacy.'' Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. However, we will not consider anonymous comments. Except for proprietary information, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: September 26, 2006.

E.P. Danenberger,

Chief Office of Offshore Regulatory Programs.

[FR Doc. E6–19687 Filed 11–21–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Draft White-tailed Deer Management Plan Environmental Impact Statement, Catoctin Mountain Park, MD

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Draft White-tailed Deer Management Plan/Environmental Impact Statement for Catoctin Mountain Park.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the Draft White-tailed Deer Management Plan/Environmental Impact Statement (DEIS) for Catoctin Mountain Park, Thurmont, Maryland. The purpose of the DEIS is to identify a preferred white-tailed deer management plan from a range of alternatives that supports forest regeneration and provides for long-term protection, conservation, and restoration of native species and cultural resources. The DEIS evaluates four alternatives for managing white-tailed deer in the park. The document describes and analyzes the environmental impacts of three action alternatives and the no-action alternative. When implemented, the plan will guide deer management actions over the next 15 years.

DATES: The NPS invites comments regarding the DEIS from the public. Comments will be accepted for a period of 60 days from the date the Environmental Protection Agency's Notice of Availability is published in the **Federal Register**. In addition, the NPS intends to conduct a public meeting. Please check local newspapers, the park's Web site, *http://www.nps.gov/cato,* or contact the name listed below to find out when and where the meeting will be held. A brochure has been prepared that describes the DEIS and provides information regarding the public meeting.

There are several ways to submit comments. During the public meeting, the NPS will accept written comments as well as provide for verbal comments to be recorded. We encourage comments to be submitted electronically through the NPS Planning, Environment, and Public Comment (PEPC) Web site *http://parkplanning.nps.gov.* Written comments may also be submitted to: Superintendent, Catoctin Mountain Park, 6602 Foxville Road, Thurmont, Maryland, 21788.

ADDRESSES: The DEIS will be available for public review online at the PEPC Web site at *http://parkplanning.nps.gov.* Once on the PEPC Web site, select ''Catoctin Mountain Park'' in order to access the DEIS. Bound copies of the DEIS will be available at the Catoctin Mountain Park Visitor Center located at the intersection of Maryland Route 77 and Park Central Road, at park headquarters located approximately 2 miles west of Thurmont on Maryland Route 77, and at public libraries in Frederick, Thurmont, Smithsburg, and Hagerstown, Maryland.

FOR FURTHER INFORMATION CONTACT: Donna Swauger, Environmental Protection Specialists, Catoctin Mountain Park, 6602 Foxville Road, Thurmont, Maryland 21788, (301) 416–0135.

SUPPLEMENTARY INFORMATION: The DEIS evaluates four alternatives for managing white-tailed deer in the park. The document describes and analyzes the environmental impacts of three action alternatives and the no-action alternative.

Alternative A (no action) would continue the existing deer management plan of limited fencing, use of repellents in landscaped areas, monitoring, data management, and research; no new deer management actions would be implemented.

Alternative B would combine several non-lethal actions including large-scale exclosures (fencing), additional use of repellents in limited areas, and reproductive control of does to gradually reduce deer population in the park.

Under Alternative C (NPS Preferred Alternative), qualified federal employees or contractors would directly reduce the deer population in the park through sharpshooting and capture and euthanasia, where appropriate.

Alternative D would combine actions of Alternative C to directly reduce the deer population and reproductive control of does as under Alternative B to maintain population levels.

Comments will be analyzed and responded to within the final White-tailed Deer Management Plan/Environmental Impact Statement. Our practice is to make comments, including names, home addresses, home phone numbers and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must

demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documental circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Dated: October 20, 2006.

Joseph M. Lawler,

Regional Director, National Capital Region.

[FR Doc. 06–9331 Filed 11–21–06; 8:45 am]

BILLING CODE 4312–59–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Carnegie Museum of Natural History, Pittsburgh, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of Carnegie Museum of Natural History, Pittsburgh, PA. The human remains were removed from a site in Poinsett County, AR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Carnegie Museum of Natural History professional staff in consultation with representatives of the Quapaw Tribe of Indians, Oklahoma.

In 1974, human remains representing a minimum of one individual were removed from the Cummin's Place (also known as Cumming's Place, site 3PO5) in Poinsett County, AR, by Emil Alam during a pedestrian survey of the site. Mr. Alam donated the human remains as part of a larger collection to the Carnegie Museum of Natural History in 1984. No known individual was identified. No associated funerary objects are present.

The Cummin's Place is a Parkin phase site of the Mississippian nucleation horizon (A.D. 1350–1650). Oral history evidence presented by representatives of the Quapaw Tribe of Indians, Oklahoma indicates that the region including Poinsett County has long been included in the traditional ancestral homelands and hunting territory of the Quapaw. European documentation concerning the geographical range of the Quapaw people, specifically French colonial documents and maps, indicate that only the Quapaw had villages in eastern Arkansas circa A.D. 1673–1720. Descendants of the Quapaw are members of the Quapaw Tribe of Indians, Oklahoma. In addition, the Quapaw Tribe of Indians, Oklahoma have previously repatriated Native American human remains and associated funerary objects from the Cummin's Place in accordance with the Native American Graves Protection and Repatriation Act.

Officials of the Carnegie Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Carnegie Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Quapaw Tribe of Indians, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. David R. Watters, Carnegie Museum of Natural History, 5800 Baum Blvd., Pittsburgh, PA 15206, telephone (412) 665–2605, before December 22, 2006. Repatriation of the human remains to the Quapaw Tribe of Indians, Oklahoma may proceed after that date if no additional claimants come forward.

The Carnegie Museum of Natural History is responsible for notifying the Quapaw Tribe of Indians, Oklahoma that this notice has been published.

Dated: October 23, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–19788 Filed 11–21–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Pierce College District, Lakewood, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Pierce College District, Lakewood, WA. The human remains were removed from site 45–PI–07, also known as the Purdy 1 site, at Carr Inlet, Pierce County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Pierce College professional staff in consultation with representatives of the Puyallup Tribe of the Puyallup Reservation, Washington.

Between April 1975 and August 1976, the human remains of a number of Native American individuals were removed from site 45–PI–07, also known as the Purdy 1 site, at Carr Inlet, Pierce County, WA, by a Pierce College instructor, Dale McGinnis, and James Forrest, a Pierce College student. The human remains were initially brought to Fort Steilacoom Community College, now called Pierce College, for storage. At an unknown date, the human remains of an unknown number of individuals were re-interred by representatives of local Indian tribes and First Nations. In 1978, the human remains of a minimum of 29 individuals were transferred to the care of Mr. Forrest. In 2006, Mr. Forrest transferred the human remains to Pierce College. No known individuals were identified. No associated funerary objects are present.

Site 45–PI–07 is a shell mound measuring 5 feet high, 30 feet wide, and 120 feet long. Osteological and archeological analysis indicate that the human remains removed from site 45–PI–07 are of Native American ancestry, based on the presence of extreme degrees of dental ware, marked shoveling of the exposed permanent incisors, blunt nasal sills, rounded chins, squatting facets on the talus, and their flex-kneed burial position, and site context. Archeological materials recovered from the site indicate a wide range of use during the prehistoric and historic periods. Site 45–PI–07 is located within the area long occupied by the Shotlemamish, a Southern Lushootseed speaking group.

Descendants of the Shotlemamish are members of the Puyallup Tribe of the Puyallup Reservation, Washington.

Officials of the Pierce College District have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 29 individuals of Native American ancestry. Officials of the Pierce College District also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Puyallup Tribe of the Puyallup Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Chris MacKersie, District Director of Safety & Security and the Assistant Director of Facilities, Pierce College District, 9401 Farwest Drive SW, Lakewood, WA 98498, (253) 912–3655 December 22, 2006. Repatriation of the human remains to the Puyallup Tribe of the Puyallup Reservation, Washington may proceed after that date if no additional claimants come forward.

Pierce College District is responsible for notifying the Puyallup Tribe of the Puyallup Reservation, Washington that this notice has been published.

Dated: October 26, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–19790 Filed 11–21–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Slater Museum of Natural History, University of Puget Sound, Tacoma, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Slater Museum of Natural History, University of Puget Sound, Tacoma, WA. The human remains were removed from an area north of the Native Village of Barrow, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Slater Museum of Natural History, University of Puget Sound professional staff and a consultant in consultation with representatives of the Native Village of Barrow Inupiat Traditional Government.

In the summer of 1953, human remains representing a minimum of two individuals were removed from a site between the Native Village of Barrow, AK, and the Naval Arctic Research Laboratory, by Stewart Lowther, a geologist. In July 2006, after Dr. Lowther retired, the human remains were brought to the Slater Museum of Natural History. There is no additional information regarding the collection and subsequent transfer of the human remains to the museum. No known individuals were identified. No associated funerary objects are present.

The individuals are most likely of Native American ancestry as indicated by morphological features. The geographical location where the human remains were recovered is consistent with the historically documented territory of the Native Village of Barrow Inupiat Traditional Government. Furthermore, based on information provided during consultation with tribal representatives, there is a reasonable belief that the human remains share a common ancestry with members of the Native Village of Barrow Inupiat Traditional Government.

Officials of the Slater Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above likely represent the physical remains of two individuals of Native American ancestry. Officials of the Slater Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Native Village of Barrow Inupiat Traditional Government.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Peter Wimberger, Director, Slater Museum of Natural History, 1500 N. Warner, Tacoma, WA 98416, telephone (253) 879–2784, before December 22, 2006. Repatriation of the human remains to the Native Village of Barrow Inupiat Traditional Government may proceed after that date if no additional claimants come forward.

The Slater Museum of Natural History is responsible for notifying the Native Village of Barrow Inupiat Traditional Government that this notice has been published.

Dated: October 30, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–19791 Filed 11–21–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Yellowstone National Park, Mammoth Hot Springs, WY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession and control of the U.S. Department of the Interior, National Park Service, Yellowstone National Park, Mammoth Hot Springs, WY. The human remains were removed from an area near Logan, Gallatin County, MT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the superintendent, Yellowstone National Park.

A detailed assessment of the human remains was made by Yellowstone National Park professional staff in consultation with representatives of the Arapaho Tribe of the Wind River Reservation, Wyoming; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Blackfeet Tribe of the Blackfeet Indian Reservation of Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho; Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana; Crow Tribe of Montana; Flandreau Santee Sioux Tribe of South Dakota; Fort Belknap Indian Community of the Fort Belknap Reservation of Montana; Kiowa Indian Tribe of Oklahoma; Lower Brule Sioux Tribe of the Lower Brule Sioux Reservation, South Dakota; Nez Perce Tribe of Idaho; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian

Reservation, South Dakota; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; and Yankton Sioux Tribe of South Dakota.

Prior to 1886, human remains representing a minimum of one individual were removed from a site near Logan, Gallatin County, MT, outside park boundaries. Non-destructive analysis of the human remains determined that the human remains are Native American (Willey and Key 1992). No known individual was identified. No associated funerary objects are present.

The incomplete skull, recovered by a sheepherder near his camp northeast of Logan, MT, was obtained by W.H. Everson of Bozeman, MT, in 1886. Mr. Everson sold the human remains to Senator F.C. Walcott and Mr. George Pratt, who donated them to Yellowstone National Park in 1930. Parts of the cranium appear to have been painted or stained red, though it is not known when that occurred. Writings by Mr. Everson state that he encountered ''several lodges of Flatheads'' when he camped in the area in 1884. Representatives of the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana confirm that their ancestors camped near Logan, MT, around 1884.

Officials of Yellowstone National Park have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of Yellowstone National Park also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Suzanne Lewis, superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, WY 82190, telephone (307) 344–2229, before December 22, 2006. Repatriation of the human remains to the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana may proceed after that date if no additional claimants come forward.

Yellowstone National Park is responsible for notifying the Arapaho Tribe of the Wind River Reservation, Wyoming; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Blackfeet Tribe of the Blackfeet Indian Reservation of Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho; Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana; Crow Tribe of Montana; Flandreau Santee Sioux Tribe of South Dakota; Fort Belknap Indian Community of the Fort Belknap Reservation of Montana; Kiowa Indian Tribe of Oklahoma; Lower Brule Sioux Tribe of the Lower Brule Sioux Reservation, South Dakota; Nez Perce Tribe of Idaho; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; and Yankton Sioux Tribe of South Dakota that this notice has been published.

Dated: October 23, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–19786 Filed 11–21–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0094, 1029–0098 and 1029–0119

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for the titles described below have been forwarded to the Office of Management and Budget (OMB) for review and approval. The information collection requests describe the nature of the information collections and their expected burden and cost.

DATES: Comments must be submitted on or before December 22, 2006, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783. You may also contact Mr. Trelease at *jtrelease@osmre.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted three requests to OMB to renew its approval for the collections of information found at 30 CFR Part 700, General; 30 CFR Part 769, Petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations, and the AML Contractor Information Form which is found in the Applicant/Violator System (AVS) handbook and is prepared by AML contractors to ensure compliance with 30 CFR 874.16. OSM is requesting a 3-year term of approval of these collections.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for these collections of information are 1029–0094 for Part 700, 1029–0098 for Part 769, and 1029–0119 for the AML Contractor Information Form.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on August 11, 2006 (71 FR 46240). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: 30 CFR Part 700, General.

OMB Control Number: 1029–0094.

Summary: This Part establishes procedures and requirements for terminating jurisdiction of surface coal mining and reclamation operations, petitions for rulemaking, and citizen suits filed under the Surface Mining Control and Reclamation Act of 1977.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State and tribal regulatory authorities, private citizens and citizen groups, and surface coal mining companies.

Total Annual Responses: 6.

Total Annual Burden Hours: 84.

Title: 30 CFR Part 769, Petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations.

OMB Control Number: 1029–0098.

Summary: This Part establishes the minimum procedures and standards for

designating Federal lands unsuitable for certain types of surface mining operations and for terminating designations pursuant to a petition. The information requested will aid the regulatory authority in the decision making process to approve a disapprove a request.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: People who may be adversely affected by surface mining of Federal lands.

Total Annual Responses: 1.

Total Annual Burden Hours: 1,067.

Title: AML Contractor Information Form.

OMB Control Number: 1029–0119.

Summary: 30 CFR 874.16 requires that every successful bidder for an AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Further, the regulation requires the eligibility to be confirmed by OSM's automated Applicant/Violator System (AVS) and the contractor must be eligible under the regulations implementing Section 510(c) of the Surface Mining Act to receive permits to conduct mining operations. This form provides a tool for OSM and the States/Indian tribes to help them prevent persons with outstanding violations from conducting further mining or AML reclamation activities in the State.

Bureau Form Number: None.

Frequency of Collection: Once per contract.

Description of Respondents: AML contract applicants and State and tribal regulatory authorities.

Total Annual Responses: 428.

Total Annual Burden Hours: 161.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–6566 or via e-mail to *OIRA_Docket@omb.eop.gov.* Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.*

Dated: October 11, 2006.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 06–9296 Filed 11–21–06; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Black Mesa and Kayenta Coal Mines, Coal Slurry Preparation Plant and Pipeline, and Coconino Aquifer Water-Supply System, Coconino, Mohave, and Navajo Counties, AZ, and Clark County, NV

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of draft environmental impact statement for the Black Mesa Project.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) announces availability of the draft environmental impact statement (EIS) for the Black Mesa Project, the public comment period and procedures, and public meetings and procedures.

DATES: To ensure consideration in the preparation of the final EIS, written comments must be received by OSM by 4 p.m., m.s.t., on January 22, 2007.

Public meetings will be held in:

- Window Rock, Arizona, on January 2, 2007, from 6 p.m. to 9 p.m. in the Resource Room at the Navajo Nation Museum, Highway 64 and Loop Road.
- Forest Lake, Arizona, on January 3, 2007, from 6 p.m. to 9 p.m. at the Forest Lake Chapter House on Navajo Route 41 about 20 miles north of Pinon, Arizona.
- Moenkopi, Arizona, on January 3, 2007, from 6 p.m. to 9 p.m. at the Community Center.
- Kayenta, Arizona, on January 4, 2007, from 6 p.m. to 9 p.m. at the Monument Valley High School cafeteria, north Highway 163.
- Kykotsmovi, Arizona, on January 4, 2007, from 6 p.m. to 9 p.m. at the Veterans Center.
- Peach Springs, Arizona, on January 9, 2007, from noon to 3 p.m. at the Hualapai Lodge, 900 Route 66.
- Kingman, Arizona, on January 9, 2007, from 6 p.m. to 9 p.m. at the Hampton Inn, 1791 Sycamore Avenue.
- Leupp, Arizona, on January 9, 2007, from 6 p.m. to 9 p.m. at the Leupp Chapter House on Navajo Route 15.
- Winslow, Arizona, on January 10, 2007, from 6 p.m. to 9 p.m. at the Winslow High School, Student Union, 600 E. Cherry Avenue.
- Laughlin, Nevada, on January 10, 2007, from 6 p.m. to 9 p.m. at the Laughlin Town Hall, 101 Civic Way.
- Flagstaff, Arizona, on January 11, 2007, from 6 p.m. to 9 p.m. at the Little America Hotel, 2515 East Butler Avenue.

ADDRESSES: The draft EIS is available for review on OSM's Internet Web site at *www.wrcc.osmre.gov/WR/BlackMesaEIS.htm.* Paper and computer compact disk (CD) copies of the draft EIS are also available for review at the Office of Surface Mining, Western Region, 1999 Broadway, Suite 3320, Denver, Colorado 80202–5733.

A limited number of CD and paper copies of the draft EIS have been prepared and are available upon request. Because of the time and expense in producing and mailing CD and paper copies, OSM requests that you review the Internet or publicly-available copy, if possible. You may obtain a CD or paper copy by contacting the person identified below in **FOR FURTHER INFORMATION CONTACT.** In your request, indicate whether you want a CD or paper copy.

Comments on the draft EIS may be submitted in writing or by e-mail over the Internet. At the top of your letter or in the subject line of your e-mail message, indicate that the comments are ''BMP Draft EIS Comments.'' Include your name and return address in your letter or e-mail message.

- E-mail comments should be sent to *BMKEIS@osmre.gov.* If you do not receive a confirmation from the system that OSM has received your e-mail comment, contact the person identified in **FOR FURTHER INFORMATION CONTACT** below.
- Written comments sent by first-class or priority U.S. Postal Service should be mailed to: Dennis Winterringer, Leader, Black Mesa Project EIS, OSM Western Region, P.O. Box 46667, Denver, Colorado 80201–6667.
- Comments delivered by U.S. Postal Service Express Mail or by courier service should be sent to: Dennis Winterringer, Leader, Black Mesa Project EIS, OSM Western Region, 1999 Broadway, Suite 3320, Denver, Colorado 80202–5733.

FOR FURTHER INFORMATION CONTACT: Dennis Winterringer, Leader, Black Mesa Project EIS, OSM Western Region, by telephone at (303) 844–1400, extension 1440, or by e-mail at *BMKEIS@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Black Mesa Project EIS

II. Availability of Your Comments for Public Review
III. Specificity of Comments
IV. Public Meetings

I. Background on the Black Mesa Project EIS

Pursuant to the National Environmental Policy Act of 1969 (NEPA), OSM prepared a draft EIS analyzing the effects of the proposed Black Mesa Project. The proposed Project consists of Peabody Western Coal Company's operation and reclamation plans for coal mining at the Black Mesa Mine Complex near Kayenta, Arizona; Black Mesa Pipeline Incorporated's (BMPI's) Coal Slurry Preparation Plant at the Black Mesa Mine Complex; BMPI's reconstruction of the 273-mile long Coal Slurry Pipeline across northern Arizona from the Coal Slurry Preparation Plant to the Mohave Generating Station in Laughlin, Nevada; and Salt River Project's and Mohave Generation Station co-owners' construction and operation of a water supply system consisting of water wells in the Coconino aquifer (C aquifer) near Leupp, Arizona, and of a water supply pipeline running 108 miles across the Navajo and Hopi Reservations from the wells to the Coal Slurry Preparation Plant. More information about the project and EIS can be found on OSM's Internet Web site at *www.wrcc.osmre.gov/WR/BlackMesaEIS.htm*.

The Bureau of Indian Affairs; Bureau of Land Management; Bureau of Reclamation; U.S. Environmental Protection Agency; U.S. Department of Agriculture Forest Service; Hopi Tribe; Hualapai Tribe; Navajo Nation; County of Mohave, Arizona; and City of Kingman, Arizona, cooperated with OSM in the preparation of the draft EIS. As a part of its National Environmental Policy Act activities for the proposed project, U.S. Environmental Protection Agency will attend at least the January 3 and 4, 2007, meetings respectively in Moenkopi and Kayenta, Arizona.

II. Availability of Your Comments for Public Review

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

III. Specificity of Written Comments

Written comments, including email comments, should be sent to OSM at the addresses given in the **ADDRESSES** section of this notice. Be specific in your comments and indicate the chapter, page, paragraph, and sentence your comments pertain to.

IV. Public Meetings

Public meeting rooms will be set up in four areas: (1) An area where an audio-visual presentation on the Black Mesa Project and EIS will be made, (2) an area with displays where meeting attendees may discuss the project proposal and the EIS process with OSM and others, (3) an area where meeting attendees may record and submit written comments, and (4) an area where an OSM representative and a transcriber will record oral comments.

To assist the transcriber and ensure an accurate record, OSM requests that each presenter of oral comments provide a written copy of his or her comments, if possible.

Hopi, Hualapai, and Navajo interpreters will be present respectively at meetings on the Hopi, Hualapai, and Navajo Reservations.

If you are disabled or need special accommodations to attend one of the meetings, contact the person under **FOR FURTHER INFORMATION CONTACT** at least 1 week before the meeting.

Dated: November 15, 2006.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. E6–19672 Filed 11–21–06; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–479]

Certain Textile Articles: Performance Outerwear

AGENCY: International Trade Commission.

ACTION: Institution of investigation and request for public comments.

DATES: *Effective Date:* November 16, 2006.

SUMMARY: Following receipt on October 25, 2006 of a request from the House Committee on Ways and Means, the Commission instituted investigation No. 332–479, Certain Textile Articles: Performance Outerwear, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Kimberlie Freund, Co-Project Leader, Office of Industries (202–708–5402; *kimberlie.freund@usitc.gov*) or Heidi Colby-Oizumi, Co-Project Leader, Office of Industries (202–205–3391; *heidi.colby@usitc.gov*). For information on legal aspects, contact William Gearhart of the Office of the General Counsel (202–205–3091; *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819; *margaret.olaughlin@usitc.gov*).

Background

In its letter, the Committee on Ways and Means, U.S. House of Representatives asked the U.S. International Trade Commission to conduct an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) and provide a report that contains, to the extent possible, data for 2005 and 2006 on the level of U.S. production and shipments of certain high-performance outerwear jackets and pants and the fabrics used to make such articles. The Committee also asked the Commission to define the products that it is covering in the report. The Committee asked the Commission to provide its report no later than 9 months following receipt of the letter (by July 25, 2007).

In its letter, the Committee also requested that the Commission provide similar data on U.S. production and shipments of certain travel goods with an outer surface of textile materials and the textile materials used to make such goods, and that the Commission submit this second report no later than 12 months following receipt of the letter (by October 25, 2007). The Commission has instituted investigation No. 332–

480, Certain Textile Articles: Travel Goods of Textile Materials, for that purpose, the details of which are provided in separate notice.

Written Submissions

No public hearing is planned. However, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. To be assured of consideration by the Commission, written statements should be submitted to the Commission at the earliest practical date but no later than 5:15 p.m. on April 30, 2007. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 requires that a signed original (or copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential business information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Persons with questions regarding electronic filing should contact the Secretary at 202–205–2000 or *edis@usitc.gov*).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Committee has indicated that it intends to make the Commission's report available to the public in its entirety, and has asked that the Commission not include any confidential business information in the report it sends to the Committee. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

General information concerning the Commission may also be obtained at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) *http://www.usitc.gov/secretary/edis.htm*. Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

By order of the Commission.

Issued: November 16, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–19763 Filed 11–21–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–480]

Certain Textile Articles: Travel Goods of Textile Materials

AGENCY: International Trade Commission.

ACTION: Institution of investigation and request for public comments.

DATES: *Effective Date:* November 16, 2006.

SUMMARY: Following receipt on October 25, 2006 of a request from the House Committee on Ways and Means, the Commission instituted investigation No. 332–480, Certain Textile Articles: Travel Goods of Textile Materials, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Kimberlie Freund, Co-Project Leader, Office of Industries (202–708–5402; *kimberlie.freund@usitc.gov*) or Heidi Colby-Oizumi, Co-Project Leader, Office of Industries (202–205–3391; *heidi.colby@usitc.gov*). For information on legal aspects, contact William Gearhart of the Office of the General Counsel (202–205–3091; *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819; *margaret.olaughlin@usitc.gov*).

Background: In its letter, the Committee on Ways and Means, U.S. House of Representatives asked the U.S. International Trade Commission to conduct an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) and provide a report that contains, to the extent possible, data for 2005 and 2006 on the level of U.S. production and shipments of certain travel goods with an outer surface of textile materials and the textile materials used to make such goods. The Committee also asked the Commission to define the products that it is covering in the report. The Committee asked the Commission to provide its report no later than 12 months following receipt of the letter (by October 25, 2007).

In its letter the Committee also requested that the Commission provide similar data on U.S. production and shipments of certain high-performance outerwear pants and jackets and the fabrics used to make such goods, and that the Commission submit that report no later than 9 months following receipt of the letter (by July 25, 2007). The Commission has instituted investigation No. 332–479, Certain Textile Articles: Performance Outerwear, for that purpose, the details of which are provided in a separate notice.

Written Submissions: No public hearing is planned. However, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. To be assured of consideration by the Commission, written statements should be submitted to the Commission at the earliest practical date but no later than 5:15 p.m. on June 30, 2007. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 C.F.R. 201.8). Section 201.8 requires that a signed original (or copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential business information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/*

pub/reports/electronic_filing_handbook.pdf). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Committee has indicated that it intends to make the Commission's report available to the public in its entirety, and has asked that the Commission not include any confidential business information in the report it sends to the Committee. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

General information concerning the Commission may also be obtained at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) *http://www.usitc.gov/secretary/edis.htm*. Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

By order of the Commission.

Issued: November 16, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–19765 Filed 11–21–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–06–058]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 4, 2006 at 2 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–678, 679, 681, and 682 (Second Review)(Stainless Steel Bar from Brazil, India, Japan, and Spain)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before December 15, 2006.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: November 20, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–9375 Filed 11–20–06; 12:03 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Filing of Proposed Stipulation by the United States To Resolve Certain Alleged Violations of a Clean Air Act Consent Decree With Alcoa, Inc.

Notice is hereby given that on November 15, 2006, the United States filed with the United States District Court for the Western District of Texas, in Cast No. A–03–CA–222–SS, a motion for judicial approval of a stipulation that it has entered into with Defendant Alcoa Inc. (''Alcoa'') and Intervenor-Defendant TXU Sandow Development Company LP (''TXU Sandow'') to resolve certain alleged violations of the Consent Decree in this action. The specific alleged violations addressed by the stipulation relate to Alcoa's failure to commence construction of one or more new units (the ''Replacement Sandow Units'') to replace the three existing electricity generating units (the ''Existing Sandow Units'') at Alcoa's Rockdale, Texas, facility by April 25, 2005; and Alcoa's anticipated failure to commence operation of the new replacement units by April 25, 2007. The relief provided by the stipulation is set forth in a proposed order (''Stipulated Order'') that the United States tendered with its motion. This Stipulated Order provides for, among other things:

- Payment of $859,000 in stipulated penalties as part of the resolution of Alcoa's anticipated failure to commence timely operation of the Replacement Sandow Units by April 25, 2007;
- Shutdown of the three Existing Sandow Units by December 31, 2006, roughly four months earlier than required by the consent decree;
- A commitment by Alcoa and TXU Sandow to commence operation of the Replacement Sandow Unit with full emission controls by no later than August 31, 2009;
- A commitment by Alcoa and TXU Sandow to achieve an emission rate for NO_X at the Replacement Sandow Unit that is 20% lower than the rate currently provided for in the Consent Decree; and
- A commitment by TXU Sandow to install selective catalytic reduction system (''SCR'') to eliminate most of the remaining NO_X emissions from Sandow Unit 4—a unit not previously addressed by the consent decree.

The Stipulated Order also provides for the addition of TXU Sandow as a party to the Consent Decree, jointly and severally liable with Alcoa for the obligations pertaining to the Replacement Sandow Unit, and solely liable for the obligations pertaining to the SCR at Sandow Unit 4.

The Department of Justice will receive for a period of twenty (20) days from the date of this publication comments relating to the proposed Stipulated Order. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Alcoa Inc., D.J. Ref. No. 90–5–2–1–07723/1*.

The Unites States' Motion for Approval of Stipulation to Resolve Certain Alleged Violations of Consent Decree, including the proposed Stipulated Order, may be examined at the Office of the United States Attorney, Western District of Texas, 816 Congress Avenue, Suite 1000, Austin, Texas 78701, and at U.S. EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733. During the public comment period, the Motion and Stipulated Order may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. In addition, a copy of the proposed Stipulated Order may also be obtained by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a

copy from the Consent Decree Library, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–9353 Filed 11–21–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Toy R. Arnett, Jr., et al.,* No. 3:05cv270–RS, was lodged with the United States District Court for the Northern District of Florida on November 14, 2006.

This proposed Consent Decree concerns a complaint filed by the United States against Toy R. Arnett, Jr., Rena M. Arnett, the Nesius Family Limited Partnership, Rick D. Nesius, Shannon K. Nesius, and Faith Assembly Christian Church of Miramar Beach, Inc., pursuant to Sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, with respect to Defendants' alleged violations of the Clean Water Act at two sites by discharging pollutants into waters of the United States without or in violation of a permit. The proposed Consent Decree resolves these allegations by requiring the restoration of portions of the wetlands at issue, mitigation, and the payment of civil penalties. The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Martin F. McDermott, United States Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986 and refer to *United States* v. *Toy R. Arnett, Jr., et al.,* DJ#90–5–1–1–17459.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of Florida, United States Courthouse, 1 North Palafox Street, Pensacola, Florida 32502. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/open.html.*

Stephen Samuels,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 06–9352 Filed 11–21–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 42 U.S.C. 9622(d)(2) and 28 CFR 50.7, notice is hereby given that on November 3, 2006, 2006, a proposed Consent Decree in *United States and California Department of Toxic Substances Control* v. *Rathon Corp.*, Civil Action Number 06–07048, was lodged with the United States District Court for the Central District of California.

The consent decree resolves certain claims brought by the United States, on behalf of the United States Environmental Protection Agency (''EPA''), and the California Department of Toxic Substances Control (''DTSC'') under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act, as amended (''RCRA''), 42 U.S.C. 6973, for the performance of response actions, and for the reimbursement of response costs incurred and to be incurred by EPA and DTSC, in connection with the release and threatened release of hazardous substances at the Puente Valley Operable Unit of the San Gabriel Valley Area 4 Superfund Site (''Site'') in Los Angeles County, California.

The consent decree resolves defendant's liability for past costs, future costs, and work associated with the remedial action required for the Site set forth in EPA's 1998 Interim Record of Decision and the 2005 Explanation of Significant Differences.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Rathon Corp.*, DOJ Ref. #90–11–2–354/24. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States Attorney, 300 North Los Angeles Street, Los Angeles, California 90012, and the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood, *tonia.fleetwood@usdoj.gov*, Fax No. (202) 514–0097, phone confirmation number (202) 514–1547. To obtain a copy of the Consent Decree from the Consent Decree Library, excluding the numerous pages of attachments, please enclose a check in the amount of $9.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–9351 Filed 11–21–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 42 U.S.C. 9622(d)(2) and 28 CFR 50.7, notice is hereby given that on November 2, 2006, a proposed Consent Decree in *United States and California Department of Toxic Substances Control* v. *Saint-Gobain Corporation*, Civil Act Number 06–07047, was lodged with the United States District Court for the Central District of California.

The consent decree resolves certain claims brought by the United States, on behalf of the United States Environmental Protection Agency (''EPA''), and the California Department of Toxic Substances Control (''DTSC'') under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act, as amended (''RCRA''), 42 U.S.C. 6973, for the performance of response actions, and for the reimbursement of response

costs incurred and to be incurred by EPA and DTSC, in connection with the release and threatened release of hazardous substances at the Puente Valley Operable Unit of the San Gabriel Valley Area 4 Superfund Site (''Site'') in Los Angeles County, California.

The consent decree resolves defendant's liability for past costs, future costs, and work associated with the remedial action required for the Site set forth in EPA's 1998 Interim Record of Decision and the 2005 Explanation of Significant Differences.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Saint-Gobain Corporation*, DOJ Ref. #90–11–2–354/23. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States Attorney, 300 North Los Angeles Street, Los Angeles, CA 90012, and the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood, *tonia.fleetwood@usdoj.gov*, Fax No. (202) 514–0097, phone confirmation number (202) 514–1547. To obtain a copy of the Consent Decree from the Consent Decree Library, excluding the numerous pages of attachments, please enclose a check in the amount of $9.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–9350 Filed 11–21–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—AAF Association, Inc.

Notice is hereby given that, on October 6, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), AAF Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Agile Broadcast, London, United Kingdom; and Mediaware International, Inc., Arlington, VA have been added as parties to this venture. Also, BAE Systems, San Diego, CA; and Seachange International, Maynard, MA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AAF Association, Inc. intends to file additional written notification disclosing all changes in membership.

On March 28, 2000, AAF Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on June 21, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 12, 2006 (71 FR 39364).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–9334 Filed 11–21–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mobile Enterprise Alliance, Inc.

Notice is hereby given that, on October 27, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Mobile Enterprise Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Antenna Software, Jersey City, NJ has been added as a party to this venture. Also Appear Networks AB, Stockholm, SWEDEN has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Mobile Enterprise Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On June 24, 2004, Mobile Enterprise Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 23, 2004 (69 FR 44062).

The last notification was filed with the Department on September 14, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 20, 2006 (71 FR 62013).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–9336 Filed 11–21–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on October 5, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, TZ Mikroelectronik, Geoppingen, GERMANY; Tabor Electronics, Ltd., Tel Hana, ISRAEL;

Spectracom Corporation, Rochester, NY; and PLDA, Inc., Aix-en-Provence, FRANCE have been added as parties to this venture. Also, RACAL Instruments has changed its name to EADS North America Defense Test and Services, Inc., Irvine, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on June 23, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 9, 2006 (71 FR 45582).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–9339 Filed 11–21–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Test Consortium, Inc.

Notice is hereby given that, on October 25, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Semiconductor Test Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Interface Technologies, Haslemere, Surrey, United Kingdom has been added as a party to this venture. Also, Aquiris, Monroe, NY has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activities of the group research project. Membership in this group research project remains open, and Semiconductor Test Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On May, 27, 2003, Semiconductor Test Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 17, 2003 (68 FR 35913).

The last notification was filed with the Department on August 3, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 8, 2006 (71 FR 53134).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–9337 Filed 11–21–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production act of 1933—Southwest Research Institute: Cooperative Research Group on High Efficiency Durable Gasoline Engine

Notice is hereby given that, on September 27, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute: Cooperative Research Group on High Efficiency Durable Gasoline Engine (''HEDGE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Federal Mogul Corporation, Plymouth, MI has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HEDGE intends to file additional written notification disclosing all changes in membership.

On June 10, 2005, HEDGE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 7, 2005 (70 FR 39339).

The last notification was filed with the Department on August 7, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 8, 2006 (71 FR 53134).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–9338 Filed 11–21–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on October 23, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Tensilica, Inc., Santa Clara, CA; and Denali Software, Inc., Palo Alto, CA have been added as parties to this venture. Also, IBM Corp., White Plains, NY; and STARC, Yokohama, JAPAN have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notifications disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on July 20, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 16, 2006 (71 FR 47248).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–9335 Filed 11–21–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,323]

Cookson Electronics Assembly Material Group, a Division of Fry Metals Inc., Doing Business as Alpha Metals, Jersey City, NJ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 30, 2006 in response to a petition filed by the Teamsters Local Union, Local 945 on behalf of workers at Cookson Electronics, Assembly Material Group, A Division of Frys Metals, Inc., Doing Business As Alpha Metals, Jersey City, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 13th day of November 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–19719 Filed 11–21–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,051]

Cambridge Lee Industries, LLC, Plant #4, Including On-Site Leased Workers of Advance Personnel and Gage Personnel, Reading, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 17, 2006, applicable to workers of Cambridge Lee Industries, LLC, Plant #4, including on-site leased workers of Advance Personnel and Gage Personnel, Leesport, Pennsylvania. The notice was published in the **Federal Register** on November 6, 2006 (71 FR 65003).

At the request of the State agency and a company official, the Department reviewed the certification for workers of the subject firm. New information shows that the Department did not correctly identify the city location of the subject firm in the decision document issued on October 17, 2006. The city location of the subject firm should read Reading, Pennsylvania.

Accordingly, the Department is amending this certification to correctly identify the city location to read Reading, Pennsylvania.

The intent of the Department's certification is to include all workers of Cambridge Lee Industries, LLC, Plant #4, Reading, Pennsylvania who were adversely affected by increased company imports.

The amended notice applicable to TA–W–60,051 is hereby issued as follows:

All workers of Cambridge Lee Industries, LLC, Plant #4, Reading, Pennsylvania, including on-site leased workers of Advance Personnel and Gage Personnel (TA–W–60,051), who became totally or partially separated from employment on or after August 29, 2005, through October 17, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of November 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–19718 Filed 11–21–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,705; TA–W–59,705A]

Computer Sciences Corporation, Global Transformation Services Employed On-Site at Framers' Insurance Group Los Angeles, CA; Computer Sciences Corporation, Global Transformation Services Employed On-Site at Framers' Insurance Group Simi Valley, CA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Computer Sciences Corporation, Global Transformation Services employed on-site at Farmers' Insurance Group, Los Angeles, California and Computer Sciences Corporation, Global Transformation Services employed on-site at Farmers' Insurance Group, Simi Valley, California. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–59,705; Computer Science Corporation Global Transformation Services Employed on-site at Farmers' Insurance Group Los Angeles, California, and

TA–W–59,705A; Computer Science Corporation Global Transformation Services Employed on-site at Farmers' Insurance Group Simi Valley, California (November 8, 2006).

Signed at Washington, DC this 14th day of November 2006.

Richard Church,

Certifying Officer, Division of, Trade Adjustment Assistance.

[FR Doc. E6–19714 Filed 11–21–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 4, 2006.

Interested persons are invited to submit written comments regarding the

subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 4, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 14th day of November 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA Petitions Instituted Between 11/6/06 and 11/9/06]

TA–W	Subject Firm (Petitioners)	Location	Date of institution	Date of petition
60365	KHS USA Inc. (Comp)	Waukesha, WI	11/06/06	11/03/06
60366	Jones Apparel Group (Wkrs)	New York, NY	11/06/06	11/03/06
60367	Ford Motor Company (UAW)	Norfolk, VA	11/06/06	10/31/06
60368	Ross Mould, Inc. (USWA)	Washington, PA	11/06/06	10/27/06
60369	Hoover Precision Products, Inc. (Comp)	East Granby, CT	11/07/06	10/19/06
60370	Radio Frequency Systems, Inc. (Wkrs)	Meriden, CT	11/07/06	11/06/06
60371	Groupo Antolin North America (Wkrs)	Auburn Hills, MI	11/07/06	11/06/06
60372	International Truck and Engine (Comp)	Warrenville, IL	11/07/06	11/02/06
60373	Admiral Tool & Mfg. Co. of Illinois (Comp)	Chicago, IL	11/07/06	11/04/06
60374	Alarama Jewelry Inc. (Wkrs)	Long Island City, NY	11/07/06	11/03/06
60375	Paramount Cards, Inc. (Comp)	Huntersville, NC	11/07/06	11/07/06
60376	Creative Engineered Polymer Products (Union)	Middlefield, OH	11/07/06	11/07/06
60377	Springfield LLC (Comp)	Rockhill, SC	11/07/06	11/03/06
60378	Chemtrade Logistics (Wkrs)	Carlisle, SC	11/07/06	11/03/06
60379	Springfield LLC—Limestone Plant (Comp)	Gaffney, SC	11/07/06	11/03/06
60380	Delta Woodside Industries (Comp)	Wallace, SC	11/08/06	11/02/06
60381	Creative Engineered Polymer Products (Union)	Canton, OH	11/08/06	11/06/06
60382	Guide Anderson LLC (UAW)	Anderson, IN	11/08/06	11/07/06
60383	Bernard Chaus, Inc. (Union)	New York, NY	11/08/06	11/03/06
60384	Roanoke Furniture (Wkrs)	Columbus, OH	11/08/06	11/07/06
60385	Maxtor Corporation (Wkrs)	Longmont, CO	11/08/06	11/06/06
60386	Willamette Dental/Lab (Comp)	Vancouver, WA	11/08/06	11/06/06
60387	Arimon Technologies (Comp)	Manitowoc, WI	11/08/06	11/01/06
60388	Hartz & Co (Wkrs)	New York, NY	11/08/06	11/06/06
60389	Starkey Lab, Inc. (Wkrs)	Glencoe, MN	11/09/06	11/08/06
60390	Everett Charles Technologies (Wkrs)	San Jose, CA	11/09/06	11/09/06
60391	TI Group Automotive Systems, LLC (Wkrs)	Washington Courthouse, OH	11/09/06	11/02/06
60392	Carolina Toll Manufacturing Inc. (Wkrs)	Baton Rouge, LA	11/09/06	11/08/06
60393	RR Donelley Warsaw Division (Wkrs)	Warsaw, IN	11/09/06	10/05/06
60394	Airtomic (Comp)	Jeffersonville, IN	11/09/06	10/19/06
60395	Wellman, Inc.—Johnsonville, SC Plant (Comp)	Johnsonville, SC	11/09/06	10/27/06
60396	Suntec Industries, Inc. (Wkrs)	Glasgow, KY	11/09/06	11/06/06

[FR Doc. E6–19712 Filed 11–21–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,847]

Label World Incorporated Rochester, NY, Notice of Revised Determination on Reconsideration

By letter dated October 5, 2006, a company official requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of Label World Incorporated, Rochester, New York (subject firm). The Department's determination was issued on August 25, 2006. The Department's Notice of determination was published in the **Federal Register** on September 13, 2006 (71 FR 54095). Workers produce die-cut thermal media and labels for home photo printing.

The petition alleges that the subject firm shifted production abroad and provided information that implied that the subject firm's major customer was importing from Mexico.

The denial was based on the Department's findings that the subject firm did not shift abroad, that neither the subject firm nor the firm's customer increased imports of thermal media or labels during the relevant period, and that the firm's major customer is transferring its reliance of thermal media and labels from the subject firm to a Mexican facility but will not import like or directly competitive articles.

In the request for reconsideration, the company official states that the subject firm supplied a component part of an article that was produced by a customer who shifted production of the final product to Mexico.

Although secondary impact (the subject firm is a supplier of a component part for a TAA-certified firm and loss of business with the TAA-certified customer contributed importantly to the workers' separations) was not apparent in the petition, the Department determined that to conduct such an investigation is in the best interest of the separated workers.

The reconsideration investigation revealed that the subject firm produced and packaged cut media paper, which was supplied to a TAA-certified firm (Eastman Kodak Company, Rochester Film Finishing Division, Rochester, New York; TA–W–58,105) to be incorporated into the final product (Kodak Color Cartridge and Photo Paper

Kit). Following the loss of cut media paper business with this company, the subject firm ceased production of cut media paper and separated the subject workers (July 2006).

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the information obtained in the reconsideration investigation, I determine that workers of Label World Incorporated, Rochester, New York qualify as adversely affected secondary workers under Section 222 of the Trade Act of 1974, as amended. In accordance with the provisions of the Act, I make the following certification:

All workers of Label World Incorporated, Rochester, New York, who became totally or partially separated from employment on or after July 26, 2005 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC this 9th day of November 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–19716 Filed 11–21–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,274]

Laidlaw Corporation, Currently Known as Laidlaw Company LLC, Monticello, WI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 10, 2005, applicable to workers of Laidlaw Corporation, Monticello, Wisconsin. The notice was published in the **Federal Register** on July 14, 2005 (70 FR 40741).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of wire garment hangers.

The subject firm originally named Laidlaw Corporation was renamed Laidlaw Company LLC in May 2006 due to a change in ownership. The State agency reports that workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Laidlaw Company LLC, Monticello, Wisconsin.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Laidlaw Corporation, currently known as Laidlaw Company LLC who were adversely affected by increased company imports.

The amended notice applicable to TA-W–57,274 is hereby issued as follows:

All workers of Laidlaw Corporation, currently known as Laidlaw Company LLC, Monticello, Wisconsin, who became totally or partially separated from employment on or after May 27, 2004, through June 10, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 7th day of November 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–19693 Filed 11–21–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 4, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 4, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 14th day of November 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX–

[TAA petitions instituted between 10/16/06 and 10/20/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
60245	R. L. Stowe Mills, Inc. (Comp)	Belmont, NC	10/16/06	10/12/06
60246	Weyerhaeuser Cosmopolis Pulp Mill (Union)	Cosmopolis, WA	10/16/06	10/12/06
60247	Advanced Technology Services (Wkrs)	Vinita, OK	10/16/06	10/13/06
60248	Werner Co. (Comp)	Franklin Park, IL	10/16/06	10/13/06
60249	ADVO, Inc. (Comp)	Pittsburgh, PA	10/16/06	10/16/06
60249A	ADVO, Inc. (Comp)	Phoenix, AZ	10/16/06	10/16/06
60250	Senco Products (Wkrs)	Cincinnati, OH	10/17/06	09/21/06
60251	Canvas Products (Union)	Detroit, MI	10/17/06	10/16/06
60252	Shogren Hosiery Mfg. Co., Inc. (Comp)	Concord, NC	10/17/06	10/17/06
60253	Metaldyne (Comp)	St. Marys, PA	10/18/06	10/12/06
60254	Consolidated Metco, Inc. (IAM)	Clackamas, OR	10/18/06	10/17/06
60255	Textron Fastening Systems (Wkrs)	Wytheville, VA	10/18/06	10/16/06
60256	Eaton Corporation (Wkrs)	Auburn, IN	10/18/06	10/16/06
60257	Benchmark Electronics (Wkrs)	Hudson, NH	10/18/06	10/16/06
60258	Woodbridge Corporation (Wkrs)	Lithonia, GA	10/18/06	10/18/06
60259	Burris Manufacturing, Inc. (Comp)	Albemarle, NC	10/18/06	10/18/06
60260	Georgia Pacific Corp. (State)	Crossett, AR	10/18/06	10/17/06
60261	Clout Financial Services, Inc. (Wkrs)	Bloomington, IN	10/18/06	10/18/06
60262	Paramount Cards, Inc. (State)	Pawtucket, RI	10/19/06	10/18/06
60263	Freedom Industries (Comp)	Liberty, MS	10/19/06	10/18/06
60264T	Ibase (Comp)	IL	10/19/06	10/10/06
60264S	Ibase (Comp)	VA	10/19/06	10/10/06
60264R	Ibase (Comp)	UT	10/19/06	10/10/06
60264Q	Ibase (Comp)	TX	10/19/06	10/10/06
60264P	Ibase (Comp)	PA	10/19/06	10/10/06
60264O	Ibase (Comp)	OR	10/19/06	10/10/06
60264N	Ibase (Comp)	OH	10/19/06	10/10/06
60264M	Ibase (Comp)	NY	10/19/06	10/10/06
60264L	Ibase (Comp)	NC	10/19/06	10/10/06
60264K	Ibase (Comp)	MO	10/19/06	10/10/06
60264J	Ibase (Comp)	MI	10/19/06	10/10/06
60264I	Ibase (Comp)	MD	10/19/06	10/10/06
60264G	Ibase (Comp)	KY	10/19/06	10/10/06
60264F	Ibase (Comp)	IN	10/19/06	10/10/06
60264E	Ibase (Comp)	ID	10/19/06	10/10/06
60264D	Ibase (Comp)	FL	10/19/06	10/10/06
60264C	Ibase (Comp)	CO	10/19/06	10/10/06
60264B	Ibase (Comp)	AZ	10/19/06	10/10/06
60264A	Ibase (Comp)	AL	10/19/06	10/10/06
60264H	Ibase (Comp)	MA	10/19/06	10/10/06
60264	Ibase (Comp)	Austin, TX	10/19/06	10/10/06
60265	Physical Rehab Works (State)	Herrin, IL	10/19/06	10/18/06
60266	Hanesbrands, Inc. (Comp)	Marion, NC	10/19/06	10/13/06
60266A	Hanesbrands, Inc. (Comp)	Lumberton, NC	10/19/06	10/13/06
60267	Guide Corp. (State)	Monroe, LA	10/20/06	10/19/06
60268	Harte Hanks Market Intelligence (Wkrs)	Sterling Heights, MI	10/20/06	09/22/06
60269	AAR Cargo Systems (Comp)	Livonia, MI	10/20/06	10/17/06
60270	Beard Hosiery Co., Inc. (Comp)	Lenoir, NC	10/20/06	10/19/06
60271	Town of Hartland (Comp)	Hartland, ME	10/20/06	10/18/06
60272	Elder Manufacturing, Inc. (Wkrs)	St. Louis, MO	10/20/06	10/19/06
60273	Micro Motion, Inc. (State)	Boulder, CO	10/20/06	10/19/06
60274	Southern Glove Manufacturing Co., Inc. (Comp)	Conover, NC	10/20/06	10/20/06

[FR Doc. E6–19720 Filed 11–21–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,113; TA–W–59,113A]

Sara Lee Branded Apparel Currently Known as Hanesbrands, Inc., Eden, NC; Sara Lee Branded Apparel, Currently Known as Hanesbrands, Inc., Galax, VA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 26, 2006, applicable to workers of Sara Lee Branded Apparel, Eden, North Carolina and Galax, Virginia. The notice was published in the **Federal Register** on May 11, 2006 (71 FR 27519).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers at the Eden, North Carolina location produce yarn for knit fabric and the workers at the Galax, Virginia location produce knit fabric.

New information shows that Sara Lee Branded Apparel is currently known as Hanesbrands, Inc. In September 2006, Sara Lee Corporation spun-off its Branded Apparel business and created an independent company, Hanesbrands, Inc. Workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Hanesbrands, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Sara Lee Branded Apparel who were adversely affected by a shift in production to the Dominican Republic and El Salvador.

The amended notice applicable to TA–W–59,113 is hereby issued as follows:

All workers of Sara Lee Branded Apparel, currently known as Hanesbrands, Inc., Eden, North Carolina (TA–W–59,113) and Sara Lee Branded Apparel, currently known as Hanesbrands, Inc., Galax, Virginia (TA–W–59,113A), who became totally or partially separated from employment on or after March 22, 2005, through April 26, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 14th day of November 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–19713 Filed 11–21–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,930]

Shaw Mudge and Company Shelton, CT; et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 11, 2006, applicable to workers of Shaw Mudge and Company, Shelton, Connecticut. The notice was published in the **Federal Register** on October 25, 2006 (71 FR 62490).

At the request of a State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations have occurred involving five employees of the Shelton, Connecticut facility of Shaw Mudge and Company located in Whitehouse, New Jersey; West Milford, New Jersey; Morris Township, New Jersey; Calabasas, California; and Harrington, Maine. Ms. Angela Kohut, Mr. Peter Obermeyer, Mr. Allan Streit, Ms. Tracy Gedney and Mr. David Ramsdell provided sales function services for the production of fragrances produced by the subject company.

Based on these findings, the Department is amending this certification to include employees of the Shelton, Connecticut facility of Shaw Mudge and Company located in Whitehouse, New Jersey; West Milford, New Jersey; Morris Township, New Jersey; Calabasas, California; and Harrington, Maine.

The intent of the Department's certification is to include all workers of Shaw Mudge and Company, Shelton, Connecticut who were adversely affected by increased customer imports.

The amended notice applicable to TA–W–59,930 is hereby issued as follows:

''All workers of Shaw Mudge and Company, Shelton, Connecticut (TA–W–59,930) and including employees of Shaw Mudge and Company, Shelton, Connecticut, located in Whitehouse, New Jersey (TA–W–59,930A); West Milford, New Jersey (TA–W–59,930B); Morris Township, New Jersey (TA–W–59,930C); Calabasas, California (TA–W–59,930D); and Harrington, Maine (TA–W–59,930E), who became totally or partially separated from employment on or after August 18, 2005, through October 11, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 13th day of November 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–19717 Filed 11–21–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of October 30 through November 3, 2006.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (A)(2)(A) All of the Following Must Be Satisfied

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (A)(2)(B) Both of the Following Must Be Satisfied

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–60,100; Signature Mold and Manufacturing Co., Inc., Hartford, CT: September 19, 2005;

TA–W–60,120; Blackhawk Automotive Plastics, Upper Sandusky, OH: September 21, 2005;

TA–W–60,243; Oakwood Custom Coasting, Oakwood Energy Management Division, Taylor, MI: October 12, 2005;

TA–W–60,243A; Oakwood Custom Coasting, Oakwood Metal Fabricating Division, Taylor, MI: October 12, 2005;

TA–W–60,243B; Oakwood Custom Coasting, Oakwood Metal Fabricating Division, Dearborn, MI: October 12, 2005.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–60,227; Amcor Pet Packaging, A Subsidiary of Amcor Limited, Erie, PA: October 9, 2005.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–60,198; Westark Diversified Enterprises, Ft. Smith, AR: October 2, 2005.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,163; Gallman Wire Technologies, Gallman, MS: September 28, 2005;

TA–W–60,274; Southern Glove Manufacturing Co., Inc., Conover, NC: October 20, 2005;

TA–W–60,303; Jeld-Wen Premium Doors, Oshkosh, WI: October 25, 2005;

TA–W–60,132; Mansfield Plumbing Products, LLC, Perrysville, OH: September 25, 2005;

TA–W–59,800; Delphi Corporation, Delphi Packard Electric, Bazetta Township, OH: July 26, 2005;

TA–W–59,800A; Delphi Corporation, Delphi Packard Electric, Cortland, OH: July 26, 2005;

TA–W–59,800B; Delphi Corporation, Delphi Packard Electric, Rootstown, OH: July 26, 2005;

TA–W–59,800C; Delphi Corporation, Delphi Packard Electric, Vienna, OH: July 26, 2008;

TA–W–59,800D; Delphi Corporation, Delphi Packard Electric, Warren, OH: July 26, 2005;

TA–W–59,800E; Delphi Corporation, Delphi Packard Electric, Champion, OH: July 26, 2005;

TA W 59, 800F; Delphi Corporation, Delphi Packard Electric, Howland, OH: July 26, 2005;

TA–W–59,870; Cerro Flow Products, Sauget, IL: August 8, 2005;

TA–W–60,062; G and G Hosiery, Fort Payne, AL: September 5, 2005;

TA–W–60,128; Pony Lumber Company, LLC, Tacoma, WA: September 21, 2005;

TA–W–60,259; Burris Manufacturing, Inc., Albemarle, NC: October 18, 2005;

TA–W–60,205; General Motors Corp., GMVM Division, Oklahoma City, OK: September 27, 2005.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,202; Goodyear Tire and Rubber Co., Engineered Products Division, St. Marys, OH: September 28, 2005;

TA–W–60,214; Multy Industries USA, Atlanta, GA: October 5, 2005;

TA–W–60,248; Werner Co., Chicago Division, Franklin Park, IL: October 13, 2005;

TA–W–60,192; Black and Decker U.S., Charlotte Packaging Facility, Charlotte, NC: September 20, 2005;

TA–W–60,238; Ossur Generation II, Bothell, WA: October 10, 2005;

TA–W–60,278; Ames True Temper, Formerly Know as Union Tools, Frankfort, NY: January 24, 2006.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,253; Metaldyne, St. Marys, PA: October 12, 2005;

TA–W–60,324; Lines Unlimited, Inc., Kernersville, NC: October 20, 2005.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–60,100; Signature Mold and Manufacturing Co., Inc., Hartford, CT: September 19, 2005;

TA–W–60,243; Oakwood Custom Coasting, Oakwood Energy Management Division, Taylor, MI: October 12, 2005;

TA–W–60,243A; Oakwood Custom Coasting, Oakwood Metal Fabricating Division, Taylor, MI: October 12, 2005;

TA–W–60,243B; Oakwood Custom Coasting, Oakwood Metal Fabricating Division, Dearborn, MI: October 12, 2005;

TA–W–60,198; Westark Diversified Enterprises, Ft. Smith, AR: October 2, 2005.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–60,120; Blackhawk Automotive Plastics, Upper Sandusky, OH: September 21, 2005;

TA–W–60,227; Amcor Pet Packaging, A Subsidiary of Amcor Limited, Erie, PA: October 9, 2005.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–60,146; Jabil Circuit, Auburn Hills Division, Auburn Hills, MI;

TA–W–60,276; Brand ID, LLC, Costa Mesa, CA.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–60,260; Georgia Pacific Corp., Crossett Paper OPNS, Crossett, AR.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–60,015; Laird Technologies, A Subsidiary of Laird Group PLC, Schaumburg, IL;

TA–W–60,089; Jones Apparel Group, Bristol Production Departments, Bristol, PA;

TA–W–60,106; Cenveo, Inc., dba Graphic Arts Center, Commercial Printing Division, Portland, OR;

TA–W–60,145; Schutt Sports, Salem, IL;

TA–W–60,152; Aimsworth Engineered, USA LLC, Grand Rapids, MN;

TA–W–60,197; C and C Smith Lumber Co., Summerhill, PA;

TA–W–60,204; Schaeffler Group USA, A Subsidiary of Schaeffler Group, Automotive Division, Joplin, MO;

TA–W–60,223; Zippo Manufacturing Co., Bradford, PA;

TA–W–60,215; Gold Star Coatings, Division of Starcutter, West Branch, MI.

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country under a free trade agreement or a beneficiary country under a preferential trade agreement, or there has been or is likely to be an increase in imports).

None.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–60,171; Nisource/Columbia Gas Transmission, Charleston, WV.

TA–W–60,226; Washington Mutual, LFC Bethel Park, A Division of Washington Mutual Bank, Bethel Park, PA.

TA–W–60,241; Ingenix, Louisville, KY.

TA–W–60,261; Clout Financial Services, Inc., Bloomington, IN.

TA–W–60,264; Ibase, A Division of SPI Litigation Direct, Austin, TX.

TA–W–60,264A; Ibase, A Division of SPI Litigation Direct, Located Through Out AL.

TA–W–60,264B; Ibase, A Division of SPI Litigation Direct, Located Through Out AZ.

TA–W–60,264C; Ibase, A Division of SPI Litigation Direct, Located Through Out CO.

TA–W–60,264D; Ibase, A Division of SPI Litigation Direct, Located Through Out FL.

TA–W–60,264E; Ibase, A Division of SPI Litigation Direct, Located Through Out ID.

TA–W–60,264F; Ibase, A Division of SPI Litigation Direct, Located Through Out IN.

TA–W–60,264G; Ibase, A Division of SPI Litigation Direct, Located Through Out KY.

TA–W–60,264H; Ibase, A Division of SPI Litigation Direct, Located Through Out MA.

TA–W–60,264I; Ibase, A Division of SPI Litigation Direct, Located Through Out MD.

TA–W–60,264J; Ibase, A Division of SPI Litigation Direct, Located Through Out MI.

TA–W–60,264K; Ibase, A Division of SPI Litigation Direct, Located Through Out MO.

TA–W–60,264L; Ibase, A Division of SPI Litigation Direct, Located Through Out NC.

TA–W–60,264M; Ibase, A Division of SPI Litigation Direct, Located Through Out NY.

TA–W–60,264N; Ibase, A Division of SPI Litigation Direct, Located Through Out OH.

TA–W–60,264O; Ibase, A Division of SPI Litigation Direct, Located Through OR.

TA–W–60,264P; Ibase, A Division of SPI Litigation Direct, Located Through Out PA.

TA–W–60,264Q; Ibase, A Division of SPI Litigation Direct, Located Through Out TX.

TA–W–60,264R; Ibase, A Division of SPI Litigation Direct, Located Through Out UT.

TA–W–60,264S; Ibase, A Division of SPI Litigation Direct, Located Through Out VA.

TA–W–60,264T; Ibase, A Division of SPI Litigation Direct, Located Through Out IL.

TA–W–60,268; Harte Hanks Market Intelligence, Sterling Heights, MI.

TA–W–60,306; United Auto Workers Local 969, Columbus, OH.

TA–W–60,352; Imperial World, dba World Pacific, Westmont, IL.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible To apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of October 30 through November 3, 2006. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 9, 2006.

Richard Church,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–19694 Filed 11–21–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,831]

GTI International Including On-Site Leased Workers of Woodward Hamilton, D/B/A Total HR Wixom, MI; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 8, 2006, applicable to workers of GTI International, Wixom, Michigan. The notice was published in the **Federal Register** on September 21, 2006 (71 FR 55218).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information shows that leased workers of Woodward Hamilton, D/B/A Total HR were employed on-site at the Wixom, Michigan location of GTI International. Information also shows that all workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Woodward Hamilton, D/B/A Total HR.

Based on these findings, the Department is amending this certification to include leased workers of Woodward Hamilton, D/B/A Total HR, working on-site at GTI International, Wixom, Michigan.

The intent of the Department's certification is to include all workers employed at GTI International who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–59,831 is hereby issued as follows:

''All workers of GTI International, including on-site leased workers of Woodward Hamilton, D/B/A Total HR, Wixom, Michigan, who became totally or partially separated from employment on or after July 13, 2005, through September 8, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC this 14th day of November 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–19715 Filed 11–21–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 4, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 4, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 9th day of November 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 10/30/06 and 11/3/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
60322	Western Textile Printing Co. (COMP)	Piedmont, SC	10/30/06	10/27/06
60323	Cookson Electronics/Fry Metals Inc./Alpha Metals (Union).	Jersey City, NJ	10/30/06	10/27/06
60324	Lines Unlimted, Inc. (Wkrs)	Kernersville, NC	10/30/06	10/20/06
60325	West TN Machining (Wkrs)	Camden, TN	10/30/06	10/27/06
60326	Paxar Corporation (Wkrs)	Fair Lawn, NJ	10/30/06	10/27/06
60327	Production Products (Wkrs)	Bonne Terre, MO	10/30/06	10/23/06
60328	Johnson Controls Inc. (Union)	Fullerton, CA	10/30/06	10/25/06
60329	Dirigo Stitching (COMP)	Skowhegan, ME	10/30/06	10/30/06
60330	Paige Electric (Wkrs)	McConnellsburg, PA	10/31/06	10/24/06
60331	UGM, Inc. (COMP)	Salida, CA	10/31/06	10/20/06
60332	Valley-Dynamo (COMP)	Richland Hills, TX	10/31/06	10/26/06
60333	Intel-Jones Farm Camps (Wkrs)	Hillsboro, OR	10/31/06	10/24/06
60334	Intel Cornell Oaks Campus (Wkrs)	Beaverton, OR	10/31/06	10/26/06
60335	Intel Ronier Acres Campus (Wkrs)	Hillsboro, OR	10/31/06	10/26/06
60336	Ward Products (Wkrs)	North Brunswick, NJ	10/31/06	10/30/06
60337	Production Products (Wkrs)	Bonne Terre, MO	10/31/06	10/26/06
60338	Intel Elam Young Campus (Wkrs)	Hillsboro, OR	10/31/06	10/26/06
60339	Intel–Aloha Campus (Wkrs)	Aloha, OR	10/31/06	10/26/06
60340	Intel-AmerGlen Campus (Wkrs)	Beaverton, OR	10/31/06	10/24/06
60341	Intel Evergreen Campus (Wkrs)	Hillsboro, OR	10/31/06	10/26/06
60342	General Cable Corporation (Wkrs)	Lawrenceburg, KY	11/01/06	10/29/06
60343	Welch Allyn, Inc. (COMP)	San Diego, CA	11/01/06	10/27/06
60344	Georgia Pacific Corporation (Wkrs)	El Dorado, AR	11/01/06	10/30/06
60345	Pride Manufacturing Co. (COMP)	Portal, GA	11/01/06	10/25/06
60346	Tubular Technologies, LLC (COMP)	Welcome, NC	11/01/06	10/27/06
60347	Timken Company (Union)	Torrington, CT	11/01/06	10/31/06
60348	Del Monte Fresh Produce (Hawaii) Inc. (COMP).	Honolulu, HI	11/01/06	10/30/06
60349	Versa-Tech Machining, Inc. (Wkrs)	Union, SC	11/01/06	10/13/06
60350	Clariant Corporation (COMP)	Coventry, RI	11/01/06	10/27/06
60351	Gyrus ACMI Corporation (Comp)	Racine, WI	11/01/06	10/31/06
60352	Imperial World (State)	Westmont, IL	11/01/06	10/31/06
60353	Rice Mills, Inc. (Comp)	Belton, SC	11/01/06	10/31/06
60354	Altana Pharma USA (Comp)	Florham Park, NJ	11/01/06	10/27/06
60354A	Altana Pharma USA (Comp)	Waltham, MA	11/01/06	10/27/06
60355	Xron, Inc. (Wkrs)	Garden Grove, CA	11/02/06	10/26/06
60356	Turtle Wax, Inc. (Union)	Willowbrook, IL	11/02/06	10/31/06
60357	Adapto-Indiana, Inc. (IBT)	South Bend, IN	11/02/06	11/01/06
60358	Calhoun Apparel, Inc. (Comp)	Calhoun City, MS	11/02/06	10/30/06
60359	Affinia Group, Inc. /Brake Parts, Inc. (Wkrs)	Cuba, MO	11/02/06	10/29/06
60360	Yakima Resources, LLC (UBCJA)	Yakima, WA	11/03/06	10/31/06
60361	Meadwestvaco (Union)	Colton, CA	11/03/06	11/01/06
60362	Blederlack of America Corporation (Comp)	Cumberland, MD	11/03/06	10/13/06
60363	Guido Corporation (Wkrs)	Pendleton, IN	11/03/06	11/03/06
60364	New Page Corporation—Rumford Mill (USW)	Rumford, ME	11/03/06	11/03/06

[FR Doc. E6–19695 Filed 11–21–06; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. U.S.C. 3506(c)(2)(A)), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation invites the general public and other Federal agencies to take this opportunity to comment on this information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 71 FR 51641 and no substantive comments were received regarding the materials provided. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.* Copies of the submission may be obtained by calling (703) 292–7556.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Suzanne Plimpton, the NSF Reports Clearance Officer, phone (703) 292–7556, or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8

p.m., Eastern time, Monday through Friday.

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

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance of the Science Resources Statistics Survey Improvement Projects.

OMB Approval Number: 3145–0174.

Abstract: Generic Clearance of the Science Resources Statistics Survey Improvement Projects. The National Science Foundation's Division of Science Resources Statistics (NSF/SRS) needs to collect timely data on constant changes in the science and technology sector and to provide the most complete and accurate information possible to policy makers in Congress and throughout government and academia. NSF/SRS conducts many surveys to obtain the data for these purposes. The Generic Clearance will be used to ensure that the highest quality data are obtained from these surveys. State-of-the-art methodology will be used to develop, evaluate, and test questionnaires and survey concepts as well as to improve survey methodology. This may include field or pilot tests of questions for future large-scale surveys, as needed.

Expected Respondents: The respondents will be from industry, academia, nonprofit organizations, members of the public, and state, local, and federal governments. Respondents will be either individuals or institutions, depending upon the survey under investigation. Qualitative procedures will generally be conducted in person or over the phone, but quantitative procedures may be conducted using mail, web, e-mail, or phone modes, depending on the topic under investigation. Up to 19,150 respondents will be contacted across all survey improvement projects. No respondent will be contacted more than twice in one year under this generic clearance. Every effort will be made to use technology to limit the burden on respondents from small entities.

Both qualitative and quantitative methods will be used to improve NSF's current data collection instruments and processes and to reduce respondent burden, as well as to develop new surveys. Qualitative methods include, but are not limited to, expert review; exploratory, cognitive, and usability interviews; focus groups; and respondent debriefings. Cognitive and usability interviews may include the use of scenarios, paraphrasing, card sorts, vignette classifications, and rating tasks. Quantitative methods include, but are not limited to, telephone surveys, behavior coding, split panel tests, and field tests.

Information being collected is not considered sensitive. In general, assurances of data confidentiality will not be provided to respondents in the pretests. Instead, respondents have the option of requesting that any and all data they provide be kept confidential.

Use of the Information: The purpose of these studies is to use the latest and most appropriate methodology to improve NSF surveys. The data will be used internally to improve NSF surveys. Methodological findings may be presented externally in technical papers at conferences, published in the proceedings of conferences, or in journals. Improved NSF surveys will help policy makers in decisions on research and development funding, graduate education, scientific and technical workforce, regulations, and reporting guidelines, as well as contributing to reduced survey costs.

Burden on the Public: NSF estimates that a total reporting and recordkeeping burden of 14,950 hours will result from activities to improve its surveys. The calculation is:

TABLE 1.—ANTICIPATED SURVEYS TO UNDERTAKE IMPROVEMENT PROJECTS, ALONG WITH THE NUMBER OF RESPONDENTS AND BURDEN HOURS PER SURVEY FOR THREE YEAR PERIOD

Survey Name	Number of respondents[1]	Hours
Graduate Student Survey	[2] 5,000	3,000
SESTAT Surveys	10,000	5,000
Postdoc Project	800	1,600
New and Redesigned R&D Surveys:		
Academic R&D	600	1,200
Government R&D	50	100
Nonprofit R&D	200	100
Industry R&D	500	2,000
Survey of Scientific & Engineering Facilities	300	150
Public Understanding of S&E Surveys	200	50
Survey of Earned Doctorates	300	550
Additional surveys not specified	1,200	1,200
Total	19,150	14,950

[1] Number of respondents listed for any individual survey may represent several methodological improvement projects.

[2] This number refers to the science, engineering, and health-related departments within the academic institutions of the United States (not the academic institutions themselves).

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB

approval of this information collection; they also will become a matter of public record.

Dated: November 15, 2006.

Suzanne Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E6–19608 Filed 11–21–06; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Privacy Act of 1974; Systems of Records

AGENCY: U.S. Nuclear Waste Technical Review Board.

ACTION: Notice of modification to two existing systems of records.

SUMMARY: USC 552a requires that each federal agency review its systems of records containing personal information covered by the Privacy Act of 1974. As a result of its latest review, the Board is proposing to amend both of the systems of records that it maintains. A description of these systems was last published in November 22, 1996 (61 FR 227, 59472–59473). The Board has concluded that one system needs to be amended and that the second system needs to be expanded to include other information useful to the Board. In the first system, NWTRB–1 Administrative Files, some categories were overlooked in the previous notice. The Board is proposing to expand the second system, NWTRB–2 Mailing List, to become NWTRB–2 Contact List. The Board has determined that the changes to NWTRB–1 are imporant enough to republish the notice with the changes and that the changes to NWTRB–2 are substantial enough to accept comments on the proposed expansion.

DATES: Comments on the changes to NWTRB–2 should be received before January 15, 2007.

ADDRESSES: Comments on this proposed rule may be submitted as follows:

By mail or hand delivery: Joyce M. Dory, Director of Administration; U.S. Nuclear Waste Technical Review Board; 2300 Clarendon Blvd., Suite 1300; Arlington, VA 22201.

By Fax: 703–235–4495.

To the Federal eRulemaking Portal: *http://www.regulations.gov*.

Via the Board Web site at *http://www.nwtrb.gov* via the ''contact us'' function.

All comments on this proposed Privacy Act rule modification should be clearly identified as such.

FOR FURTHER INFORMATION CONTACT: Victoria Reich, 703–235–4473.

SUPPLEMENTARY INFORMATION: The Board currently maintains two systems of records, NWTRB–1 and NWTRB–2, that contain information covered by the Privacy Act of 1974. In its review of these systems, the Board has found classes of information that were not included in its previous notice and is republishing the first, NWTRB–1, with the corrections added. The Board further found that expanding the records in the second, NWTRB–2, would make it more useful.

List of Subjects

Administrative practice and procedure; Privacy; Reporting and recordkeeping requirements.

NWTRB–1

SYSTEM NAME:

Administrative Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Nuclear Waste Technical Review Board; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with the Board, including NWTRB contractors and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing the following information:

(1) Time and attendance;

(2) Payroll actions, direct deposit, and deduction information;

(3) Personnel actions, evaluations, and other data;

(4) Authorizations for overtime and night differential;

(5) Credit cards and telephone calling cards issued to individuals;

(6) Destination, itinerary, mode and purpose of travel;

(7) Date(s) of travel and all expenses;

(8) Passport number;

(9) Request for advance of funds and voucher with receipt;

(10) Travel authorizations;

(11) Name, address, Social Security number, and birth date;

(12) Employee public transit subsidy applications and vouchers;

(13) Security clearance information; and

(14) 450's.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 100–203, Part E.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

Information is used ''in house.'' Notwithstanding the above, access also may be gained under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation, or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a ''routine use'' to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to a request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICY AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

By type of document, then by name.

SAFEGUARDS:

Access is limited to employees having a need to know. Records containing personal information are stored in locked file cabinets in controlled-access areas or in password-protected electronic databases in accordance with federal guidelines.

RETENTION AND DISPOSAL:

Record retention and disposal authorities are in ''General Records Schedules'' published by National

Archives and Records Administration, Washington, D.C. Records within NWTRB are destroyed by shredding or purging.

SYSTEM MANAGER AND ADDRESS:

U.S. Nuclear Waste Technical Review Board; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201; Attention: Office of Administration.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if NWTRB–1 contains information about him/her should be directed to the Director of Administration, at the address listed above. Required identifying information: complete name, Social Security number, and date of birth.

RECORD-ACCESS PROCEDURE:

Same as notification procedures above, except individual must show official photo identification before viewing records.

CONTESTING-RECORD PROCEDURE:

Same as notification procedure.

RECORD-SOURCE CATEGORIES:

Subject individuals, timekeepers, travel officers, official personnel records, GSA for accounting and payroll, and travel agency contract.

SYSTEM EXEMPTED FROM CERTAIN PARTS OF THE ACT:

None.

NWTRB–2

SYSTEM NAME:

Contact List.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Nuclear Waste Technical Review Board; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The Board is proposing to expand the database containing its mailing list to include contact information on vendors, Board contractors and consultants, as well as officials and specialists working with the disposal of radioactive waste. Emergency information for Board personnel and their affiliates also would be included.

CATEGORIES OF RECORDS IN THE SYSTEM:

In addition to the mailing list, the database would be expanded to include Board contacts in the nuclear program in the United States and abroad; vendors of products used by, or of potential use to the Board; Board contractors and consultants; and emergency information on both Board and staff members.

AUTHORITY FOR MAINTENANCE OF THE FILES:

Public Law 100–203, Part E.

ROUTINE USES OF THE RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Distribution of Board reports, newsletters, meeting transcripts, and press releases. Information for contacting specialists and officials in the disposal of radioactive waste. Information on vendors, contractors, and consultants that the Board may use or consider using. Contact information on Board members and staff for use in emergencies. All information can be accessed only by appropriate Board staff. Notwithstanding the above, access also may be gained under the following condition.

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the states, or rule, regulation, or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic database.

IRRETRIEVABILITY:

By personal or corporate name; place of employment, state, zip code, or country; materials requested; and employment status with the Board.

SAFEGUARDS:

Access is limited to Board staff members having a need to know.

RETENTION AND DISPOSAL:

Contacts on the mailing list are sent periodic requests to update their records and to determine if they want to remain on the mailing list. Nonrespondent and all asking to be deleted are purged from the list. Other contracts are revised if their information changes or if they no longer work in a field of interest.

SYSTEM MANAGER AND ADDRESS:

U.S. Nuclear Waste Technical Review Board, 2300 Clarendon Boulevard, suite 1300; Arlington, VA 22201; Attention: Office of Administration.

NOTIFICATION PROCEDURES:

Requests by an individual to determine if NWTRB–2 contains information about him/her should be directed to the Director of Administration, at the address listed above. Required identifying information: complete name and address.

RECORD-ACCESS PROCEDURE:

Some as notification procedure above, except individual must show official photo identification before viewing records.

CONTESTING-RECORD PROCEDURE:

Same as notification procedure.

RECORD-SOURCE CATEGORIES:

Statutory reporting authority, and requests from individuals to be placed on a distribution list for information from the Board. Contact information supplied by vendors, other agencies, and groups.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: November 17, 2006.

William D. Barnard,

Executive Director, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 06–9349 Filed 11–21–06; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Existing Information Collection: RI 38–115

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of an existing information collection. RI 38–115, Representative Payee Survey, is used to collect information about how the benefits paid to a representative payee have been used or conserved for the incompetent annuitant.

Comments are particularly invited on: Whether this collection of information

is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 4,067 RI 38–115 forms will be completed annually. The form takes approximately 20 minutes to complete. The annual burden is 1,356 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, fax (202) 418–3251 or via e-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to— Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

For Information Regarding Administrative Coordination Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

Office of Personnel Management.

Dan G. Blair,

Deputy Director.

[FR Doc. E6–19604 Filed 11–21–06; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: SF 3104 and SF 3104B

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for reclearance of a revised information collection. SF 3104, Application for Death Benefits/Federal Employees Retirement System (FERS), is used by persons applying for death benefits which may be payable under FERS because of the death of an employee, former employee, or retiree who was covered by FERS at the time of his/her death or separation from Federal Service. SF 3104B, Documentation and Elections in Support of Application for Death Benefits when Deceased was an Employee at the Time of Death, is used by applicants for death benefits under FERS if the deceased was a Federal employee at the time of death.

Comments are particularly invited on:

- Whether this information is necessary for the proper performance of functions of OPM, and whether it will have practical utility;
- Whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and
- Ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

It is estimated that approximately 7,481 SF 3104 forms will be processed annually. This form requires approximately 60 minutes to complete. An annual burden of 7,481 hours is estimated. Approximately 3,366 SF 3104B forms are expected to be processed annually. It is estimated that the form requires approximately 60 minutes to complete. An annual burden of 3,366 hours is estimated. The total annual burden is 10,847.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, fax (202) 418–3251 or via e-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

For Information Regarding Administrative Coordination Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, 202) 606–0623, Room 10235, Washington, DC 20503.

Office of Personnel Management.

Dan G. Blair,

Deputy Director.

[FR Doc. E6–19607 Filed 11–21–06; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services, *Extension:* Washington, DC 20549.

Rule 154; SEC File No. 270–438; OMB Control No. 3235–0495.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

The federal securities laws generally prohibit an issuer, underwriter, or dealer from delivering a security for sale unless a prospectus meeting certain requirements accompanies or precedes the security. Rule 154 (17 CFR 230.154) under the Securities Act of 1933 (15 U.S.C. 77a) (the ''Securities Act'') permits, under certain circumstances, delivery of a single prospectus to investors who purchase securities from the same issuer and share the same address (''householding'') to satisfy the applicable prospectus delivery requirements.[1] The purpose of Rule 154 is to reduce the amount of duplicative prospectuses delivered to investors sharing the same address.

Under Rule 154, a prospectus is considered delivered to all investors at a shared address, for purposes of the federal securities laws, if the person relying on the rule delivers the prospectus to the shared address and the investors consent to the delivery of a single prospectus. The rule applies to

[1] The Securities Act requires the delivery of prospectuses to investors who buy securities from an issuer or from underwriters or dealers who participate in a registered distribution of securities. *See* Securities Act sections 2(a)(10), 4(1), 4(3), 5(b) [15 U.S.C. 77b(a)(10), 77d(1), 77d(3), 77e(b); see also Rule 174 under the Securities Act (17 CFR 230.174) (regarding the prospectus delivery obligation of dealers); Rule 15c2–8 under the Securities Exchange Act of 1934 (17 CFR 240.15c2–8) (prospectus delivery obligations of brokers and dealers).

prospectuses and prospectus supplements. Currently, the rule permits householding of all prospectuses by an issuer, underwriter, or dealer relying on the rule if, in addition to the other conditions set forth in the rule, the issuer, underwriter, or dealer has obtained from each investor written or implied consent to householding.[2] The rule requires issuers, underwriters, or dealers that wish to household prospectuses with implied consent to send a notice to each investor stating that the investors in the household will receive one prospectus in the future unless the investors provide contrary instructions. In addition, at least once a year, issuers, underwriters, or dealers, relying on Rule 154 for the householding of prospectuses, must explain to investors who have provided written or implied consent how they can revoke their consent. Preparing and sending the initial notice and the annual explanation of the right to revoke are collections of information.

The rule allows issuers, underwriters, or dealers to household prospectuses and prospectus supplements if certain conditions are met. Among the conditions with which a person relying on the rule must comply are providing notice to each investor that only one prospectus will be sent to the household and, in the case of issuers that are open-end mutual funds, providing to each investor who consents to householding an annual explanation of the right to revoke consent to the delivery of a single prospectus to multiple investors sharing an address. The purpose of the notice and annual explanation requirements of the rule is to ensure that investors who wish to receive individual copies of shareholder reports are able to do so.

Although Rule 154 is not limited to investment companies, the Commission believes that it is used mainly by open-end mutual funds and by broker-dealers that deliver prospectuses for open-end mutual funds. The Commission is unable to estimate the number of issuers other than mutual funds that rely on the rule.

The Commission estimates that there are approximately 2,400 open-end mutual funds, approximately 200 of which engage in direct marketing and therefore deliver their own prospectuses. The Commission estimates that each direct-marketed mutual fund will spend an average of 20 hours per year complying with the notice requirement of the rule, for a total of 4,000 hours. The Commission estimates that each direct-marketed fund will also spend 1 hour complying with the explanation of the right to revoke requirement of the rule, for a total of 200 hours. The Commission estimates that there are approximately 361 broker-dealers that carry customer accounts and, therefore, may be required to deliver mutual fund prospectuses. The Commission estimates that each affected broker-dealer will spend, on average, approximately 20 hours complying with the notice requirement of the rule, for a total of 7,220 hours. Each broker-dealer will also spend 1 hour complying with the annual explanation of the right to revoke requirement, for a total of 361 hours. Therefore, the total number of respondents for Rule 154 is 561 (200 mutual funds plus 361 broker-dealers), and the estimated total hour burden is 11,781 hours (4,200 hours for mutual funds plus 7,581 hours for broker-dealers).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: November 15, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–19729 Filed 11–21–06; 8:45 am]

BILLING CODE 8011–01–P

[2] Rule 154 permits the householding of prospectuses that are delivered electronically to investors only if delivery is made to a shared electronic address and the investors give written consent to householding. Implied consent is not permitted in such a situation. See Rule 154(b)(4).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54766; File No. S7–06–05]

Order Granting the New York Stock Exchange Inc.'s (n/k/a the New York Stock Exchange LLC) Application for an Exemption Pursuant to Section 36 of the Securities Exchange Act of 1934

November 16, 2006.

I. Introduction

On May 26, 2005, the Securities and Exchange Commission (the ''Commission'') received an application from the New York Stock Exchange, Inc. (n/k/a the New York Stock Exchange LLC) (''NYSE'' or ''Exchange'') [1] for an exemption pursuant to section 36 [2] of the Securities Exchange Act of 1934 (the ''Exchange Act''),[3] in accordance with the procedures set forth in Exchange Act Rule 0–12.[4] The NYSE has requested exemptive relief from section 12(a) of the Exchange Act [5] to permit its members and brokers or dealers to trade certain unregistered debt securities on its facilities.[6] On July 8, 2005, the Commission approved publication of a notice of the application submitted by the NYSE, a proposed exemption order,[7] and a proposed rule change by the NYSE that would incorporate the terms of the proposed exemption into the NYSE's rules.[8] We received 19 comment letters on the proposed exemption order.[9] The responses are discussed

[1] On October 17, 2006, the NYSE submitted an updated application to the Commission.

[2] 15 U.S.C. 78mm. Section 36 of the Exchange Act gives the Commission the authority to exempt any person, security or transaction from any Exchange Act provision by rule, regulation or order, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors.

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 240.0–12. Exchange Act Rule 0–12 sets forth procedures for filing applications for orders for exemptive relief pursuant to section 36.

[5] 15 U.S.C. 78l(a).

[6] The NYSE made its exemption request with regard to the Automated Bond System (''ABS''), an existing bond trading facility. Subsequently, the NYSE filed a proposed rule change, SR–NYSE–2006–37 (the ''NYSE Bonds Proposal''), to establish a new trading facility, NYSE Bonds, which would replace ABS. Accordingly, the Commission is granting the exemption described herein for use in conjunction with ABS and any successor bond trading facility, which would include NYSE Bonds, in the event that the NYSE Bonds Proposal is approved.

[7] *See* Release No. 34–51998 (July 8, 2005), 70 FR 40748 (July 15, 2005).

[8] *See* Release No. 34–51999 (July 8, 2005), 70 FR 41067 (July 15, 2005) (SR–NYSE–2004–69).

[9] The commenters are as follows: Bond Market Association; Representative Michael Castle; Mr. William Dolan; Mr. Donald Dueweke; Mr. Howard Friedman; Ms. Robyn Greene; Mr. Denis Kelleher; Mr. Ron Klein; Mr. Dennis J. Lehr; Multiple

Continued

more fully below. This order grants the NYSE's application for an exemption, subject to the conditions set forth below.

In connection with NYSE's request for an exemption, it has also proposed a rule change, SR–NYSE–2004–69, to establish rules for the trading of unlisted debt securities on the Exchange. The Commission, via authority delegated to the Division of Market Regulation, today is also approving that rule change,[10] as well as a rule change relating to trade reporting for transactions in unregistered debt securities proposed by the National Association of Securities Dealers, Inc. (''NASD'').[11]

II. Order Granting the New York Stock Exchange's Application for an Exemption Pursuant to Section 36 of the Securities Exchange Act of 1934

Section 12(a) of the Exchange Act provides in relevant part that ''[i]t shall be unlawful for any ''member, broker or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange.'' Section 12(b) of the Exchange Act[12] dictates how the registration referred to in section 12(a) must be accomplished. Accordingly, all equity and debt securities that are not ''exempted securities'' or are not otherwise exempt from Exchange Act registration must be registered by the issuer under the Exchange Act before a member, broker or dealer may trade that class of securities on a national securities exchange.

Contrarily, brokers or dealers who trade debt securities otherwise than on a national securities exchange may trade debt securities regardless of whether the issuer registered that class of debt under the Exchange Act. This is so because Exchange Act registration for securities traded other than on a national securities exchange is required only for certain equity securities. In particular, section 12(g) of the Exchange Act,[13] the only Exchange Act provision other than section 12(a) to impose an affirmative Exchange Act registration requirement, requires the registration of equity securities exclusively.

As the Commission has stated in the past, we believe that this disparate regulatory treatment may have negatively and unnecessarily affected the structure and development of the debt markets.[14] In 1994, to reduce existing regulatory distinctions between exchange-traded debt securities and unlisted debt securities that trade in the ''over-the-counter'' (''OTC'') market, we adopted Exchange Act Rule 3a12–11.[15] Rule 3a12–11 provides for the automatic effectiveness of Form 8–A registration statements for exchange-traded debt securities, exempts exchange-traded debt from the borrowing restrictions under section 8(a) of the Exchange Act,[16] and exempts exchange-traded debt from certain proxy and information statement requirements under sections 14(a), (b) and (c) of the Exchange Act.[17] Despite these efforts, the vast majority of secondary trading of debt securities continues to occur in the OTC market, which suggests that there still may be regulatory impediments that need to be addressed.[18]

In addition, we have sought to increase the level of transparency in the public debt markets. We have long believed that price transparency in the U.S. capital markets is fundamental to promoting the fairness and efficiency of our markets.[19] In 1998, the Commission's staff conducted a review of the public debt markets and found that in the area of corporate debt securities, price transparency was deficient.[20] Following the staff's 1998 review, the NASD was encouraged to develop systems to receive and redistribute prices of transactions in corporate debt securities on an immediate basis.[21]

We view the exemptive relief requested by the NYSE as another step to improve the public debt markets. The Commission believes that granting the NYSE's application will serve the public interest by minimizing unnecessary regulatory disparity and promoting competition. Currently, unlike on a national securities exchange, broker-dealers may trade debt securities in the OTC market regardless of whether the issuer registered that class of debt under the Exchange Act. The exemption is designed to minimize that disparate regulatory treatment and promote competition between the corporate debt security markets. Moreover, the exemption may improve the existing level of transparency on the current OTC market.

At the same time, the conditions of the exemption serve to protect investors by minimizing any reduction in information available as a result of the exemption. Further, the conditions are designed to ensure that investors continue to have access to comprehensive public information about an issuer, including the issuer's detailed disclosure in a registration statement filed under the Securities Act of 1933 and accompanying trust indenture qualified under the Trust Indenture Act of 1939, and substantially all of the public information that would be available if the debt securities were registered under Section 12 of the Exchange Act.

We received 19 comment letters on the proposed exemption order. The commenters generally supported the proposed exemption. We have, however, added an additional condition to the exemption based on a response from the Bond Market Association (''BMA''). The BMA expressed concern that debt securities of an issuer that does not have equity securities listed on a national securities exchange, such as a wholly-owned subsidiary of an issuer of equity securities, would lose the exemption from state law regulation provided by Section 18 of the Securities Act[22] for ''covered securities'' if the

Markets, Inc.; the National Association of Securities Dealers, Inc.; NASDAQ Stock Market LLC; New York Stock Exchange LLC; Mr. Joseph Riveiro; Mr. David Russell Jr.; and Mr. Fred Siesel.

[10] *See* Release No. 34–54767 (November 16, 2006) (SR–NYSE–2004–69).

[11] *See* Release No. 34–54768 (November 16, 2006) (SR–NASD–2006–110).

[12] 15 U.S.C. 78*l*(b).

[13] 15 U.S.C. 78*l*(g). Section 12(g)(1) of the Exchange Act and Rule 12g–1 [17 CFR 240.12g–1] promulgated thereunder require an issuer to register a class of equity securities if the issuer of the securities, at the end of its fiscal year, has more than $10,000,000 in total assets and a class of equity securities held by 500 or more recordholders.

[14] *See* Release Nos. 34–34922 (November 1, 1994), 59 FR 55342 (November 7, 2004), and 34–34139 (June 1, 1994), 59 FR 29398 (June 7, 1994).

[15] 17 CFR 240.3a12–11.

[16] 15 U.S.C. 78h(a).

[17] 15 U.S.C. 78n(a), (b) and (c).

[18] The NYSE estimates that there are over 22,000 publicly offered corporate bond issues having a par value in excess of $3 trillion but only 8% of the $3 trillion par value is registered under the Exchange Act and so may be traded on the NYSE. *See* NYSE's request for exemptive relief. Letter to Jonathan G. Katz, Secretary, Commission, from Mary Yeager, NYSE, dated May 26, 2005. *See* Release No. 34–51998.

[19] *See* Testimony of Chairman Arthur Levitt Before the House Subcommittee on Finance and Hazardous Materials, Committee on Commerce, Concerning Transparency in the United States Debt Market and Mutual Fund Fees and Expenses (September 29, 1998).

[20] *Id.*

[21] *Id.*

[22] 15 U.S.C. 77r. Section 18 of the Securities Act preempts state regulation that would require the registration or qualification of covered securities, or registration or qualification of securities transactions that involve covered securities. Under Section 18, a security is a ''covered security'' if it is: (1) listed, or authorized for listing, on the NYSE or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities); (2) listed, or authorized for listing, on a national securities exchange (or tier or segment thereof) that has listing standards that the Commission determines by rule (on its own initiative or on the basis of a petition) are substantially similar to the listing standards applicable to securities described above; or (3) is a security of the same issuer that is equal in seniority or that is a senior security to a security described in the two preceding paragraphs.

NYSE unilaterally delisted debt securities eligible for trading under this exemption order. To address this concern, we have added a new condition to the order stating that the NYSE will delist a class of debt securities only if the issuer of the class of debt security does not object to the delisting. As the potential loss of covered security status under Section 18 of the Securities Act would be an unintended consequence of this exemption, this additional condition would allow an issuer with listed debt securities to maintain covered security status with respect to its securities at its option.

Another commenter, the NASDAQ Stock Market LLC, argued that limiting the bonds eligible to trade pursuant to this exemption exclusively to companies with equity listed on the NYSE, or their wholly-owned subsidiaries, would potentially be anti-competitive to other national securities exchanges. We do not believe this exemption will provide the NYSE with an unfair competitive advantage over other exchanges. Although the unlisted bonds that will trade on the ABS, and any successor bond trading facility pursuant to this exemption will not be eligible to trade on other exchanges pursuant to the unlisted trading privileges of Section 12(f) of the Exchange Act,[23] another exchange may petition the Commission for similar relief that would permit that exchange's members to trade unregistered debt securities on its facilities subject to the conditions imposed by the Commission in this order.

In granting this relief, we expect that the NYSE will design and implement all rules related to the relief in a manner that protects investors and the public interest and does not unfairly discriminate between customers, issuers, brokers or dealers. We view the exemptive relief requested by the NYSE as another step to improve the public markets and believe that granting the NYSE's application will minimize unnecessary regulatory disparity, promote competition and transparency in the public debt markets and is necessary and appropriate in the public interest and consistent with the protection of investors.

Accordingly, *it is ordered* pursuant to Section 36 of the Exchange Act that, under the terms and conditions set forth below, an NYSE member, broker or dealer may effect a transaction on the ABS, and any successor bond trading facility, in a debt security that has not been registered under Section 12(b) of the Exchange Act without violating Section 12(a) of the Exchange Act.[24] This exemption does not extend to any other section or provision of the Exchange Act.

For purposes of this order, a ''debt security'' is:

Any security that, if the class of securities were listed on the NYSE, would be listed under Sections 102.03 or 103.05 of the NYSE's Listed Company Manual. A debt security does not include any security that, if the class of securities were listed on the NYSE, would be listed under Sections 703.19 or 703.21 of the NYSE's Listed Company Manual. Provided, however, under no circumstances does a debt security include any security that is defined as an ''equity security'' under Section 3(a)(11) of the Exchange Act.

References to Sections 102.03, 103.05, 703.19, and 703.21 of the NYSE's Listed Company Manual are to those sections as in effect on January 31, 2005.

For purposes of this order, the following conditions must be satisfied:

(1) The issuer of the debt security has registered the offer and sale of such security under the Securities Act of 1933;[25]

(2) The issuer of the debt security, or the issuer's parent company if the issuer is a wholly-owned subsidiary,[26] has at least one class of common or preferred equity securities registered under Section 12(b) of the Exchange Act and listed on the NYSE;

(3) The transfer agent of the debt security is registered under Section 17A of the Exchange Act;[27]

(4) The trust indenture for the debt security is qualified under the Trust Indenture Act of 1939;[28]

(5) The NYSE has complied with the undertakings set forth in its exemptive application to distinguish between debt securities registered under Section 12(b) of the Exchange Act and listed on the NYSE and debt securities trading pursuant to this order; and

(6) The NYSE will delist a class of debt securities that are listed on the NYSE as of the date of this order only if the issuer of that class of debt security does not object to the delisting of those securities.

By the Commission.

Nancy M. Morris,

Secretary.

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[23] 15 U.S.C. 78*l*(f). Section 12(f) of the Exchange Act permits a national securities exchange to extend unlisted trading privileges to any security that is listed and registered on a national securities exchange.

[24] As noted previously, NYSE members will be able to effect transactions on the NYSE in accordance with the terms of this exemption without violating NYSE rules only after SR–NYSE–2004–69 becomes effective.

[25] 15 U.S.C. 77a *et seq.*

[26] The terms ''parent'' and ''wholly-owned'' have the same meanings as defined in Rule 1–02 of Regulation S–X [17 CFR 210.1–02].

[27] 15 U.S.C. 78q–1.

[28] 15 U.S.C. 77aaa—77bbbb.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27554; 812–13311]

The GMS Group, LLC, *et al.*; Notice of Application

November 16, 2006.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under: (i) Section 6(c) of the Investment Company Act of 1940 (''Act'') for exemptions from sections 2(a)(32), 2(a)(35), 14(a), 19(b), 22(d), and 26(a)(2)(C) of the Act and from rules 19b–1 and 22c–1 under the Act; (ii) sections 11(a) and 11(c) of the Act for approval of certain exchange and rollover privileges and conversion offers; and (iii) sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain unit investment trusts (''UITs'') to: (i) Impose sales charges on a deferred basis and waive the deferred sales charge in certain cases; (ii) offer unitholders certain exchange and rollover privileges and conversion offers; (iii) publicly offer units without requiring the sponsor to take for its own account or place with others $100,000 worth of units; (iv) distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt; and (v) sell portfolio securities of a terminating series of a UIT to a new series of that UIT.

APPLICANTS: The GMS Group, LLC (''Sponsor'' or ''The GMS Group''), the Patriot Trust (including the Patriot Trust, Insured Tax Free Bond Trust), any future registered UIT sponsored or co-sponsored by The GMS Group or an entity controlled by or under common control with The GMS Group (the future UITs, together with the above-specified UITs are ''Trusts'') and any presently outstanding or subsequently issued series of each Trust (each, a ''Series'').

FILING DATES: The application was filed on June 30, 2006, and amended on November 6, 2006. Applicants have agreed to file an additional amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 11, 2006, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, Peter J. DeMarco, c/o The GMS Group, LLC, 5N Regent Street, Suite 513, Livingston, New Jersey 07039.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington DC 20549–0102 (tel. 202–551–5850).

Applicants' Representations

1. The GMS Group, a broker-dealer registered under the Securities Exchange Act of 1934, is the sponsor of the Trusts. Each Trust is or will be a UIT registered under the Act.[1] Each Series is or will be created by a trust indenture (''Indenture'') among the Sponsor, a banking institution or trust company as trustee (''Trustee''), and, for those Series that the Trustee does not also serve as evaluator, an evaluator.

2. The Sponsor acquires a portfolio of securities, which it deposits with the Trustee in exchange for certificates representing units of fractional undivided interest in the deposited portfolio (''Units''). The Units are then offered to the public through the Sponsor, underwriters and dealers at a public offering price which, during the initial offering period, is based upon the aggregate market value (the aggregate offering side evaluation for fixed income securities) of the underlying securities plus a front-end sales charge. The sales charge is expected to range from 1.25% to 5.5% of the public offering price, generally depending upon the terms of the underlying securities. The Sponsor may reduce the sales charge in compliance with rule 22d-1 under the Act in certain circumstances, which are disclosed in the prospectus.

3. The Sponsor maintains a secondary market for Units and continually offers to purchase Units at prices based upon the market value (the bid side evaluation for fixed income securities) of the underlying securities. Investors may purchase Units on the secondary market at the current public offering price plus a front-end sales charge. If the Sponsor discontinues maintaining such a market at any time for any Series, holders of the Units (''Unitholders'') of that Series may redeem their Units through the Trustee.

A. Deferred Sales Charge and Waiver of Deferred Sales Charge Under Certain Circumstances

1. Applicants request an order to the extent necessary to permit them to impose a sales charge on a deferred basis (''deferred sales charge'' or ''DSC''). For each Series, the Sponsor will set a maximum sales charge per Unit as a dollar amount and/or as a percentage of the initial offering price, a portion of which may be collected ''up front'' (*i.e.*, at the time an investor purchases the Units). The DSC would be collected subsequently in installments (''Installment Payments'') as described in the application. The Sponsor would not add any amount for interest or any similar or related charge to adjust for such deferral.

2. When a Unitholder redeems or sells Units, the Sponsor intends to deduct any unpaid DSC from the redemption or sale proceeds. When calculating the amount due, the Sponsor will assume that Units on which the DSC has been paid in full are redeemed or sold first. With respect to Units on which the DSC has not been paid in full, the Sponsor will assume that the Units held for the longest time are redeemed or sold first. Applicants represent that the DSC collected at the time of redemption or sale, together with the Installment Payments and any amount collected up front, will not exceed the maximum sales charge per Unit. Under certain circumstances, the Sponsor may waive the collection of any unpaid DSC in connection with redemptions or sales of Units. These circumstances will be disclosed in the prospectus for the relevant Series and implemented in accordance with rule 22d-1 under the Act.

3. Each Series offering Units subject to a DSC will state the maximum charge per Unit in its prospectus. In addition, the prospectus for such Series will include the table required by item 3 of Form N–1A (modified as appropriate to reflect the difference between UITs and open-end management investment companies) and a schedule setting forth the number and date of each Installment Payment, along with the duration of the collection period. The prospectus for that Series also will disclose that portfolio securities may be sold to pay an Installment Payment if distribution income is insufficient, and that securities will be sold pro rata or a specific security will be designated for sale.

B. Exchange Privilege, Rollover Privilege, and Conversion Offer

1. Applicants propose to offer an exchange privilege to Unitholders of the Trusts at a reduced sales charge (''Exchange Privilege''). Unitholders would be able to exchange any or all of their Units in a Series of a Trust for Units in one or more available Series of the Trusts (''Exchange Series''). Applicants also propose a conversion offer at a reduced sales charge (''Conversion Offer'') pursuant to which Unitholders may elect to redeem Units of any Series in which there is no active secondary market (''Redemption Series'') and apply the proceeds to the purchase of available Units of one or more Series of the Trusts (''Conversion Series''). In addition, applicants propose to offer a rollover privilege to Unitholders of the Trusts at a reduced sales charge (''Rollover Privilege''). Unitholders would be able to ''roll over'' their Units in a Series which is terminating (''Terminating Series'') for Units in one or more new Series of the Trusts (''Rollover Series'').

2. To exercise the Exchange Privilege or Rollover Privilege, a Unitholder must notify the Sponsor. In order to exercise the Conversion Offer, a Unitholder must notify his or her retail broker. The Conversion Offer will be handled entirely through the Unitholder's retail broker and the retail broker must tender the Units to the Trustee of the Redemption Series for redemption and then apply the proceeds toward the purchase of Units of a Conversion Series. Exercise of the Exchange Privilege or Rollover Privilege is subject to the following conditions: (i) The Sponsor must be maintaining a

[1] All presently existing Trusts that currently intend to rely on the requested order have been named as applicants. Any other existing Trust and any Trust organized in the future that rely on the requested order will do so only in accordance with the terms and conditions of the application.

secondary market in Units of the available Exchange Series or Rollover Series; (ii) at the time of the Unitholder's election to participate, there must be Units of the Exchange Series or Rollover Series to be acquired available for sale, either under the initial primary distribution or in the Sponsor's secondary market; (iii) exchanges will be in whole Units only; and (iv) for certain Series, Units may be obtained in blocks of certain sizes only.

3. Unitholders who wish to exchange Units under the Exchange Privilege, the Rollover Privilege or the Conversion Offer within the first five months of purchase will not be eligible for the reduced sales charge. Such Unitholders will be charged a sales load equal to the greater of: (i) The reduced sales charge; or (ii) an amount which, when added to the sales charge paid by the Unitholder upon his or her original purchase of Units of the applicable Series, would equal the sales charge applicable to the direct purchase of the newly acquired Units, determined as of the date of purchase.

C. Purchase and Sale Transactions Between a Terminating Series and a New Series

1. Certain Terminating Series will have a date (''Rollover Date'') by which Unitholders of that Series may, at their option, redeem their Units and receive in return Units of a subsequent Series of the same type (''New Series''). The New Series will be created on or about the Rollover Date and will have a portfolio that contains securities, many, if not all, of which are actively traded *i.e.*, have had an average daily trading volume in the preceding six months of at least 500 shares equal in value to at least U.S. $25,000) on an exchange (a ''Qualified Exchange'') that is either (i) a national securities exchange that meets the qualifications of section 6 of the Securities Exchange Act of 1934, or (ii) a foreign securities exchange meeting the qualifications set forth in the proposed amendments to rule 12d3–1(d)(6) under the Act [2] and releasing daily closing prices (securities meeting the preceding tests are referred to as ''Qualified Securities'').

2. Applicants anticipate that there will be some overlap in the Qualified Securities selected for the portfolios of a Terminating Series and the related New Series. Absent the requested relief, a Terminating Series would, upon termination, sell its Qualified Securities on the applicable Qualified Exchange. Likewise, a New Series would acquire its Qualified Securities on the applicable Qualified Exchange. This procedure would result in Unitholders of both the Terminating Series and the New Series incurring brokerage commissions on the same Qualified Securities. Applicants accordingly request an order to the extent necessary to permit a Terminating Series to sell its Qualified Securities to a New Series and to permit the New Series to purchases those securities.

Applicants' Legal Analysis

A. DSC and Waiver of DSC under Certain Circumstances

1. Section 4(2) of the Act defines a ''unit investment trust'' as an investment company that issues only redeemable securities. Section 2(a)(32) of the Act defines a ''redeemable security'' as a security that, upon its presentation to the issuer, enables the holder to receive approximately his or her proportionate share of the issuer's current net assets or the cash equivalent of those assets. Rule 22c–1 under the Act requires that the price of a redeemable security issued by a registered investment company for purposes of sale, redemption or repurchase be based on the security's current net asset value (''NAV''). Because the collection of any unpaid DSC may cause a redeeming Unitholder to receive an amount less than the NAV of the redeemed Units, applicants request relief from section 2(a)(32) and rule 22c–1.

2. Section 22(d) of the Act and rule 22d–1 under the Act require a registered investment company and its principal underwriter and dealers to sell securities only at the current public offering price described in the investment company's prospectus, with the exception of sales of redeemable securities at prices that reflect scheduled variations in the sales load. Section 2(a)(35) of the Act defines the term ''sales load'' as the difference between the sales price and the portion of the proceeds invested by the depositor or trustee. Applicants request relief from sections 2(a)(35) and 22(d) to permit waivers, deferrals or other scheduled variations of the sales load.

3. Under section 6(c) of the Act, the Commission may exempt classes of transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their proposal meets the standards of section 6(c). Applicants state that the provisions of section 22(d) are intended to prevent (i) riskless trading in investment company securities due to backward pricing, (ii) disruption of orderly distribution by dealers selling shares at a discount, and (iii) discrimination among investors resulting from different prices charged to different investors. Applicants assert that the proposed DSC program will present none of these abuses. Applicants further state that all scheduled variations in the sales load will be disclosed in the prospectus of each Series and applied uniformly to all investors, and that applicants will comply with all the conditions set forth in rule 22d–1.

4. Section 26(a)(2)(C) of the Act, in relevant part, prohibits a trustee or custodian of a UIT from collecting from the trust as an expense any payment to the trust's depositor or principal underwriter. Because the Trustee's payment of the DSC to the Sponsor may be deemed to be an expense under section 26(a)(2)(C), applicants request relief under section 6(c) from section 26(a)(2)(C) to the extent necessary to permit the Trustee to collect Installment Payments and disburse them to the Sponsor. Applicants submit that the relief is appropriate because the DSC is more properly characterized as a sales charge.

B. Exchange Privilege, Conversion Offer and Rollover Privilege

1. Sections 11(a) and (c) of the Act prohibit any offer of exchange by a UIT for the securities of another investment company unless the terms of the offer have been approved in advance by the Commission. Applicants request an order under sections 11(a) and 11(c) for Commission approval of the Exchange Privilege, the Conversion Offer and the Rollover Privilege.

2. Applicants state that the Exchange Privilege and Rollover Privilege provide investors with a convenient means of transferring their interests at a reduced sales charge into Exchange Series and Rollover Series which suit their current investment objectives. Further, applicants state that the Conversion Offer provides Unitholders of a Series in which there is no active secondary market to redeem those Units and invest

[2] Investment Company Act Rel. No. 17096 (Aug. 3, 1989) (proposing amendments to rule 12d3–1). The proposed amended rule defined a ''Qualified Foreign Exchange'' as a stock exchange in a country other than the United States where: (i) Trading generally occurred at least four days per week; (ii) there were limited restrictions on the ability of acquiring companies to trade their holdings on the exchange; (iii) the exchange had a trading volume in stocks for the previous year of at least U.S. $7.5 billion; and (iv) the exchange had a turnover ratio for the preceding year of at least 20% of its market capitalization. The version of the amended rule that was adopted did not include the part of the proposed amendment defining the term ''Qualified Foreign Exchange.''

the proceeds at a reduced sales charge into Units of the Conversion Series in which there is an active secondary market. Applicants state that absent the Exchange Privilege, Rollover Privilege and Conversion Offer, Unitholders would be required to dispose of their Units, either in the secondary market (in the case of the Exchange Privilege and Rollover Privilege) or through redemption, and to reinvest, at the then fully applicable sales charge, into the chosen Series.

3. Applicants represent that Unitholders will not be induced or encouraged to participate in the Exchange Privilege, Rollover Privilege, or Conversion Offer through an active advertising or sale campaign. The Sponsor recognizes its responsibility to its investors against generating excessive commissions through churning and asserts that the sales charge collected will not be a significant economic incentive to salesmen to promote inappropriately the Exchange Privilege, Rollover Privilege or the Conversion Offer. Applicants state that the reduced sales charge will fairly and adequately compensate the Sponsor and the participating underwriters and brokers for their services and expenses in connection with the administration of the programs. Applicants further believe that the Exchange Privilege, Rollover Privilege, and Conversion Offer are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

C. Purchase and Sale Transactions Between a Terminating Series and a New Series

1. Section 17(a) of the Act prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person directly or indirectly controlling, controlled by, or under common control with the other person. The GMS Group will be the Sponsor of each Series. Since the Sponsor of a Series may be deemed to control the Series, all of the Series may be deemed to be affiliated persons of each other.

2. Rule 17a–7 under the Act was designed to permit registered investment companies which might be deemed affiliated persons by reason of common investment advisers, directors and/or officers, to purchase securities from or sell securities to one another at an independently determined price, provided that certain conditions are met. Paragraph (e) of the rule requires an investment company's board of directors (''Board'') to adopt and monitor procedures to assure compliance with the rule. Paragraph (f) of the rule requires that the Board satisfy certain fund governance standards. Because UITs do not have Boards, the Series would be unable to comply with these requirements. Applicants represent that they will comply with all of the provisions of rule 17a–7, other than paragraphs (e) and (f).

3. Section 17(b) of the Act provides that the Commission will exempt a proposed transaction from section 17(a) if evidence establishes that: (i) the terms of the transaction are reasonable and fair and do not involve overreaching; (ii) the transaction is consistent with the policies of each registered investment company involved; and (iii) the transaction is consistent with the general purposes of the Act. Applicants request relief under sections 6(c) and 17(b) to permit a Terminating Series to sell Qualified Securities to a New Series and permit the New Series to purchase the Qualified Securities.

4. Applicants believe that the proposed transactions satisfy the requirements of sections 6(c) and 17(b). Applicants represent that purchases and sales between the Terminating and New Series will be consistent with the policies of each Series. Applicants further state that permitting the proposed transactions would result in savings on brokerage fees for the Terminating and New Series.

5. Applicants state that the condition that the Qualified Securities must be actively traded on a Qualified Exchange protects against overreaching. In addition, applicants state that the Sponsor will certify to the Trustee, within five days of each sale of Qualified Securities from a Terminating Series to a New Series: (i) that the transaction is consistent with the policy of both the Terminating Series and the New Series, as recited in their respective registration statements and reports filed under the Act; (ii) the date of the transaction; and (iii) the closing sales price on the Qualified Exchange for the sale date of the Qualified Securities. The Trustee will then countersign the certificate, unless, in the unlikely event that the Trustee disagrees with the closing sales price listed on the certificate, the Trustee immediately informs the Sponsor orally of such disagreement and returns the certificate within five days to the Sponsor with corrections duly noted. Upon the Sponsor's receipt of a corrected certificate, if the Sponsor can verify the corrected price by reference to an independently published list of closing sales prices for the date of the transactions, the Sponsor will ensure that the price of the Units of the New Series, and the distributions to Unitholders of the Terminating Series, accurately reflect the corrected price. To the extent that the Sponsor disagrees with the Trustee's corrected price, the Sponsor and the Trustee will jointly determine the correct sales price by reference to a mutually agreeable, independently published list of closing sales prices for the date of the transaction.

D. Net Worth Requirement

1. Section 14(a) of the Act requires that registered investment companies have $100,000 of net worth prior to making a public offering. Applicants believe that each Series will comply with this requirement because the Sponsor will deposit substantially more than $100,000 of debt and/or equity securities, depending on the objective of the particular Series. Applicants assert, however, that the Commission has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Series would not satisfy section 14(a) because of the Sponsor's intention to sell all of the Units of the Series.

2. Rule 14a–3 under the Act exempts UITs from section 14(a) if certain conditions are met, including that the UIT invest only in ''eligible trust securities,'' as defined in the rule. Applicants state that they may not rely on rule 14a–3 because the Series may invest in equity securities which do not satisfy the definition of eligible trust securities.

3. Consequently, applicants seek an exemption under section 6(c) of the Act to exempt the Series from the net worth requirement of section 14(a) of the Act. Applicants state that the Series and the Sponsor will comply in all respects with the requirements of rule 14a-3, except that the Series will not restrict their portfolio investments to ''eligible trust securities.''

E. Capital Gains Distribution

1. Section 19(b) of the Act and rule 19b–1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b–1(c), under certain circumstances, exempts a UIT investing in ''eligible trust securities'' (as defined in rule 14a–3(b)) from the requirements of rule 19b–

1. Because the Trusts do not limit their investments to ''eligible trust securities,'' the Trusts do not qualify for the exemption in paragraph (c) of rule 19b–1. Therefore, applicants request an exemption under section 6(c) from section 19(b) and rule 19b–1 to the extent necessary to permit capital gains earned in connection with the sale of portfolio securities to be distributed to Unitholders along with the Series' regular distributions. In all other respects, applicants will comply with section 19(b) and rule 19b–1.

2. Applicants state that their proposal meets the standards of section 6(c). Applicants assert that any sale of portfolio securities would be triggered by the need to meet Series' expenses, Installment Payments or by requests to redeem Units, events over which the Sponsor and the Series have no control. Applicants further state that, because principal distributions must be clearly indicated in accompanying reports to Unitholders as a return of principal and will be relatively small in comparison to normal dividend distributions, there is little danger of confusion from failure to differentiate among distributions.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

A. DSC and Waiver of DSC Under Certain Circumstances

1. Each Series offering Units subject to a DSC will include in its prospectus the disclosure required in Form N–1A relating to deferred sales charges, modified as appropriate to reflect the differences between UITs and open-end management investment companies, and a schedule setting forth the number and date of each installment payment.

2. Any DSC imposed on Units issued by a Series will comply with the requirements of subparagraphs (1), (2) and (3) of rule 6c–10(a) under the Act.

B. Exchange Privilege, Conversion Offer and Rollover Privilege

1. The prospectus of each Series offering exchanges, rollovers, or conversions and any sales literature or advertising that mentions the existence of the Exchange Privilege, Conversion Offer or Rollover Privilege will disclose that the Exchange Privilege, Conversion Offer or Rollover Privilege is subject to modification, termination or suspension without notice, except in limited cases.

2. Whenever the Exchange Privilege, Conversion Offer or Rollover Privilege is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to make one or more New Series eligible for the Exchange Privilege, Conversion Offer or Rollover Privilege, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of the Series under section 22(e) of the Act and the rules and regulations promulgated under that section, or (ii) a Series temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies, and restrictions.

3. An investor who purchases Units under the Exchange Privilege, Conversion Offer or Rollover Privilege will pay a lower sales charge than that which would be paid for the Units by a new investor.

C. Net Worth Requirement

Applicants will comply in all respects with the requirements of rule 14a–3, except that the Series will not restrict their portfolio investments to ''eligible trust securities.''

D. Purchase and Sale Transactions Between a Terminating Series and a New Series

1. Each sale of Qualified Securities by a Terminating Series to a New Series will be effected at the closing price of the securities sold on a Qualified Exchange on the sale date, without any brokerage charges or other remuneration except customary transfer fees, if any.

2. The nature and conditions of such transactions will be fully disclosed to investors in the appropriate prospectus of each Terminating Series and New Series.

3. The Trustee of each Terminating Series and New Series will review the procedures discussed in the application relating to the sale of securities from a Terminating Series and the purchase of those securities for deposit in a New Series, and make such changes to the procedures as the Trustee deems necessary to ensure compliance with paragraphs (a) through (d) of rule 17a–7.

4. A written copy of these procedures and a written record of each transaction pursuant to this order will be maintained as provided in rule 17a–7(g).

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–19739 Filed 11–21–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Digital Gas, Inc.; Order of Suspension of Trading

November 17, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Digital Gas, Inc. (''Digital''), because of questions raised regarding the accuracy and adequacy of publicly disseminated information concerning, among other things, Digital's announced agreement with Techno Rubber, Inc. and Digital's assets.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, November 17, 2006, through 11:59 p.m. EST, on December 4, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. 06–9332 Filed 11–17–06; 11:31 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54762; File No. SR–CBOE–2006–93]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Regarding Quarterly Options Series

November 16, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 8, 2006, the Chicago Board Options

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange, Incorporated (''CBOE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rules regarding the opening of Quarterly Options Series to limit the number of strike prices that the Exchange may open for Quarterly Options Series and make minor clarifications. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 11, 2006, the SEC approved CBOE's proposal to add language to CBOE Rule 24.9 that would permit the listing and trading of Quarterly Options Series based on an underlying index.[3] That language did not include a limit on the number of strike prices that may be opened for a Quarterly Options Series. In the instant filing, Exchange proposes to add such a limit.

The purpose of the proposed rule change is to amend CBOE Rule 24.9 (''Terms of Index Option Contracts'') to (1) Limit the number of strike prices that the Exchange may open for Quarterly Options Series to five strike prices above or below the value of the underlying index, (2) clarify that the Exchange may open for trading additional Quarterly Options Series of the same class when the Exchange deems such action necessary to maintain an orderly market or meet customer demand, and (3) clarify that the opening of any new Quarterly Options Series will not affect the previously opened series of options of the same class.

1. 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.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Statement of 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. Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Currently, under CBOE Rule 24.9, at the time the Exchange initially lists strike prices for a QOS, the Exchange may list strike prices that are within $5 from the closing price of the underlying index on the preceding trading day. The Exchange may open for trading additional strike prices if the current market price of the underlying index moves substantially from the exercise prices of those QOS that already have been opened for trading on the Exchange. The exercise price of each such additional QOS is required to be reasonably related to the current index value of the underlying index at or about the time such additional series is opened for trading on the Exchange. The CBOE rules define the term ''reasonably related to the current index value of the underlying index'' to mean that the exercise price is within thirty percent of the current index value.

However, despite this ''reasonably related'' requirement, the current language of CBOE Rule 24.9 also permits the Exchange to open for trading additional strike prices that are more than thirty percent away from the current index value, ''provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers.''[8] Thus, as currently in effect, CBOE Rule 24.9 effectively does not limit the number of additional strike prices that may be opened for a QOS based on an underlying index.

In this filing, the Exchange proposes to eliminate the requirement that strike prices at the time of initial listing must be within $5 from the closing price of the underlying security on the preceding trading day. Instead, the proposal would limit the Exchange to listing no more than five strike prices above and five strike prices below the value of the underlying index at about the time the QOS is opened for trading on the Exchange.

In addition, the proposal would restrict the additional strike prices that may be opened on a QOS. The proposal would permit the Exchange to open additional strike prices that are above (or below) the value of the underlying index, provided that the total number of strike prices above (or below) the value of the underlying index is no greater than five. For example, assume that when a particular QOS was initially listed, the Exchange opened the

[3] *See* Securities Exchange Act Release No. 54123 (July 11, 2006), 71 FR 40558 (July 17, 2006) (approving SR–CBOE–2006–65) (''Pilot Program Approval Order'').

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] CBOE Rule 24.9(a)(2).

maximum number of strike prices permitted by the rule: five above and five below the value of the underlying index at that time. If the index value subsequently increased such that only two strike prices were above the value of the underlying index, the Exchange would be permitted to open up to three additional strike prices above the value of the index. (In this example, the Exchange would not be permitted to open any additional strike prices below the value of the underlying index because it may only add strike prices provided that the total number of open strike prices on that side of the underlying index value remains five or fewer.) The provisions of CBOE Rule 24.9 requiring that the exercise price of additional series must be ''reasonably related'' to the value of the underlying index, unless ''demonstrated customer interest'' exists for a series with an exercise price more than 30% away from the current index value, would remain in place, but would be limited by the five above/five below restriction.

Although the proposal is more permissive in the range of strike prices that may be opened at the time of initial listing, the proposal to limit additional strike prices renders CBOE Rule 24.9(a)(2) more restrictive overall in the number of strike prices that may be opened on the Exchange. Therefore, the Commission believes the proposal should not raise any capacity or regulatory concerns not already discussed in the order approving the QOS pilot program.[9] For these reasons, the Commission believes that the proposed rule change is consistent with the Act.

The Exchange has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of notice of the filing in the **Federal Register**. The Commission believes that accelerated approval is appropriate because the proposal adds a restriction on the number of strike prices that may be opened on the Exchange, thus lessening the impact of the QOS on the limited quote traffic capacity of the Exchange and the Options Price Reporting Authority, while still permitting the Exchange to list an appropriate range of strike prices in order to respond to market conditions and customer demand. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[10] to approve the proposed rule change prior to the thirtieth day after publication of the notice of filing thereof in the **Federal Register.**

[9] For the same reason, the Commission does not view the proposed rule change as an expansion of the pilot program, and therefore the proposal does not trigger the requirement under the terms of the Pilot Program Approval Order that the Exchange submit a pilot program report. *See* Pilot Program Approval Order, 71 FR at 40561.

[10] 15 U.S.C. 78s(b)(2).

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*);
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2006–93 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–2006–93. 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 identifying personal information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2006–93 and should be submitted on or before December 13, 2006.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–2006–93) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19725 Filed 11–21–06; 8:45 am]

BILLING CODE 8011–01–P

[11] *Id.*

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54761; File No. SR–CBOE–2006–85]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Definition of Quarterly Index Expiration or QIX

November 16, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 2006, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. 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 the definition of ''Quarterly Index Expiration or QIX'' in CBOE Rule 24.1(s). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to update the definition of an index option contract in CBOE Rule 24.1(s) to reflect current Options Clearing Corporation (''OCC'') settlement procedures. Specifically, the Exchange proposes to define Quarterly Index Expiration (''QIX'') as an index option contract that expires on the last business day of a calendar quarter, rather than the first business day of the month following the end of a calendar quarter. QIX options rules allow the Exchange to trade quarterly expiration options for certain index option products. QIX options were approved by the Commission in February 1993.[5] The Exchange does not currently trade QIX index options, but expects to do so in the near future. In connection with renewed trading of QIX options, the Exchange seeks to modify the definition of QIX in CBOE Rule 24.1(s) to reflect changes in OCC settlement procedures over the years. When QIX rules were approved, OCC expiration processing for QIX options could not be completed until the business day following the end of the calendar quarter. Today, OCC technology and procedures have improved such that expiration processing can be completed on the last business day of the calendar quarter.

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.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and 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

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9] Because the foregoing proposed rule change (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to waive the operative delay if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become effective prior to the 30th day after filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposal to change the expiration date of QIX options to the last business day of a calendar quarter is consistent with the definition of other quarterly options series on the Exchange.[11] Therefore, the Commission has determined to waive the 30-day delay and allow the proposed rule change to become operative immediately.[12]

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 No. SR–CBOE–2006–85 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–2006–85. 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 Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements

[5] *See* Securities Exchange Act Release No. 31800 (February 1, 1993), 58 FR 7274 (February 5, 1993) (approving file no. SR–CBOE–92–13).

[6] 15 U.S.C. 78f(b).

[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).

[10] Rule 19b–4(f)(6)(iii) requires the Exchange to give written notice to the Commission of its intent to file the proposed rule change at least five business days prior to filing. The Exchange provided the required notice on September 26, 2006.

[11] *See, e.g.*, Securities Exchange Act Release No. 54123 (July 11, 2006), 71 FR 40558 (July 17, 2006) (approving CBOE's Quarterly Options Series pilot program, file no. SR–CBOE–2006–65).

[12] For purposes only of waiving the operative delay of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–85 and should be submitted on or before December 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19726 Filed 11–21–06; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54682A; File No. SR–FICC–2006–15]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify Its Rules To Diversify and Standardize Clearing Fund Collateral Requirements Across the Divisions To Improve Liquidity and Minimize Risk for Its Members; Correction and Extension of Comment Period

November 17, 2006.

Correction

In FR Doc. E6–18948, beginning on page 65855 for Thursday, November 9, 2006, revise the number ''500,000'' to read ''5,000,000'' on page 65856, second column, sixth line.

Extension

On October 4, 2006, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] that would modify the rules of both of the Government Securities Division (''GSD'') and the Mortgage-Backed Securities Division (''MBSD'') (collectively, the ''Divisions'') of FICC to diversify and standardize Clearing Fund collateral requirements across the Divisions. A complete description of the proposed rule change is found in the notice of filing, which was published in the **Federal Register** on November 9, 2006.[3] The comment period expires on November 30, 2006.[4]

To give the public additional time to comment on the correction above, the Commission has decided to extend the comment period pursuant to Section 19(b)(2) of the Act.[5] Accordingly, the comment period shall be extended until December 12, 2006.

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–FICC–2006–15 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–FICC–2006–15. 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. Copies of such filings also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.ficc.com/gov/notices/GOV115.06.htm?NS-query.* 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–FICC–2006–15 and should be submitted on or before December 12, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19727 Filed 11–21–06; 8:45 am]

BILLING CODE 8011–01–P

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 54682 (November 1, 2006) 71 FR 65855 (November 9, 2006) (SR–FICC–2006–15).

[4] *Id.*

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54751; File No. SR–ISE–2006–56]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Relating to Customer Fees for Certain Complex Orders

November 14, 2006.

I. Introduction

On September 20, 2006, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish execution and comparison fees for customer Complex Orders that take liquidity from the ISE's complex order book. The ISE filed Amendment No. 1 to the proposal on October 4, 2006.[3] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 revises the text of the ISE's Schedule of Fees to: (1) explain when an order takes liquidity from the ISE's complex order book; and (2) clarify that the proposed fee applies solely to Complex Orders that trade with other Complex

Continued

proposed rule change, as amended, was published for comment in the **Federal Register** on October 13, 2006.[4] The Commission received no comments regarding the proposal, as amended. This order approves the proposed rule change, as amended.

II. Description of the Proposal

Under its current rules, the ISE generally charges execution and comparison fees of $.15 and $.03 per contract, respectively, for Firm Proprietary orders.[5] The ISE states that it has noted increased volume in certain customer transactions in Complex Orders. According to the ISE, customers that use highly developed trading systems are able to take liquidity quickly from ISE's complex order book.[6] To place customer orders on a more equal footing with broker-dealer orders, the ISE proposes to amend its Schedule of Fees to adopt execution and comparison fees of $.15 and $.03 per contract, respectively, for customer Complex Orders that take liquidity from the ISE's complex order book.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,[8] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Under its current rules, the ISE generally charges execution and comparison fees of $.15 and $.03 per contract, respectively, for Firm Proprietary orders. The proposal establishes execution and comparison fees of $.15 and $.03 per contract, respectively, for customer Complex Orders that take liquidity from the ISE's complex order book.[9] Accordingly, the Commission believes that the proposal provides for the equitable allocation of fees among members and other persons using the ISE's facilities, consistent with Section 6(b)(4) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–ISE–2006–56), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19734 Filed 11–21–06; 8:45 am]

BILLING CODE 8011–01–P

Orders, and not to Complex Orders that trade with customer orders in the regular order book.

[4] *See* Securities Exchange Act Release No. 54571 (October 4, 2006), 71 FR 60593.

[5] For Firm Proprietary Complex Orders, the execution fee is charged only for the leg of the trade with the most contracts.

[6] Under the ISE's proposal, an order takes liquidity when it interacts with a Complex Order resident on the ISE's complex order book. The ISE determines the liquidity provider and the liquidity taker based on time, *i.e.*, the order that arrives first on the ISE's complex order book is the liquidity provider. The fees established in the proposal apply solely to customer Complex Orders that take liquidity from the ISE's complex order book, but not to customer Complex Orders that trade with orders in the regular order book. Similarly, the fees do not apply to customer orders in the regular order book that trade with Complex Orders.

[7] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4).

[9] As with the current execution fee for Firm Proprietary Complex Orders, the execution fee will be charged only for the leg of the trade with the most contracts.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54765; File No. SR–NASDAQ–2006–009]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendments No. 1 and 2 Thereto To Permit Trading Pursuant to Unlisted Trading Privileges of streetTRACKS Gold Shares and To Establish Trading Rules to Trade, Pursuant to Unlisted Trading Privileges, Certain Securities Whose Value Is Linked to the Value of One or More Commodities

November 16, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 15, 2006 The NASDAQ Stock Market LLC (''Nasdaq'' 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 Nasdaq. On October 10, 2006, the Exchange submitted Amendment No. 1 to the proposal,[3] and on November 14, 2006, the Exchange submitted Amendment No. 2 to the proposal.[4] 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 proposal, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is making this filing to enable it to continue trading pursuant to unlisted trading privileges (''UTP'') of streetTRACKS Gold Shares (''Shares'') and to add Nasdaq Rule 4630 to establish trading rules to trade, pursuant to UTP, certain securities whose value is linked to the value of one or more commodities.

The text of the proposed rule change is below. Proposed new language is in *italics*.[5]

* * * * *

4630. Trading in Commodity-Based Trust Shares

(a) Nasdaq will consider for trading pursuant to unlisted trading privileges, Commodity-Based Trust Shares that meet the criteria of this Rule.

(b) Applicability. This Rule is applicable only to Commodity-Based Trust Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of Rule 4420(l) and all other Nasdaq Rules shall be applicable to the trading on Nasdaq of such securities. Commodity-Based Trust Shares are included within the definition of ''security'' or ''securities'' as such terms are used in the Nasdaq Rules.

(c) Definitions. The following terms shall, unless the context otherwise requires, have the meaning herein specified:

(1) Commodity-Based Trust Shares. The term ''Commodity-Based Trust Shares'' means a security (a) that is issued by a trust (''Trust'') that holds a specified commodity deposited with the Trust; (b) that is issued by such Trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity.

(2) Commodity. The term ''commodity'' is defined in Section 1(a)(4) of the Commodity Exchange Act.

[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.

[4] Amendment No. 2 replaced Amendment No. 1 in its entirety.

[5] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://www.complinet.com/nasdaq*.

(d) Information Barriers. A member acting as a registered market maker in Commodity-Based Trust Shares is obligated to establish adequate information barriers when such market maker engages in inter-departmental communications. Members should refer to NASD/NYSE Joint Memo on Chinese Wall Policies and Procedures (NASD Notice to Members 91–45) for guidance on the "'minimum elements" of adequate Chinese Wall policy and procedures." For purposes of Commodity-Based Trust Shares only, "inter-departmental communications" shall include communications to other departments within the same firm or the firm's affiliates that involve trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives.

(e) Market Maker Accounts. A member acting as a registered market maker in Commodity-Based Trust Shares must file with Nasdaq Regulation in a manner prescribed by Nasdaq Regulation and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, that the market maker may have or over which it may exercise investment discretion. No market maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a market maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, that has not been reported as required by this Rule.

(f) The member acting as a registered market maker in Commodity-Based Trust Shares shall make available to Nasdaq Regulation such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by Nasdaq Regulation.

(g) In connection with trading the underlying physical commodity, related commodity futures or options on commodity futures or any other related commodity derivative (including Commodity-Based Trust Shares), the member acting as a market maker in Commodity-Based Trust Shares shall not use any material nonpublic information received from any person associated with the member or employee of such person regarding trading by such person or employee in the physical commodity, commodity futures or options on commodity futures, or any other related commodity derivatives.

(h) Nasdaq requires that members provide all purchasers of newly issued Commodity-Based Trust Shares a prospectus for the series of Commodity-Based Trust Shares.

(i) Transactions in Commodity-Based Trust Shares will occur during the trading hours specified in Rule 4617.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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 III below. Nasdaq 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

a. streetTRACKS Gold Shares

(1) General Description

The Nasdaq Stock Market, Inc. ("Nasdaq Market"), the parent of Nasdaq, currently trades the Shares. After Nasdaq begins to operate as an exchange for trading securities not listed on Nasdaq, it proposes to continue trading the Shares pursuant to UTP in much the same manner as they are being traded by the Nasdaq Market currently. Nasdaq's surveillance procedures applicable to the Shares will not change as a result of the transition to exchange status.

The Commission previously approved the listing and trading of the Shares on the New York Stock Exchange ("NYSE").[6] The Shares represent units of fractional undivided beneficial interest in and ownership of the streetTRACKS Gold Trust ("Trust").

The Trust is an investment trust and is not managed like a corporation or an active investment vehicle. The Trust has no board of directors or officers or persons acting in a similar capacity. The Trust is not an investment company under the Investment Company Act of 1940. The purpose of the Trust is to hold gold bullion. The investment objective of the Trust is for the Shares to reflect the performance of the price of gold, less the Trust's expenses.

World Gold Trust Services, LLC, a wholly owned limited liability company of the World Gold Council,[7] is the sponsor of the Trust ("Sponsor"). The Bank of New York is the trustee; HSBC Bank USA, an indirect wholly owned subsidiary of HSBC Holdings plc, is the custodian ("Custodian"); and State Street Global Markets LLC, a wholly owned subsidiary of State Street Corporation, is the marketing agent ("Marketing Agent").

Generally, the assets of the Trust (*e.g.*, gold bullion) will be sold to pay Trust expenses and management fees. These expenses and fees will reduce the value of an investor's Shares as gold bullion is sold to pay such costs. Ordinary operating expenses of the Trust include: (a) Fees paid to the Sponsor; (b) fees paid to the Trustee; (c) fees paid to the Custodian; (d) fees paid to the Marketing Agent; and (e) various Trust administration fees, including printing and mailing costs, legal and audit fees, registration fees, and Nasdaq listing fees. The Trust's estimated ordinary operating expenses are accrued daily and reflected in the net asset value ("NAV") of the Trust.

The Trust will create Shares on a continuous basis only in aggregations of 100,000 Shares (such aggregation referred to as a "Basket"). Authorized Participants are the only persons that may place orders to create and redeem Baskets by making an in kind deposit of gold together with, if applicable, a specified cash payment. Similarly, the Trust will redeem Shares only in Baskets, principally in exchange for gold and, if applicable, a cash payment. Because the creation and redemption process facilitates the potential for arbitrage, the NYSE stated that the Sponsor believed that the Shares would not trade at a material discount or premium to the underlying gold held by the Trust.

(2) Availability of Information About the Shares

The global trade in gold consists of over-the-counter transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options. The NYSE

[6] *See* Securities Exchange Act Release No. 50603 (October 28, 2004) 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) ("NYSE Approval Order").

[7] The World Gold Council is a not-for-profit association registered under Swiss law.

Listing Order contains descriptions of the key components of the gold market.

The last sale price for the Shares is disseminated over the Consolidated Tape. Gold pricing information based on the spot price for a troy ounce of gold from various financial information service providers, such as Reuters and Bloomberg, is available on a 24-hour basis. Complete real-time data for gold futures and options prices traded on the COMEX (a division of the NYMEX) is available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. Nasdaq, via a link from its own public Web site (*http://www.nasdaq.com*) to the Trust Web site (*http://www.streettracksgoldshares.com*), will provide at no charge continuously updated bids and offers indicative of the spot price of gold.[8]

The Trust Web site also will provide a calculation of the estimated NAV (also known as the Intraday Indicative Value or ''IIV'') of a Share as calculated by multiplying the indicative spot price of gold by the quantity of gold backing each Share. Comparing the IIV with the last sale price of the Shares helps an investor to determine whether, and to what extent, Shares may be selling at a premium or a discount to the NAV. Although provided free of charge, the indicative spot price and IIV per Share will be provided on an essentially real-time basis.[9] The Trust Web site provides the NAV of the Trust as calculated each business day by the Sponsor. In addition, the Trust Web site contains the following information, on a per-Share basis, for the Trust: (a) The IIV as of the close of the prior business day and the midpoint of the bid/ask price [10] in relation to such IIV (''Bid/Ask Price''), and a calculation of the premium or discount of such price against such IIV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the IIV, within appropriate ranges, for each of the four previous calendar quarters. The Trust Web site also provides the Trust's prospectus, as well as the two most recent reports to stockholders. The Trust Web site provides the last sale price of the Shares as traded in the U.S. market, subject to a 20-minute delay.[11] Finally, the Shares will trade during all hours that Nasdaq is open, as specified in Nasdaq Rule 4617.[12]

(3) Trading Rules

Trading in the Shares will be subject to Nasdaq's existing rules governing the trading of equity securities and will occur during the hours when other equity securities are traded on Nasdaq. The minimum price variation will be as set forth in the Nasdaq rules specifically with respect to equity securities listed on the NYSE.

Nasdaq is trading the Shares pursuant to UTP, but will cease trading in the Shares during all trading sessions if: (a) The primary market stops trading the Shares because of a regulatory halt and/or a halt because dissemination of the IIV and/or the unaffiliated gold value has ceased or Nasdaq no longer provides a hyperlink to the Trust's Web site; or (b) the primary market delists the Shares. Additionally, Nasdaq may cease trading the Shares if such other event shall occur or condition exists which in the opinion of Nasdaq makes further dealings on Nasdaq inadvisable.

Because Nasdaq is trading pursuant to UTP the Shares during its early and late trading sessions, when the primary market is closed, Nasdaq will monitor the unaffiliated value of gold and IIV per Share and ensure that trading of the Shares will cease during the early and late trading sessions, if the unaffiliated value of gold and IIV per Share (used by the primary listing exchange) is no longer calculated or available during the early and late trading sessions, or Nasdaq stops providing a hyperlink on its Web site to such unaffiliated gold value or IIV per Share.

(4) Surveillance

Nasdaq believes its surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, the NASD relies on its existing surveillance procedures for equity securities. After Nasdaq begins to operate as an exchange for trading securities not listed on Nasdaq, the NASD, on behalf of Nasdaq, will continue to surveil Nasdaq trading, including Nasdaq trading of the Shares. Nasdaq's transition to exchange status will not result in any change in the surveillance process with respect to the Shares.[13]

In addition, for intermarket surveillance purposes, Nasdaq entered into a reciprocal Memorandum of Understanding with NYMEX, which is a comprehensive surveillance sharing arrangement,[14] for the sharing of information related to any financial instrument based, in whole or in part, upon an interest in or performance of gold.

(5) Information Circular

In connection with its commencement of operations as an exchange for trading non-Nasdaq securities, Nasdaq will issue an information circular (''Circular''), which, among other things, will identify certain securities, such as the Shares, that present special characteristics and risks associated with their trading. The Circular will refer to the information publicly available about the identified securities, alert members to possible prospectus delivery requirements, and remind them of the suitability rules.

Specifically, the Circular, among other things, will discuss what the Shares are, how a Basket is created and redeemed, the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction, applicable Nasdaq rules, dissemination of information regarding the indicative price of gold and IIV, trading information, and the applicability of suitability rules. The Circular will also explain that the Trust is subject to various fees and expenses described in

[8] The Trust's Web site's gold spot price will be provided by The Bullion Desk (*http://thebulliondesk.com*). The Trust's Web site will indicate that there are other sources for obtaining the gold spot price. In the event that the Trust's Web site should cease to provide this indicative spot price from an unaffiliated source (and the intraday indicative value) of the Shares, Nasdaq will cease to trade the Shares.

[9] The Trust's Web site, to which the Nasdaq Web site will link, will disseminate an indicative spot price of gold and the IIV and indicate that these values are subject to an average delay of five to ten seconds.

[10] The bid/ask price is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day IIV.

[11] 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.

[12] The Nasdaq system operates from 7 a.m. to 8 p.m. (all times herein refer to Eastern Standard Time) on each business day, unless modified by Nasdaq. A Nasdaq market maker shall be open for business as of 9:30 a.m. and shall close no earlier than 4 p.m. A Nasdaq market maker may voluntarily open for business prior to 9:30 a.m. and remain open for business later than 4 p.m. Nasdaq market makers whose quotes are open prior to 9:30 a.m. or after 4 p.m. are obligated to comply, while their quotes are open, with all Nasdaq Rules that are not by their express terms, or by an official interpretation of Nasdaq, inapplicable to any part of the 7 a.m. to 9:30 a.m. or 4 p.m. to 8 p.m. period.

[13] Surveillance of all trading on the Nasdaq Market, including the trading of Shares, is currently being conducted by NASD, Inc. Following Nasdaq's transition to exchange status, NASD, Inc. will continue to surveil trading, pursuant to a regulatory services agreement. Nasdaq is responsible for NASD, Inc.'s performance under this regulatory services agreement.

[14] Telephone conversation between Jonathan Cayne, Associate General Counsel, Nasdaq, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, November 15, 2006.

the Registration Statement, and that the number of ounces of gold required to create a Basket or to be delivered upon a redemption of a Basket will gradually decrease over time because the Shares comprising a Basket will represent a decreasing amount of gold due to the sale of the Trust's gold to pay the Trust's expenses. The Circular will also reference the fact that there is no regulated source of last sale information regarding physical gold, and that the Commission has no jurisdiction over the trading of gold as a physical commodity.

The Circular will also set forth the procedures for purchases and redemptions of the Shares in Baskets and that the Shares are not individually redeemable but are redeemable only in Basket-size aggregations or multiples thereof. The Circular will also advise members of their suitability obligations with respect to recommended transactions to customers in the Shares. The Circular will also discuss any relief if granted by the Commission or the staff from any rules under the Act.

b. Commodity-Based Trust Shares

Nasdaq is also adopting Rule 4630 to govern the trading, pursuant to UTP, of Commodity-Based Trust Shares (including the Shares). Nasdaq currently does not list (and does not have listing rules for) Commodity-Based Trust Shares, but its facilities are currently being used for the over-the-counter trading of such securities if they are listed on the NYSE or the American Stock Exchange (''Amex''). Once Nasdaq's separation from the NASD is complete and Nasdaq begins to operate as a national securities exchange with respect to securities listed on the NYSE and Amex, Nasdaq plans to continue trading NYSE- and Amex-listed Commodity-Based Trust Shares pursuant to UTP, subject to Commission approval of UTP trading of such securities. (Nasdaq expects to make appropriate filings with the Commission under Rule 19b–4.[15])

The proposed rule, which is based on the existing rules of NYSE Arca, Inc. as adapted for UTP trading only, would impose certain requirements on any Nasdaq member registered and acting as a market maker in Commodity-Based Trust Shares.

As the proposed rule's definition of Commodity-Based Trust Shares reflects, these securities are structurally similar to exchange traded funds, except, of course, that their value is a function of the value of the underlying commodities, rather than of an underlying securities index. The proposed rule will apply to the trading of Commodity-Based Trust Shares at all times. The proposed rule establishes the following requirements for market makers in Commodity-Based Trust Shares:

(1) Information Barriers

The proposed rule makes clear that a member acting as a registered market maker in Commodity-Based Trust Shares is obligated to comply with NASD Notice to Members 91–45 pertaining to limitations on dealings when such market maker engages in inter-departmental communications. For purposes of Commodity-Based Trust Shares only, ''inter-departmental communications'' shall include communications to other departments within the same firm or the firm's affiliates that involve trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives.

(2) Market Maker Accounts

A member acting as a registered market maker in Commodity-Based Trust Shares will be required to file and keep current a list of all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, that the market maker may have or over which it may exercise investment discretion.

(3) Books and Records

A member acting as a registered market maker in Commodity-Based Trust Shares will be required to make available to Nasdaq Regulation such books, records or other information pertaining to transactions in the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by Nasdaq Regulation.

(4) Material Non-public Information

In connection with trading the underlying physical commodity, related commodity futures or options on commodity futures or any other related commodity derivatives (including Commodity-Based Trust Shares), the member acting as a market maker in Commodity-Based Trust Shares would not be permitted to use any material non-public information received from any person associated with the member or employee of such person regarding trading by such person or employee in the physical commodity, commodity futures or options on commodity futures, or any other related commodity derivatives.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act[16] in general, and with Section 6(b)(5) of the Act[17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to 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

Nasdaq 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, as amended.

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. 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–NASDAQ–2006–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2006–009. 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

[15] 17 CFR 240.19b–4.

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(5).

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 Nasdaq. 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 publicly available. All submissions should refer to File Number SR–NASDAQ–2006–009 and should be submitted on or before December 13, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[18] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[19] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposal will benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission believes that the proposal is consistent with Section 12(f) of the Act,[20] which permits an exchange to trade, pursuant to UTP, a security that is listed and traded on another exchange.[21] The Commission notes that it previously approved the listing and trading of the Shares on NYSE[22] and, via UTP, on NYSE Arca.[23] The Commission also believes that the proposal is consistent with Rule 12f–5 under the Act,[24] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the existing rules of the Exchange governing the trading of equity securities, including rules relating to trading hours, trading halts, and the minimum trading increment.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[25] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Quotation System. Furthermore, as noted by the Exchange, various means exist for investors to obtain reliable gold price information and thereby monitor the underlying spot market in gold relative to the NAV of their Shares. Additionally, the Trust's Web site provides an continuously updated IIV (subject to an average delay of five to ten seconds). If the Trust ceases to maintain or to calculate the IIV or if the value of the index ceases to be widely available, the Exchange would cease trading the Shares.

The Commission notes that, if the Shares were to be delisted by NYSE, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of the proposal, the Exchange made the following representations:

1. The Exchange's surveillance procedures are adequate to deter manipulation, and its existing surveillance procedures for investment company units will be utilized for the Shares. Among other things, the Exchange entered into a reciprocal Memorandum of Understanding with NYMEX for the sharing of information related to any financial instrument based, in whole or in part, upon an interest in or performance of gold.
2. The Exchange will distribute an information circular to its members prior to the commencement of trading of the Shares on the Exchange that explains, among other things, the terms and characteristics of the Shares and the risks associated with their trading.
3. The Exchange will require a member to provide all purchasers of newly-issued Shares on the Exchange to provide that customer with a product prospectus, and will note this prospectus delivery requirement in the information circular.
4. The Exchange will cease trading the Shares during the regular market session (a) If the primary market stops trading the Shares because of a halt because the dissemination of the IIV and/or the unaffiliated underlying gold spot price has ceased to be disseminated by the Trust's Web site or because of a regulatory halt; or (b) if the primary market delists the shares.
5. During its early and late trading sessions, when the primary market is closed, the Exchange will monitor the dissemination of the IIV and the unaffiliated underlying gold spot price by the Trust's Web site, and will cease trading the Shares if this data ceases to be available.
6. The Exchange will cease trading the Shares if the Exchange's Web site for any reason ceases to provide a hyperlink to the Trust's Web site.

This approval order is conditioned on the Exchange's adherence to these representations.

Finally, the Commission believes that subsections (d) and (e) of the Exchange's proposed Rule 4630, which impose information barriers and trading restrictions on a member acting as a registered market maker in the Shares, are reasonable and consistent with the Act. These provisions would require a member acting as a registered market maker in the Shares to provide the Exchange with information relating to its trading in physical gold, gold futures contracts, options on gold futures, or any other gold derivatives. Further, a member acting as a registered market maker in the Shares would be prohibited under these provisions from using any material nonpublic information received from any person

[18] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78l(f).

[21] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extend[s] unlisted trading privileges.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[22] *See* NYSE Approval Order, *supra* note 6.

[23] *See* Securities Exchange Act Release No. 51245 (February 23, 2005) 70 FR 10731 (March 4, 2005) (SR–PCX–2004–117).

[24] 17 CFR 240.12f–5.

[25] 15 U.S.C. 78k–1(a)(1)(C)(iii).

associated with a member or employee of such person regarding trading by such person or employee in physical gold, gold futures contracts, options on gold futures, or any other gold derivatives.

The Commission finds good cause for approving the proposal, as amended, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Shares on NYSE and, pursuant to UTP, on NYSE Arca is consistent with the Act.[26] The Commission presently is not aware of any regulatory issue that should cause the Commission to revisit these earlier findings. Therefore, accelerating approval of the proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change, as amended (SR–Nasdaq–2006–009), is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19733 Filed 11–21–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54768; File No. SR–NASD–2006–110]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto to Establish a Two-Year Pilot Program Exempting from TRACE Reporting Transactions in Bonds Traded on a Facility of NYSE

November 16, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 19, 2006, the National Association of Securities Dealers, Inc. (''NASD'') 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 substantially been prepared by NASD. On September 27, 2006, NASD filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments[4] on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend: (1) NASD Rule 6230, to initiate a two-year pilot program exempting certain TRACE-eligible securities from reporting requirements that otherwise would apply; and (2) NASD Rules 6210 and 6230, to reflect the registration of The NASDAQ Stock Market LLC as a national securities exchange. Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

6200. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

* * * * *

6210. Definitions

The terms used in this Rule 6200 Series shall have the same meaning as those defined in NASD's By-Laws and Rules unless otherwise specified.

(a) No Change.

(b) No Change.

(c) The term ''reportable TRACE transaction'' shall mean any secondary market transaction in a TRACE-eligible security except transactions in TRACE-eligible securities that are listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, when such transactions are executed on, and reported to the exchange and the transaction information is disseminated publicly[, or transactions in TRACE-eligible securities that are listed and quoted on the Nasdaq Stock Market, Inc. (Nasdaq), when such transactions are reported to Nasdaq and the transaction information is disseminated publicly].

(d)–(j) No Change.

* * * * *

6230. Transaction Reporting

(a) through (d) No Change.

(e) Transactions Exempt from Reporting

The following types of transactions shall not be reported:

(1) Transactions that are part of a primary distribution by an issuer.

(2) Transactions in TRACE-eligible securities that are listed on a national securities exchange, when such transactions are executed on and reported to the exchange and the transaction information is disseminated publicly[, and transactions in TRACE-eligible securities that are listed and quoted on Nasdaq, when such transactions are reported to Nasdaq and the transaction information is disseminated publicly].

(3) Transactions where the buyer and the seller have agreed to trade at a price substantially unrelated to the current market for the TRACE-eligible security (e.g., to allow the seller to make a gift).

(4) *For the duration of a two-year pilot program, effective upon the later of either: 1) approval of this rule by the Commission, or 2) execution by NASD and the New York Stock Exchange (''NYSE'') of a data sharing agreement addressing data related to transactions covered by this Rule, transactions in TRACE-eligible securities that are executed on a facility of NYSE in accordance with NYSE Rules 1400 and 1401 and reported to NYSE in accordance with NYSE's applicable trade reporting rules and disseminated publicly by NYSE.*

(f) No Change.

* * * * *

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 III below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[26] *See supra* notes 6 and 23.

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1, which replaces and supersedes the original filing in its entirety, made various technical changes to the proposal and replaced a reference in the proposed rule text to NYSE's Automated Bond System with a reference to ''a facility of NYSE.''

[4] The Commission received one comment on the proposed rule change prior to issuance of this notice and order. *See* comment from Ron Klein, Chairman, CEO, General Associates, Inc., dated October 16, 2006. The commenter asked various questions regarding the status of the filing, which are resolved by the Commission's action in this notice and order.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD is proposing to amend its Rule 6230 to exempt from Trade Reporting and Compliance Engine (''TRACE'') [5] reporting requirements, for a period of two years, transactions in TRACE-eligible securities [6] executed on a facility of the New York Stock Exchange (''NYSE'') in accordance with NYSE Rules 1400 and 1401, provided that such transactions are reported pursuant to applicable NYSE trade reporting rules and publicly disseminated.[7] NYSE has sought exemptive relief from the Commission that would facilitate NYSE's trading of certain corporate debt securities that are not listed on NYSE.[8] NASD has proposed to amend its Rule 6230 to address concerns regarding duplicative trade reporting that would result from the trading of those NYSE-Traded Bonds which otherwise would be subject to both NASD's and NYSE's trade reporting requirements.

NASD Rule 6230(e)(2) currently exempts transactions in TRACE-eligible securities that are listed on a national securities exchange when such transactions are executed on and reported to the exchange and the transaction information is disseminated publicly. However, NYSE-Traded Bonds will not be listed on NYSE [9] and the proposed rule change would expand the exemption from reporting under NASD Rule 6230 to transactions in NYSE-Traded Bonds that are TRACE-eligible securities that are reported to NYSE and disseminated publicly.

NASD notes that the proposed rule change is predicated on NASD's receiving certain information from NYSE relating to transactions in NYSE-Traded Bonds that are TRACE-eligible and NASD's successful integration of this information into its audit trail.[10] The success of the proposed pilot program will be heavily dependent on NASD's ability to effectively continue to provide surveillance for corporate debt trading in the over-the-counter (''OTC'') market. NASD will evaluate the effectiveness of the consolidated audit trail during the pendency of the proposed pilot program.

Finally, NASD is proposing to delete references to ''Nasdaq'' and the ''Nasdaq Stock Market, Inc.'' in NASD Rule 6210 and ''Nasdaq'' in NASD Rule 6230 to reflect The NASDAQ Stock Market LLC's registration as a national securities exchange.

The proposed rule change will become effective upon the later of either: (1) approval of this proposed rule change by the Commission, or (2) execution by NASD and NYSE of a data-sharing agreement addressing data related to transactions covered by the proposed rule change.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is being made to enhance regulatory efficiency and reduce duplicative trade reporting.

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. 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–NASD–2006–110 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–2006–110. 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–2006–110 and should be submitted on or before December 13, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities

[5] *See* NASD Rule 6210(b).

[6] *See* NASD Rule 6210(a).

[7] *See* Securities Exchange Act Release Nos. 51999 (July 8, 2005), 70 FR 41067 (July 15, 2005) (SR–NYSE–2004–69) (proposing NYSE Rules 1400 and 1401) (''NYSE Corporate Debt Proposal'') and 54767 (November 16, 2006) (SR–NYSE–2004–69) (approving NYSE Corporate Debt Proposal).

[8] *See* Securities Exchange Act Release No. 51998 (July 8, 2005), 70 FR 40748 (July 14, 2005) (File No. S7–06–05). Debt securities traded on a facility of NYSE, but not listed on NYSE, are herein referred to as ''NYSE–Traded Bonds.''

[9] *See* NYSE Corporate Debt Proposal, 70 FR at 41067, 41068 (discussing distinction between bonds listed on NYSE and bonds traded on a facility of NYSE).

[10] In this regard, NASD and NYSE are in the process of negotiating a data-sharing agreement wherein, among other things, NYSE will agree to provide NASD, on a T+1 basis, certain information related to transactions in NYSE-Traded Bonds that are TRACE-eligible securities. In turn, NASD intends to consolidate this information into the computer database housing NASD's audit trail. NASD intends to provide NYSE regulatory personnel access, strictly for regulatory purposes only, to that portion of NASD's database reflecting the information submitted by NYSE.

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Specifically, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act [13] in that it is designed to promote just and equitable principles of trade, 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. The Commission also believes that the proposal is consistent with Section 15A(b)(9) of the Act [14] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Any trade in unregistered corporate debt securities on NYSE will automatically be captured by NYSE's systems. The Commission understands that NYSE will provide data on such trades to NASD for surveillance purposes. Therefore, NASD should be able to obtain necessary surveillance data without subjecting joint NYSE/NASD members to a duplicative reporting requirement. The Commission concludes that it is reasonable and consistent with the Act for NASD to eliminate from its rules the requirement that a trade executed on NYSE also be reported to TRACE.[15]

Pursuant to Section 19(b)(2) of the Act,[16] the Commission finds good cause for approving the proposed rule change, as amended, before the thirtieth day after the date of publication of notice of filing thereof. Accelerating approval of this proposed rule change will immediately eliminate double-reporting of certain bond trades and thereby eliminate an unnecessary burden on NYSE members trading corporate bonds pursuant to the terms of an exemption being granted in a related action today by the Commission.[17] The Commission believes that NASD's rule change raises no issues of regulatory concern, because NASD should have access to sufficient regulatory information relating to the exempted bond trades through the information-sharing agreement it will enter with NYSE. Therefore, the Commission does not believe it is necessary or appropriate to delay approval and implementation of this proposal pending a notice-and-comment period.

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78*o*–3(b)(9).

[15] The Commission will continue to monitor the growth of intermarket competition in the corporate bond markets and, in the event market fragmentation becomes a concern, will consider appropriate means to address the consolidation of market information for corporate bonds.

[16] 15 U.S.C. 78s(b)(2).

[17] *See* Securities Exchange Act Release No. 54766 (November 16, 2006) (File No. S7–06–05).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NASD–2006–110), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Nancy M. Morris,

Secretary.

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[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54755; File No. SR–NASD–2006–007]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Order Approving Proposed Rule Change Relating to Option Position and Exercise Limits and Position Reporting Obligations; and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto

November 15, 2006.

I. Introduction

On January 23, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 2860, which relates to position and exercise limits and position reporting obligations for members that hold positions in index and equity options or that represent customers holding such positions. The proposed rule change was published for comment in the **Federal Register** on February 6, 2006.[3] The Commission received one comment on the proposal.[4] In its comment letter, the Securities Industry Association (''SIA'') ''endorse[d] the adoption of clear and objective criteria for identifying those index options that would be exempt from NASD option position and exercise limits.'' [5] However, the SIA also recommended ''streamlining the relevant standards and easing the operational steps necessary for NASD member firms to verify compliance with the Proposed Rule Change.'' [6] In response to this comment, NASD filed Amendment No. 1 to the proposed rule change on September 20, 2006.[7] This notice and order solicits comments from interested persons on Amendment No. 1 and approves the proposal, as amended by Amendment No. 1, on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53189 (January 30, 2006), 71 FR 6117.

[4] *See* letter from John R. Vitha, Esq., Chairman, Securities Industry Association Derivative Product Committee, to Nancy M. Morris, Secretary, Commission, dated May 23, 2006 (''SIA Letter'').

[5] *Id.* at 1.

II. Description of the Proposal

A. Position Limits for OTC Index Options

NASD currently prohibits its members, for their proprietary or agency accounts, from holding positions in over-the-counter (''OTC'') equity options [8] that exceed certain position limits.[9] NASD also imposes exercise limits on a member that holds OTC equity options; the member may not exercise, within a period of five consecutive business days, a number of option contracts that exceeds the same number established for the position limit.[10] The position limits that NASD imposes on its members for OTC equity options are based on similar standards established by the option exchanges for ''standardized'' equity options.[11] In contrast, NASD rules impose no position limits on OTC index options, but do not clarify what constitutes an OTC index option for this purpose.

NASD believes that some indexes underlying OTC options might have economic characteristics more closely resembling single securities than broad-based indexes. This could be the case, for example, where the index consisted of only a small number of securities or if one or a few securities represented a significant percentage of the index's weighting. In its initial filing, NASD proposed 11 criteria an index would have to meet to be sufficiently broad-based for an option on that index to be

[6] *Id.*

[7] The text of Amendment No. 1 is available on the NASD's Web site (*http://www.nasd.com*), at NASD's principal office, and at the Commission's Public Reference Room.

[8] An ''OTC option'' for the purposes of this approval order means any option contract not issued or subject to issuance by the Options Clearing Corporation (''OCC'').

[9] These position limits vary depending on the characteristics of the security underlying the OTC option. *See* NASD Rule 2860(b)(3)(A)(viii).

[10] *See* NASD Rule 2860(b)(4). NASD's proposal will impact its exercise limits in the same way as it will change its position limits.

[11] The term ''standardized equity option'' means any equity options contract issued, or subject to issuance by, The Options Clearing Corporation that is not a FLEX Equity Option. *See* NASD Rule 2860(b)(2)(UU).

deemed a ''conventional index option'' under proposed NASD Rule 2860(b)(2)(N).[12] A position in a ''conventional index option'' would continue to be free from any position limits imposed by NASD rules. In addition, a position in an OTC option overlying the same index as an exchange-traded option would not be subject to position limits. A position in an OTC index option that did not either qualify as a ''conventional index option'' or overlie the same index as an exchange-traded option would in effect be deconstructed into separate equity option components, and NASD position limits would apply with respect to each component.[13]

In response to the SIA Comment Letter, NASD in Amendment No. 1 replaced the 11 originally proposed criteria for a ''conventional index option'' with the following criteria:

- An index must contain nine or more equity securities.
- No equity security may comprise more than 30% of the equity security component of the index's weighting.
- Each equity security in the index is either:

1. A component security of the Russell 3000 Index or the FTSE All-World Index Series; or
2. Characterized by a minimum market capitalization and minimum trading volume.[14]

The SIA recommended basing the definition of a ''conventional index option,'' in part, on the definition under the Exchange Act of what is not a ''narrow-based security index.''[15] As provided in that definition, the SIA recommended replacing the requirement that a qualifying index be comprised of ten or more securities with a requirement that an index be comprised of nine or more securities. Similarly, the SIA also recommended that the NASD amend its proposal to conform with the criterion under the Exchange Act definition described above, to provide that no equity security in the index represent more than 30% of the equity security component of the index. NASD adopted both of these recommendations.

In its original filing, NASD required that the components of an index underlying a ''conventional index option'' be characterized by certain minimum market capitalization and liquidity standards.[16] The SIA suggested that NASD treat components of the Russell 3000 Index and the FTSE All-World Index Series as meeting such quantitative standards without measuring the actual market capitalization and trading volume of such components.[17] In Amendment No. 1, NASD retained the quantitative standards for market capitalization and trading volume, but allowed that condition to be met if an equity security is included in the Russell 3000 Index or the FTSE All-World Index Series. NASD believes that these indexes are reasonable surrogates for the quantitative measurements, and that these alternative criteria would reduce the compliance burden for members to monitor capitalization and trading volume of the index components.

NASD believes that the criteria it proposed in Amendment No. 1 to replace the original 11 criteria impose sufficient parameters on the components of the index to ensure that a qualifying index would not be so narrowly constructed as to have the economic characteristics of a single security or small group of securities. Accordingly, NASD in Amendment No. 1 eliminated the remaining criteria proposed in the original filing.

B. Large Options Position Reporting

Under existing NASD Rule 2860(b)(5)(A)(i)(a), an NASD member must report a position of 200 contracts or more in any OTC option covering an ''underlying security or index.''[18] On June 30, 2006, the Commission approved an NASD rule change that, among other things, eliminated the term ''underlying index,'' which was defined to mean ''an index upon which a Nasdaq index option contract is based.''[19] Accordingly, NASD rules currently provide no standard for the types of OTC index options for which members must report large positions. NASD's initial proposal would have clarified this situation by requiring a member to report a position of 200 or more contracts in: (1) An OTC option on an index underlying an exchange-traded option, or (2) a ''conventional index option,'' as defined in proposed NASD Rule 2860(b)(2)(N).

In its comment letter, the SIA suggested that a position in an OTC index option should be exempt from any position reporting requirements unless the OTC option overlies the same index as an exchange-traded option. NASD generally agrees with the SIA's approach and is proposing to revise its Rule 2860(b)(5) to provide that a member must report a position in a ''conventional index option'' only when such option is based on an index that underlies, or is substantially similar to an index that underlies, an exchange-traded option. This approach would enable NASD Market Regulation staff to analyze the exchange-traded and OTC markets in aggregate for options on the same or substantially similar indexes.[20] NASD believes that position reporting for other conventional index options would be of little regulatory interest and represents that, to the extent it requires information about a position in a conventional index option on a specially negotiated index or group of underlying securities, it can obtain such information from a member pursuant to

[12] The 11 criteria originally proposed by NASD to define a ''conventional index option'' were as follows:

a) The option must be A.M.-settled;

b) The index must be weighted pursuant to one of a number of widely recognized methodologies;

c) The index must consist of ten or more component securities;

d) Each component security must be characterized by a minimum market capitalization;

e) Each component security must be characterized by a minimum trading volume;

f) The most highly weighted components of the index must be characterized by heightened trading volume, as compared to the remaining components;

g) No single component security or group of five securities may represent more than a maximum concentration of the index;

h) All component securities are ''NMS securities'' as defined in Regulation NMS;

i) Certain non-U.S. component securities may not, in the aggregate, represent more than a maximum weight of the index;

j) An equal dollar-weighted index will be rebalanced once every quarter; and

k) If an underlying index is maintained by a broker-dealer, the index must be calculated by a third party that has implemented appropriate information barriers around its personnel who have access to information about changes to the index.

[13] *See* NASD Rule 2860(b)(2)(JJ).

[14] Specifically, each equity security in the index must: (A) Have a market capitalization of at least $75 million, or, in the case of the lowest weighted component securities in the basket or index in the aggregate account for no more than 10% of the weight of the index $50 million; and (B) have a trading volume for each of the preceding six months of at least one million shares or, in the case of each of the lowest weighted component securities in the basket or index that in the aggregate account for no more than 10% of the weight of the index, 500,000 shares.

[15] *See* 15 U.S.C. 78c(a)(55)(C).

[16] *See supra* note 14

[17] *See* SIA Letter at 3.

[18] When a member conducts a business in standardized (*i.e.*, exchange-traded) options but is not a member of the exchange on which the option is traded (*i.e.* is an ''access firm''), the member also must report to NASD a position of 200 contracts or more in a standardized option. *See* NASD Rule 2860(b)(5)(A)(i)(b). Nothing in this proposal affects an access firm's obligation to report positions in standardized options.

[19] The proposed rule change amended various NASD rules in anticipation of the Nasdaq Stock Market's separation from NASD. *See* Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (SR–NASD–2005–087).

[20] Telephone conversation among Gary Goldsholle, Associate General Counsel, NASD, Kathryn Moore, Assistant General Counsel, NASD, and Tim Fox, Special Counsel, Commission, on October 31, 2006.

a request under NASD Rule 8210.[21] Thus, NASD believes that eliminating this position reporting requirement would not prevent it from accessing information relating to a conventional index option position as needed to carry out its market oversight and enforcement responsibilities.

Finally, the SIA urged NASD to revisit the threshold at which position reporting applies, for the OTC options where position reporting is required.[22] The SIA suggested raising the threshold from the current 200 contracts to 10,000 contracts. NASD stated in Amendment No. 1 that it does not believe such a change is appropriate or necessary at this time. However, NASD stated that it will consider this issue and subject it to further review and discussion with the other self-regulatory organizations.

C. Position Limits for Options on Foreign Equity Securities

Under existing NASD Rule 2860(b)(3)(A)(viii), the position limits for conventional equity options parallel the limits for the standardized options on the same security. Therefore, if a standardized equity option is subject to a higher tier of position limits because of the relatively liquid and deep nature of the market for the underlying security, then a conventional option on the same security would be subject to a higher tier as well. On the other hand, with respect to an OTC option on an equally liquid foreign security, for which no exchange-traded equivalent exists, a member is required to limit its holdings (or its customer's holdings) to the lowest tier of position limits, absent prior approval of NASD staff. To alleviate this disparate treatment of OTC options on foreign equities, NASD proposed in the original filing to allow the higher tiers of position limits for OTC options overlying equity components of the FTSE All-World Index Series [23] meeting the volume and float criteria established by the options exchanges for standardized options on domestic equity securities.[24]

Under the proposed rule change, a member would file a post-trade notice—within one business day—with NASD staff providing the necessary trade volume data and/or current float data to support the member's position limit calculation. NASD staff would review the member's notice, and, if the staff determined that a member incorrectly assigned a position limit, a staff member would instruct the firm to reduce its position below the appropriate limits determined by NASD staff. The Commission received no comments on this aspect of the proposal.

D. Miscellaneous Issues

The SIA also suggested revising the definition of ''conventional index option'' to permit the inclusion of financial assets other than equity securities.[25] NASD believes that the originally proposed definition of ''conventional index option'' permits the inclusion of non-equity assets and is not proposing any change to the rule text to accommodate SIA's suggestion. According to NASD, financial assets other than equity securities could be part of an index and the option thereon could still qualify as a ''conventional index option'' if the equity security components of the index together met the criteria in the definition.

In addition to changes in response to the SIA Letter, NASD in Amendment No. 1 proposed to clarify the date on which an OTC index option would or would not qualify as a ''conventional index option.'' The revised rules clarify that the definition's requirements apply as of the date the option position is created.[26] NASD designed this approach to clarify that subsequent events that might impact an index's components would not change how an option on that index is treated for purposes of NASD's position limits and position reporting rules.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association and, in particular, the requirements of Section 15A(b)(6) of the Exchange Act,[27] which requires that the rules of the NASD be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.[28] The Commission believes the proposed rule change is reasonably designed to enhance the NASD's ability to monitor the options positions of members and their customers and to clarify applicable position limits. In particular, the Commission believes that the NASD rules it is approving today reasonably differentiate between broad-based indexes and indexes whose economic characteristics more closely approximate those of a single security or a small number of securities. The Commission believes that the proposal is designed to balance between allowing the NASD to obtain information for surveilling the market in OTC index options and limiting the burdens on NASD members that hold positions in such options.

The Commission finds good cause for approving the proposal, as amended by Amendment No. 1, prior to the thirtieth day after the amended proposal is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Exchange Act.[29] The Commission believes that Amendment No. 1 does not make any changes to the proposal that would adversely impact investor protection or the public interest. The Commission notes that it received only one comment letter in response to NASD's original proposal.[30] Amendment No. 1 is generally responsive to the commenter's concerns and does not materially alter the proposal. The Commission notes that accelerating approval will enable NASD to implement the proposed rule changes without further delay.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[21] However, a position in an OTC index option that did not qualify as a ''conventional index option'' would in effect be deconstructed into separate equity option components, and the position reporting obligation would apply with respect to each component. *See* NASD Rule 2860(b)(2)(JJ).

[22] *See* SIA Letter at 4.

[23] NASD has represented that, if it designates another index in addition to or instead of the FTSE All-World Index Series, NASD would publish the designation of the new index in a *Notice to Members* and provide members at least 30 days' written notice of the change.

[24] *See* Commentary .07 to American Stock Exchange Rule 904, Section 7(c) of Chapter III of the Boston Options Exchange Rules, Interpretation .02 to Chicago Board Options Exchange (''CBOE'') Rule 4.11; International Securities Exchange Rule 412(d); Commentary .06 to NYSE Arca Rule 6.8; Commentary .05 to Philadelphia Stock Exchange Rule 1001.

[25] *See* SIA Letter at 4.

[26] Telephone conversation between Gary Goldsholle, Associate GeneralCounsel, NASD, and Tim Fox, Division of Market Regulation, Commission on October 19, 2006.

[27] 15 U.S.C. 78*o*–3(b)(6).

[28] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[29] 15 U.S.C. 78s(b)(2).

[30] *See* SIA Letter, *supra* note 4.

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2006–007 on the subject line.

Paper comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to Amendment No. 1 to File Number SR–NASD–2006–007. 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, Station Place, 100 F Street, NE., Washington, DC 20549. 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 Amendment No. 1 to File Number SR–NASD–2006–007 and should be submitted on or before December 13, 2006.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[31] that the proposed rule change (SR–NASD–2006–007) be, and hereby is approved, and that Amendment No. 1 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19732 Filed 11–21–06; 8:45 am]

BILLING CODE 8011–01–P

[31] *Id.*

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54753; File No. SR–NSX–2006–14]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto To Implement a Fee Schedule Under NSX Rule 16.1(a) and 16.1(c) for Transactions Executed Through NSTS and To Modify a Fee Schedule for ITS Transactions

November 14, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2006, the National Stock Exchange, Inc. (''NSX'' 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. On November 13, 2006, NSX submitted Amendment No. 1 to the proposed rule change. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to implement a new Fee Schedule to supplement Exchange Rule 11.10 for transactions executed through the Exchange's National Securities Trading System (''NSTS''), and to amend the Fee Schedule applicable to transactions under the Intermarket Trading System Plan and/or the Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage (''ITS Plans''), both to provide for an execution fee and a rebate for executions in Exchange Traded Funds (''ETFs'') classified as Tape B securities. The other fees for executions through NSTS during the phase-in period of Exchange's new trading system, NSX BLADE, will remain the fees contained in NSX Rule 11.10. The text of the proposed rule change, as amended, is available on the Exchange's Web site at *http://www.nsx.com*, at the principal office of NSX, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (i) Provide for a rebate of $0.0027 per share executed for adding liquidity in NSTS for ETFs that are classified as Tape B securities and (ii) charge a liquidity taker fee of $0.0030 per share for transactions in ETFs that are classified as Tape B securities via NSTS, including transactions executed through the auspices of the ITS Plans.

Background

The Exchange has created a new state of the art trading platform, known as NSX BLADE, that utilizes a strict price/time priority system as the ultimate replacement for NSTS. In connection with the new trading platform, the Exchange filed a proposed rule change to accommodate the new trading platform, which was approved on August 31, 2006.[5]

As part of that rule filing, the Exchange stated that NSX BLADE will be phased in gradually—first with a small group of Tape C securities over several weeks until all Tape C securities have been transitioned to the new system. Once all Tape C securities have been transitioned to NSX BLADE, the Exchange will then transition all Tape A and Tape B securities.[6]

[5] *See* Securities Exchange Act Release No. 54391 (August 31, 2006), 71 FR 52836 (September 7, 2006) (order approving SR–NSX–2006–08).

[6] The Exchange commenced the gradual phase-in of NSXBLADE on October 23, 2006 with the

During this transitional period of phasing in various securities to the NSX BLADE System, the Exchange will be operating both NSTS and the NSX BLADE Systems. Until such securities are phased into the NSX BLADE System, Tape B securities, including ETFs that are classified as Tape B securities, will continue to be traded via NSTS.

Rule Set

During this transitional period of phasing in various securities to the NSX BLADE System, the Exchange will be operating under two sets of rules. All transactions in NSTS will still operate under the rules pertaining to NSTS (old NSX Rule 11.9 (National Securities Trading System) and old NSX Rule 11.10 (National Securities Trading System Fees)) while all transactions in NSX BLADE will operate under the new trading rules approved in SR–NSX–2006–08 and the new fee rules in Chapter XVI.[7] When the phase-in period has expired and NSTS is no longer operational, old NSX Rules 11.9 and 11.10 will be extinguished.[8] The Exchange has issued a Notice to ETP Holders to advise them of the different trading systems and the rules and fees applicable to each,[9] and will issue a Notice advising them of these new Fee Schedules and this rule change. During this interim period, the Exchange has decided to create a Fee Schedule applicable to NSTS Rules under the authority of NSX Rule 16.1. Further, while the Fee Schedule for ITS Transactions is identical to the Fee Schedule for identical transactions entered in NSTS, the Exchange has decided to create a Fee Schedule for ITS Transactions to make it easier for parties to identify the specific fees associated with the ETP Holders' transactions.

Fee Proposal

The instant rule change proposes a new Fee Schedule under NSX Rule 16.1(a) and 16.1(c) for executions through NSTS, and proposes to amend a Fee Schedule previously filed for transactions executed through the ITS Plans.[10] The proposed NSTS and ITS Plan Fee Schedules provide for an execution fee of $0.0030 per share for removing liquidity in ETFs classified as Tape B securities executed through NSTS (in other words, a charge for taking liquidity against an order in NSTS). ETP Holders taking liquidity will be charged under the NSTS Fee Schedule, and executions in Tape B ETFs through an ITS Plan will be charged under the ITS Plan Fee Schedule (although the rate of the two execution fees are identical).[11] The Fee Schedules also provide for a rebate of $0.0027 per share executed for adding liquidity in NSTS for ETFs that are classified as Tape B securities (in other words, a rebate for the addition of liquidity to NSTS, provided that it results in an execution through the NSTS System).

The fees and rebates applicable to these Tape B ETF securities are contained in the NSTS Fee Schedule under NSX Rule 16.1. Moreover, as stated in SR–NSX–2006–13 (filed October 23, 2006), until transitioned to NSX BLADE, any transaction in the Tape A and Tape B (non-Nasdaq listed) securities through the NSTS System will be charged the fees in old NSX Rule 11.10. This NSTS Fee Schedule will supplement the fees and rebates contained in old NSX Rule 11.10 and will supercede any contrary fees that are contained in old NSX Rule 11.10. If the NSTS Fee Schedule does not contravene any fees stated in old NSX Rule 11.10, the ETP Holder affecting a transaction via NSTS will be charged the fees noted in old NSX Rule 11.10.

Pursuant to NSX Rule 16.1(c), the Exchange will ''provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange.'' ETP Holders and others, including self-regulatory organizations that are the subject of the Exchange to Exchange billing,[12] using the Exchange will be advised of these fees through the Exchange's Web site. In addition, the ETP Holders will, simultaneous with the filing, be notified through the issuance of a Regulatory Circular of these new Fee Schedules applicable to transactions through the NSTS System and the ITS Plans.

NSX states the fees have been designed in this manner in order to ensure that the Exchange can continue to fulfill its obligations under Section 6(b) of the Act.[13]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(4) of the Act,[15] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change, as amended, furthers the objectives of Section 6(b)(1) of the Act[16] in that it helps to assure that the Exchange is so organized and has the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its ETP Holders with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change, as amended.

trading of one Tape C security. NSX plans to monitor this implementation and adjust the schedule as needed to maintain an orderly transition.

[7] The Exchange filed SR–NSX–2006–10 inanticipation of the new trading rules and it was effective upon filing on July 13, 2006. *See* Securities Exchange Act Release No. 54194 (July 24, 2006), 71 FR 43258 (July 31, 2006) (notice of filing and immediate effectiveness of SR–NSX–2006–10). SR–NSX–2006–10 added Chapter XVI to the Exchange's Rules to create a central place where the ETP Holders can look to in order to determine the Exchange's fees and its Fee Schedules. Originally contemplated as the Fee Schedule for NSX BLADE, the chapter was flexible enough to allow the Exchange to establish other fees in that Chapter. For example, NSX Rule 16.1 is not limited by its terms to the NSX BLADE system. Thus, the Exchange has implemented the ITS Plan Fee Schedule to provide for a pass-through of costs provision which is applicable to any transactions through NSTS or NSX BLADE if done through an ITS Plan. *See* Securities Exchange Act Release No. 54692 (November 2, 2006), 71 FR 65867 (November 9, 2006) (notice of filing and immediate effectiveness of SR–NSX–2006–12). Moreover, any changes to the NSTS Fees, if necessary through the phase-in period, will be done through a Fee Schedule under NSX Rule 16.1. In contrast, NSX Rule 16.2 is limited to transactions through NSX BLADE in that rules relating to fees for crosses and tape credits for transactions through NSTS are already contained in the NSTS NSX Rule 11.10.

[8] Similarly, the NSTS Fee Schedule will also beextinguished.

[9] Regulatory Circular 06–011 issued on October 19, 2006.

[10] As set forth in SR–NSX–2006–10, the Exchange proposed to maintain a separate fee schedule that contains its current fees, dues and other charges, instead of including all of its specific fees, dues and charges in the text of its rules.

[11] The Exchange would bill non-ETP Holders using the facilities of the Exchange for transactions through an ITS Plan under the ITS Plan Fee Schedule. *See* Securities Exchange Act Release No. 54548 (September 29, 2006), 71 FR 59159 (October 6, 2006) (notice of filing and order granting accelerated approval of SR–NSX–2006–11), which permits Exchange to Exchange billing for transactions through the Linkage Plan. The Exchange represented that, for purposes of Exchange to Exchange billing, it would charge in accordance with its fee schedule.

[12] *See id.*

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(1).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act [17] and Rule 19b–4(f)(2) [18] thereunder, because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[19]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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–NSX–2006–14 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–NSX–2006–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2006–14 and should be submitted on or before December 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Nancy M. Morris,

Secretary.

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[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4(f)(2).

[19] 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on November 13, 2006, the date on which the Exchange submitted Amendment No. 1.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54767; File No. SR–NYSE–2004–69]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Establish Rules for the Trading of Unregistered Corporate Debt Securities

November 16, 2006.

I. Introduction

On December 3, 2004, the New York Stock Exchange LLC (f/k/a New York Stock Exchange, Inc.) (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish rules for the trading of unlisted debt securities on the Exchange's Automated Bond System (''ABS''). In connection with this proposed rule change, NYSE submitted an application for a Commission exemption pursuant to Section 36 of the Exchange Act [3] that would permit its members, brokers, and dealers to trade certain unregistered corporate debt securities on ABS.[4] On March 15, 2005, NYSE filed Amendment No. 1 to the proposed rule change.[5] The proposal, as amended, was published for comment in the **Federal Register** on July 15, 2005.[6] The Commission received 19 comments from 16 different commenters on the NYSE Exemption Request and/or the proposed rule change. On October 18, 2005, the Exchange filed an initial response to the comment letters.[7] On September 22, 2006, the Exchange filed a second response to the comment letters.[8] This order approves the proposed rule change, as amended.[9]

II. Description of the Proposal

Currently, bond trading is conducted on the Exchange through ABS, an electronic trading system that provides subscribers with access to screens that display the order ''book'' in each bond being traded. Subscribers can enter orders which, if not immediately executed, would be displayed in the book according to price-time priority. NYSE disseminates quotation and last-sale information to market data vendors via the Exchange's dedicated bond quote line.

A corporate debt security may be listed and traded on the Exchange if it meets the standards set forth in NYSE Listed Company Manual Section 102.03 (for debt securities of domestic issuers [10]) or Section 103.05 (for debt securities of non-U.S. issuers), both of which require that the debt issue has an aggregate market value or principal amount of no less than $5 million, and that (a) the issuer of the debt security (or an entity that directly or indirectly owns a majority interest in, or is under common control with, such issuer) has equity securities listed on the Exchange;

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78mm.

[4] *See* Securities Exchange Act Release No. 51998 (July 8,2005), 70 FR 40748 (July 14, 2005) (File No. S7–06–05) (''NYSE Exemption Request'').

[5] Amendment No. 1 replaced and superseded the originalfiling in its entirety.

[6] *See* Securities Exchange Act Release No. 51999 (July 8,2005), 70 FR 41067.

[7] *See* letter from Mary Yeager, Assistant Secretary, NYSE,to Jonathan G. Katz, Secretary, Commission, dated October 18, 2005 (''NYSE Response Letter 1'').

[8] *See* letter from Mary Yeager, Assistant Secretary, NYSE,to Nancy Morris, Secretary, Commission, dated September 22, 2006 (''NYSE Response Letter 2'').

[9] In a separate action, the Commission today also isapproving the NYSE Exemption Request. *See* Securities Exchange Act Release No. 54766 (November 16, 2006) (File No. S7–06–05) (''Section 36 Exemption Order'').

[10] An issuer incorporated or otherwise organized outsidethe United States would be treated as a domestic issuer under NYSE's bond listing standards only if it is excepted from the definition of ''foreign private issuer'' as set forth in Rule 3b–4 under the Exchange Act, 17 CFR 240.3b–4.

(b) an issuer of equity securities listed on the Exchange has guaranteed the debt security; or (c) at least one of three criteria is met relating to the rating of the debt security or certain related debt securities.[11] In addition, a convertible debt security may be listed under NYSE Listed Company Manual Sections 102.03 or 103.05 only if the underlying equity security is subject to real-time last sale reporting in the United States. Alternatively, a debt security can trade on NYSE without a listing relationship if it is an ''exempted security'' (as defined in Section 3(a)(12) of the Exchange Act[12]).

Section 12(a) of the Exchange Act[13] provides that it shall be unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange. Section 12(b) of the Exchange Act[14] sets forth the information an issuer is required to submit for a security to be registered on a national securities exchange.

In this filing, the Exchange has proposed to establish NYSE Rules 1400 and 1401 in connection with the NYSE Exemption Request. Rule 1400 would incorporate the terms of the Commission's Section 36 Exemption Order into the Exchange's rules. Under Rule 1400, the debt securities eligible to be traded on the Exchange without being listed on the Exchange would include any unlisted note, bond, debenture, or evidence of indebtedness that is statutorily exempt from the registration requirements of Section 12(b) of the Exchange Act or is eligible to be traded absent Section 12(b) registration pursuant to the Section 36 Exemption Order. Securities eligible to be traded pursuant to the Section 36 Exemption Order would include debt securities that meet the NYSE Listing Standards of NYSE Listed Company Manual Sections 102.03 or 103.05, but would exclude convertible debt securities, which are equity securities under Section 3(a)(11) of the Exchange Act.[15]

NYSE Rule 1401 would set forth additional criteria for an unregistered debt security to be traded on the Exchange. Rule 1401 would require of each ''traded'' debt security an outstanding aggregate market value or principal amount of no less than $10 million on the date trading commences[16] and $1 million for continued inclusion for trading on the Exchange.[17] Rule 1401 also would allow the Exchange to suspend trading of a debt security if, among other things, the issuer declares bankruptcy, the Exchange receives advice that the debt securities are without value, or the issuer of the debt securities or its management engages in operations which, in the opinion of the Exchange, are contrary to the public interest. Rule 1401 also provides that the Exchange would promptly suspend trading in a debt security if the security no longer qualified as an exempted security or no longer met the criteria set forth in the Commission's Section 36 Exemption Order.

NYSE intends to identify outstanding debt securities that it currently does not list as well as newly issued debt securities that would satisfy the requirements of Rules 1400 and 1401, and to notify its members and member organizations, through ticker notices and postings on the Exchange's Web site, that such unlisted debt securities are eligible to be traded on the Exchange. In addition, NYSE intends to identify debt securities currently listed on the Exchange that meet the criteria set forth in Rules 1400 and 1401 and thus would be eligible for trading on an unlisted basis. In such cases, NYSE would inform the issuer that its debt securities could be delisted but traded on the Exchange on an unlisted basis.[18] An issuer could elect not to have its debt securities delisted; such securities would have to continue to meet the applicable listing standards.[19] Any security not satisfying the requirements of Rules 1400 and 1401 could trade on the Exchange provided it meets the applicable listing standards.[20]

III. Summary of Comments and NYSE's Response

As noted above, the Commission received 19 comments from 16 different commenters related to the proposed NYSE Exemption Request and/or the proposed rule change.[21] Thirteen of the commenters strongly urged the Commission to grant the Section 36 exemption and approve the proposed rule change.[22] The commenters generally asserted that allowing unregistered corporate bonds to trade on NYSE would lead to increased efficiency, transparency, liquidity, and competition in the debt markets. Three other commenters—NASD, Nasdaq, and the BMA—expressed some support for NYSE's proposal but also raised certain concerns.[23]

A. Bond Market Supervision and Fragmentation Issues

NASD argued generally that Commission approval of NYSE's proposal ''could undermine the

[11] Debt securities meeting the requirements of NYSEListed Company Manual Sections 703.19 (''Other Securities'') or 703.21 (''Equity-Linked Debt Securities'') currently also may be listed and traded on the Exchange.

[12] 15 U.S.C. 78c(a)(12).

[13] 15 U.S.C. 78*l*(a).

[14] 15 U.S.C. 78*l*(b).

[15] *See* 15 U.S.C. 78c(a)(11). Debt securities meeting thelisting requirements of NYSE Listed Company Manual Sections 703.19 or 703.21, while not eligible to be traded pursuant to the Section 36 Exemption Order, would continue to be eligible to be listed and traded on the Exchange.

[16] NYSE would employ two existing corporate bond issuedatabases that provide issue market size information to review for compliance with this criterion.

[17] To monitor the $1 million threshold, NYSE wouldutilize Xcitek, LLC (''Xcitek''), a third-party vendor, to monitor corporate actions such as partial redemptions, defaults, and tender offers. NYSE has represented that it would monitor the prices of bonds in the event that an issuer defaults or is facing potential bankruptcy and would monitor the media for warnings of possible difficulties in addition to ratings downgrades.

[18] *See* NYSE Response Letter 2 at 1.

[19] *See id.*

[20] Debt securities would remain eligible for listing byand trading on the Exchange under NYSE Listed Company Manual Sections 102.03, 103.05, 703.19, and 703.21.

[21] *See* comments from Dennis J. Lehr, dated July 18, 2005 (''Lehr Letter''); Howard M. Friedman, Compliance and Operations Officer, Easton & Co., dated July 19, 2005 (''Easton Letter''); Michele C. David, Vice President & Assistant General Counsel, The Bond Market Association (''BMA''), dated July 26, 2005; Robyn Greene, Esq., dated August 4, 2005 (''Greene Letter''); William T. Dolan, dated August 5, 2005 (''Dolan Letter''); Donald G. Dueweke, dated August 9, 2005 (''Dueweke Letter''); Denis P. Kelleher, CEO, Wall Street Access, dated August 9, 2005 (''Wall Street Access Letter''); Joseph P. Riveiro, Manager, Corporate Bond Department, InvestecUS, Inc., dated August 9, 2005 (''InvestecUS Letter''); Lynnette Kelly Hotchkiss, Senior Vice President and Associate General Counsel, BMA, dated August 15, 2005 (''BMA Letter 2''); David Russell, Jr., Managing Director, Cove Hill Advisory Services, Inc., dated August 15, 2005 (''Cove Hill Letter''); Thomas Peterffy, Chairman, and David M. Battan, Vice President and General Counsel, Interactive Brokers LLC, dated August 19, 2005 (''Interactive Brokers Letter''); Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, National Association of Securities Dealers, Inc. (''NASD''), dated September 7, 2005 (''NASD Letter''); Fred Siesel, dated June 2, 2006 (''Siesel Letter 1''); Ron Klein, Chairman and CEO, General Associates, Inc., dated July 2, 2006 (''General Associates Letter 1''); Michael N. Castle, Member of the U.S. House of Representatives, dated August 22, 2006 (''Castle Letter''); Joan Conley, Senior Vice President, The Nasdaq Stock Market, Inc., dated September 6, 2006 (''Nasdaq Letter''); Fred Siesel, dated September 14, 2006 (''Siesel Letter 2''); Cate Long, Multiple-Markets, dated October 12, 2006 (''Multiple-Markets Letter''); and Ron Klein, Chairman and CEO, General Associates, Inc., dated October 16, 2006 (''General Associates Letter 2'').

[22] *See* Lehr Letter, Easton Letter, Greene Letter, Dolan Letter, Dueweke Letter, Wall Street Access Letter, InvestecUS Letter, Cove Hill Letter, Interactive Brokers Letter, Siesel Letter 1, General Associates Letter 1, Castle Letter, Siesel Letter 2, Multiple-Markets Letter, and General Associates Letter 2.

[23] *See* NASD Letter, Nasdaq Letter, and BMA Letter 2.

Commission's original goal of increasing transparency in the corporate bond market.'' [24] NASD asserted that, by being permitted to trade unregistered debt securities, the Exchange would be establishing an ''execution facility in the [over-the-counter (''OTC'')] market.'' [25] Based on that assertion, NASD argued that ''transactions in unlisted bonds that are effected through ABS must be subject to NASD's statutorily mandated oversight as the OTC market regulator under Section 15A of the Exchange Act.'' [26] NASD further argued that ''a robust consolidated inter-market audit trail * * * [is necessary] * * * to ensure that the broader corporate bond market is effectively regulated without fragmentation'' [27] and that, ''[i]f significant corporate bond transaction data is disseminated by the NYSE, investors will be confronted with two unconsolidated corporate bond 'tapes.' '' [28] Nasdaq also expressed the view that having one regulator in the corporate bond market ensures appropriate and non-duplicative regulation of that market.[29]

With respect to transaction reporting, the BMA noted that, read literally, NASD's rules governing the Trade Reporting and Compliance Engine (''TRACE''), to which NASD members must report transactions in TRACE-eligible securities, would apply to trades in unregistered debt securities on ABS.[30] The BMA stated that dual reporting of the same trades would be unnecessary and unduly burdensome.[31] Another commenter, Multiple-Markets, argued that a combined trade reporting system would be beneficial to investors.[32]

In its response letter, NYSE rejected NASD's assertion that trading of unregistered debt securities would render ABS an OTC facility subject to NASD oversight.[33] NYSE argued that, if trading of unregistered securities on ABS were OTC activity, its members would not need a Section 36 exemption to trade such securities on the Exchange in the first place.[34] With respect to concerns relating to investor confusion that may arise as a result of unconsolidated market data, NYSE responded that it believed vendors would consolidate the data in response to customer demand.[35] In response to the concerns regarding uncoordinated regulation, NYSE stated that it would be amenable to coordinating regulation with NASD.[36] NYSE agreed with the BMA's view that the Exchange's members should not be required to report ABS trades to TRACE.[37]

B. Competition Issues

The BMA raised various interrelated competition issues. For example, the BMA asserted that, by trading unregistered debt securities, the Exchange would be ''acting as a broker'' and ''competing with other brokers that also offer trading in the [same] debt securities.'' [38] While not objecting to NYSE's ''acting as broker,'' the BMA claimed that this arrangement could give NYSE ''a variety of competitive advantages over the brokers with which it will be competing'' due to the Exchange's status as a self-regulatory organization (''SRO'') that regulates many of those brokers.[39] The BMA also expressed concern that broker-dealers could be forced to become NYSE members or to acquire NYSE trading rights to have access to liquidity in unregistered debt securities that would trade on ABS.[40] The BMA also questioned the Exchange's ownership of ABS quotation and trading data and argued that, at a minimum, ''any fees imposed by the NYSE on the provision of such data must be reasonable and that the NYSE should not benefit from data ownership rights that are superior to its competitors.'' [41]

NYSE refuted the BMA's assertion that the Exchange would be acting as a broker, noting that it ''neither makes recommendations regarding the purchase or sale of securities nor acts as agent for any person or entity in connection with purchases or sales through ABS.''[42] NYSE added that all activity on the Exchange occurs pursuant to rules that must be established pursuant to the procedural requirements of Section 19(b) of the Exchange Act and meet the substantive requirements of Section 6(b) of the Exchange Act.[43] NYSE noted in particular that any fees for accessing ABS trade data must comply with Section 6(b)(4) of the Exchange Act,[44] which requires the Exchange to allocate charges equitably among members, issuers, and other persons using the Exchange's facilities.[45] The Exchange concluded that its status as an SRO conveyed no inappropriate competitive advantage in trading unregistered debt securities on ABS.[46]

Nasdaq and the BMA also raised issues relating to inter-exchange competition. Nasdaq argued that ''[t]he NYSE-proposed requirement that ABS securities be limited to issuers with at least one class of equity listed on the NYSE may place a substantial barrier to the trading of ABS issues by other competing exchanges that lack an equity listing relationship with the debt issuer.''[47] Similarly, the BMA expressed concern that any Commission action not result in a ''grant of monopoly trading privileges to the NYSE.''[48] The BMA also asked whether the Commission intends to grant other exchanges the ability to trade, on an unlisted basis, debt securities of issuers whose equity securities were listed on other exchanges.[49]

One commenter, Multiple-Markets, expressed concern that the Exchange's proposed use of a single third-party vendor, Xcitek, to supply NYSE with information about corporate bonds and their issuers, would give Xcitek an unfair advantage over competing vendors.[50] Multiple-Markets also argued that debt securities trading pursuant to the Exchange's proposal should be rated by at least two nationally recognized statistical rating organizations (''NRSROs'') before being admitted to trading on the Exchange on an unlisted basis, and the withdrawal of such ratings should result in a suspension of trading.[51]

C. Blue Sky Issues

Finally, the BMA expressed concern that debt securities delisted pursuant to the Exchange's proposal and shifted to ''traded'' status could lose their ''blue sky exemption.''[52] To address this

[24] NASD Letter at 7.

[25] *Id.* at 3.

[26] *Id.* at 3–4.

[27] *Id.* at 5.

[28] *Id.* at 7.

[29] *See* Nasdaq Letter at 2.

[30] *See* BMA Letter 2 at 3.

[31] *See id.*

[32] *See* Multiple-Markets Letter at 3.

[33] *See* NYSE Response Letter 1 at 5–6.

[34] *See id.* at 5.

[35] *See id.* at 6.

[36] *See id.* In this regard, NASD and NYSE are in the process of negotiating a data-sharing agreement wherein, among other things, NYSE will agree to provide NASD certain information related to transactions in unlisted TRACE-eligible bonds traded on NYSE. In turn, NASD intends to consolidate this information into the computer database housing NASD's audit trail.

[37] *See id.* at 2.

[38] BMA Letter 2 at 2.

[39] *Id.*

[40] *See id.* at 4–5.

[41] *Id.* at 4.

[42] NYSE Response Letter 1 at 2.

[43] *See id.*

[44] 15 U.S.C. 78f(b)(4).

[45] *See id.* at 4.

[46] *See id.*

[47] Nasdaq Letter at 2.

[48] BMA Letter 2 at 6.

[49] *See id.* at 5.

[50] *See* Multiple-Markets Letter at 5–6.

[51] *See id.* at 5.

[52] *See* BMA Letter 2 at 6. Under Section 18 of the Securities Act of 1933, 15 U.S.C. 77r, certain securities are exempt from state registration requirements or ''blue sky laws,'' including those

concern, NYSE represented that it would contact in writing all issuers of currently listed debt to highlight the issue and provide such issuers the option of maintaining their listed status.[53]

IV. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[54] In particular, the Commission believes that the proposal is consistent with the provisions of Section 6(b)(5) of the Exchange Act,[55] which requires, among other things, that a national securities exchange's rules be 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.

The Commission believes that NYSE Rule 1400 is reasonably designed to implement the terms and conditions of the Commission's Section 36 Exemption Order into the Exchange's rules. The Commission also believes that Rule 1401's qualitative and quantitative criteria for initial and continued inclusion for trading on the Exchange are reasonable and consistent with the Exchange Act. These criteria are similar to those in existing NYSE rules that govern the listing of debt securities on the Exchange and have previously been approved by the Commission.[56]

The Commission has carefully considered the comments received and believes that none of the commenters raised any issue that should preclude approval of this proposal. The Commission agrees with the Exchange's view that trading unregistered debt securities on the Exchange would not result in an OTC facility that must, as such, be subject to NASD oversight. Such trading will be effected by NYSE members, pursuant to NYSE rules, and using systems owned and operated by NYSE.

NASD expressed concerns that market fragmentation might be exacerbated as a result of approval of this filing and the NYSE Exemption Request. Nasdaq also expressed the view that the corporate bond market would be better served by a single regulator. In addition, Multiple-Markets argued that a combined trade reporting system would be beneficial to investors. The Commission does not believe that these commenters' broad anticipatory concerns should preclude approval of NYSE's proposal. The Commission, however, will continue to monitor the growth of intermarket competition in the corporate bond markets and, in the event market fragmentation becomes a concern, will consider appropriate means to address the consolidation of market information for corporate bonds.

The BMA noted that current NASD rules would require transactions in unregistered bonds effected on the Exchange to be reported to TRACE.[57] However, NASD recently filed a proposed rule change with the Commission to amend its rules to provide that transactions in TRACE-eligible securities[58] executed on NYSE pursuant to the Section 36 Exemption Order would be exempt from TRACE reporting for a two-year pilot period. In a separate action, the Commission today is approving that NASD proposal.[59] Therefore, transactions in unregistered corporate debt securities on NYSE will not have to be double-reported to TRACE.

Commenters also raised various competitive issues with NYSE's proposal. The BMA claimed that NYSE's ability to sell trade data would give it ''a significant competitive advantage,'' and broker-dealers ''will be required to pay significant additional charges to obtain information for which they are currently already paying TRACE.''[60] The BMA observed that many broker-dealers that trade corporate debt securities OTC are not currently members of NYSE, and argued that Commission approval of this proposal ''could effectively force those firms to become members of the NYSE or to acquire NYSE trading rights.''[61] Finally, the BMA opined that ''there has historically been a conflict between an exchange's role as a financial intermediary and its role as a regulator of financial intermediaries.''[62] Nasdaq argued that limiting NYSE's proposal only to corporate debt securities issued by an entity having an equity security listed on the Exchange ''may place a substantial barrier to the trading of ABS issues by other competing exchanges that lack an equity listing relationship with the debt issuer.''[63] Similarly, the BMA questioned whether, and under what conditions, the Commission would permit other exchanges to trade unregistered corporate debt securities.[64]

The Commission finds that NYSE's proposal is consistent with Section 6(b)(8) of the Exchange Act,[65] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange Act sets out a comprehensive regulatory scheme for exchanges. Among other things, any fees charged by an exchange for market data on trades executed on its facilities must be fair and reasonable, not unreasonably discriminatory, and equitably allocated among its members and other persons using its facilities.[66] While an exchange is entitled to limit participation to those persons who have qualified for membership, the Exchange Act permits denials of membership only for specific legitimate reasons.[67] The Commission, among other things, oversees exchanges to ensure that they are enforcing their rules in a manner consistent with the Exchange Act and that any changes to an exchange's rules are consistent with the Exchange Act. The Commission concludes that the commenters have raised no competitive issue that would preclude approval of this proposal. The Commission believes that NYSE's entry into this segment of the corporate bond market is broadly pro-competitive and in the public interest.

The Commission does not believe that the Section 36 Exemption Order gives NYSE an unfair competitive advantage over other exchanges. Other exchanges may petition the Commission for similar relief that would permit their members to trade unregistered debt securities on exchange facilities subject to the

that are listed, or authorized for listing, on certain national securities exchanges and securities of the same issuer that are equal in seniority or senior to such securities.

[53] *See* NYSE Response Letter 2 at 1.

[54] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[55] 15 U.S.C. 78f(b)(5).

[56] *See e.g.*, Securities Exchange Act Release No. 34019 (May 5, 1994), 59 FR 24765 (May 12, 1994) (SR–NYSE–93–49) (approving changes to NYSE bond listing standards). NYSE currently permits only debt securities with an outstanding market value or principal amount of at least $5 million to be listed on the Exchange and suspends the trading of listed debt securities when the outstanding market value or principal amount falls below $1 million. *See* Sections 102.03 and 703.06 of the NYSE Listed Company Manual, respectively.

[57] *See* NASD Rule 6220.

[58] *See* NASD Rule 6210(a).

[59] *See* Securities Exchange Act Release No. 54768 (November 16, 2006) (notice of filing and accelerated approval of SR–NASD–2006–110).

[60] BMA Letter 2 at 3.

[61] *Id.* at 5.

[62] *Id.* at 4.

[63] Nasdaq Letter at 2.

[64] *See* BMA Letter 2 at 5–6.

[65] 15 U.S.C. 78f(b)(8).

[66] *See* 15 U.S.C. 78f(b)(4).

[67] *See* 15 U.S.C. 78f(c).

conditions imposed by the Commission in NYSE's case.

The Commission further believes that requiring a debt security that trades pursuant to the proposed rule change to be rated by NRSROs, as Multiple-Markets suggests, is not necessary or appropriate in the public interest, as the decision whether to impose such a requirement is a matter typically left to the business discretion of the individual markets.[68] Similarly, with respect to the commenter's concern about NYSE's proposed use of a third-party data vendor to supply information regarding the actions of corporate bond issuers, selection of a particular vendor is generally within the business judgment of the Exchange.[69]

Finally, the Commission does not believe that there are any blue sky issues that would preclude approval of this proposal. Currently, any security listed on the Exchange is exempt from state blue sky laws. A debt security that is delisted by the Exchange and, instead, traded on an unlisted basis could lose its blue sky exemption. However, NYSE has represented that it would not involuntarily delist the debt security of any issuer (provided that the security otherwise met all applicable listing requirements).[70] Therefore, this proposal will not cause undue hardship for any issuer that relies on the Exchange's listing of its debt security to obtain a blue sky exemption.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[71] that the proposed rule change (SR–NYSE–2004–69), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[72]

Nancy M. Morris,

Secretary.

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[68] *See* Multiple-Markets Letter at 5.

[69] *See id.* The Commission notes that it is not sanctioning a particular vendor by approving the proposed rule change.

[70] *See* NYSE Response Letter 2 at 1.

[71] 15 U.S.C. 78s(b)(2).

[72] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54759; File No. SR–NYSEArca–2006–80]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Procedures for Executing Complex Options Orders in Open Outcry

November 15, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 3, 2006, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has filed the proposal as one effecting a change in an existing order-entry or trading system pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(5) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 6.75 concerning the procedures for executing complex options orders in open outcry. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nysearca.com*, at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca Rule 6.75 sets forth the priority and order allocation procedures with respect to orders executed by open outcry. Commentary .01 to NYSE Arca Rule 6.75 sets forth the procedures for executing combination, spread, ratio, and straddle orders (otherwise known as ''complex orders'') in open outcry. When the Exchange introduced its new electronic trading platform for options, the OX Trading System (''OX''), the Exchange did not amend the open outcry procedures for complex orders.[5] The Exchange is providing clarifying rule amendments to NYSE Arca Rule 6.75 and Commentary .01 to NYSE Arca Rule 6.75 so that the procedures reflect references to the current systems on the floor now that OX is fully implemented.

Specifically, the Exchange wishes to clarify that the ''Book'' referenced in NYSE Arca Rule 6.75(h)(4) and Commentary .01(b)–(d) to NYSE Arca Rule 6.75 has been phased out and has been replaced by the Consolidated Book of OX.[6] In the past, the ''Book'' had contained only customer limit orders and was maintained by the floor's Order Book Official. Today, the floor utilizes the Consolidated Book of OX, and, importantly, the Consolidated Book contains not only customer limit orders but also broker-dealer and firm limit orders. Given this more comprehensive representation of orders in the Consolidated Book, the Exchange wishes to clarify how OTP Holders[7] and OTP Firms[8] are to interact with the Consolidated Book when representing a complex order.

When executing a complex order at a net debit or credit, which can be satisfied at the electronically disseminated bids and offers of the series involved in the order, the Floor Broker must determine if there are customer orders in the Consolidated

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(5).

[5] *See* Securities Exchange Act Release No. 54238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (SR–NYSEArca–2006–13) (approving establishment of OX platform).

[6] *See* NYSE Arca Rule 6.1(b)(37). The term ''Consolidated Book'' means the Exchange's electronic book of limit orders for the accounts of Public Customers and broker-dealers, and Quotes with Size. The term ''Quote with Size'' means a quotation to buy or sell a specific number of option contracts at a specific price that a Market Maker has entered into PCX Plus through an electronic interface. NYSE Arca Rule 6.1(b)(33).

[7] *See* NYSE Arca Rule 1.1(q).

[8] *See* NYSE Arca Rule 1.1(r).

Book at the best price in each series.[9] The Floor Broker will consult the Trading Official at the post to make the determination.[10] The Trading Official will check the system to see if there are customer orders on any or all sides of the transaction and inform the broker but will disclose neither the size of the customer order(s) nor the ranking of the customer order(s). In the event that there is any customer order priced at the best price in the corresponding series in the Consolidated Book, all orders at that price, customer and non-customer, will be deemed to have priority and will have to be satisfied prior to executing the complex orders. For each execution of a complex order that takes priority over non-customer bids and offers displayed in the Consolidated Book, the Trading Official at the post shall record the transaction by completing an Unusual Activity Report. A log of such reports will be maintained by the Floor Surveillance Unit.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act[11] in general and furthers the objectives of section 6(b)(5)[12] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act[13] and Rule 19b–4(f)(5)[14] thereunder because it effects a change in an existing order-entry or trading system of a self-regulatory organization that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. 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–NYSEArca–2006–80 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2006–80. 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–80 and should be submitted on or before December 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Nancy M. Morris,

Secretary.

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[9] *See* NYSE Arca Rule 6.43(a). A ''Floor Broker'' is an individual (either an OTP Holder or OTP Firm or a nominee of an OTP Holder or OTP Firm) who is registered with the Exchange for the purpose, while on the Exchange Floor, of accepting and executing option orders received from OTP Holders and OTP Firms.

[10] *See* NYSE Arca Rule 6.1(b)(34). A ''Trading Official'' is an Exchange employee or officer, who is designated by the Chief Executive Officer (or its designee) or by the Chief Regulatory Officer (or its designee) of the Exchange. Trading Officials have the ability to recommend and enforce rules and regulations relating to trading access, order, decorum, health, safety, and welfare on the Exchange.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 19b–4(f)(5).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54758; File No. SR–NYSEArca–2006–81]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rules Related to Complex Order Trading

November 15, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 3, 2006, the NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

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 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to amend its rules governing Complex Order Trading in order to allow the pricing and trading of complex orders in one cent increments. The Exchange also proposes to eliminate certain obsolete rules related to the PCX Plus System (''PCX Plus'') Complex Trading Engine (''CTE''). The text of the proposed rule change is available on the Exchange's Web site at *http://www.nysearca.com*, at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend NYSE Arca Rule 6.91 which governs CTE. NYSE Arca proposes to adopt certain rules regarding the pricing of complex orders that are in effect at the International Securities Exchange (''ISE'').[5] The Exchange also proposes to eliminate certain obsolete rules related to PCX Plus CTE.

Administrative Changes. NYSE Arca recently completed the introduction of the OX Trading System (''OX'') for options. Prior to OX the Exchange used PCX Plus. The Exchange developed rules for trading complex orders, some of which were specific to PCX Plus, in particular those that dealt with PCX Plus CTE. PCX Plus CTE is no longer used to execute orders. Therefore, the Exchange proposes to eliminate obsolete rules that applied only to CTE. NYSE Arca will file new rules with the Commission prior to trading complex orders on OX. The Exchange anticipates the introduction of complex order trading on OX sometime in the first quarter of 2007.

The Exchange also proposes amending NYSE Arca Rule 6.91(a) which deals with the definition of certain order types. NYSE Arca Rule 6.62(j) defines ''Combination orders.'' Proposed NYSE Arca Rule 6.91(a)(10) now will reference NYSE Arca Rule 6.62(j) so that this may be included with the definition of other complex order types for ease of reference.

Pricing of Complex Orders. Presently, individual orders comprising complex orders on NYSE Arca must be executed in minimum price variations (''MPV'') equivalent to those in NYSE Arca Rule 6.72(a). Those increments are $.05 for options that are priced less than $3.00 and $.10 for options priced above $3.00.[6] Complex orders are, by definition, complex trades involving intricate trading strategies. These orders, which are made up of two or more option orders (the ''legs'' of the order) or an option order tied to a corresponding equity order, are typically priced on a net debit/credit basis. The net debit/credit price is derived from either the difference in, or combined total of, the individual legs of the order. Pricing on a net debit/credit basis allows for the pricing of the entire order, as opposed to having to price the individual legs. Pricing the order as a single trade allows the order to trade at a price that can be more reflective of the actual value of the order, which can often be difficult when using separate prices.[7] Since all legs of a complex order are typically done by the same trader or customer, the trade is often better priced than would be if done as separate trades.[8] Often, however, when attempting to execute a trade on a net debit/credit basis, market participants are prevented from actually trading at the true value, because they must price the individual legs in standard MPVs as set forth in NYSE Arca Rule 6.72(a). The requirement that the legs of a complex order must trade in standard MPVs, even when the order itself is priced at a net debit/credit, defeats the purpose behind net debit/credit pricing of complex orders; that being, orders traded on a debit/credit basis can provide the opportunity for more efficient pricing of option trades. Therefore, NYSE Arca proposes to add a new Commentary .01 to NYSE Arca Rule 6.91 to allow the option leg(s) of complex orders, as defined in NYSE Arca Rule 6.91(a), to be executed in one cent increments, regardless of the minimum increment otherwise applicable to the individual option leg(s) of the order. Providing additional price points at which the individual legs of an order can be priced may facilitate complex order execution on NYSE Arca and provide better prices for all participants.

In conjunction with the change above, the Exchange proposes to add a new Commentary .02 to NYSE Arca Rule 6.91 that requires any leg of a complex order that takes priority over established customer orders in the Consolidated Book to be better priced by at least one MPV as provided in NYSE Arca Rule 6.72. The Exchange believes that these proposed rule changes related to the pricing of complex orders are consistent with rules for complex order trading on the ISE.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[10] of the Act, in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and to protect investors and the public interest. In particular, trading complex orders in one cent increments will provide market participants and public customers with more pricing options, which could lead to tighter spreads and increased liquidity at NYSE Arca.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* ISE Rule 722(b)(1)–(2).

[6] The Exchange has proposed changes to NYSE Arca Rule 6.72 as part of SR–NYSEArca–2006–73, which was filed on October 9, 2006, and is pending approval. The proposed rule change will create a Penny Pilot Program which will allow penny pricing in certain classes of options on NYSE Arca.

[7] Telephone conversation between Glen Gsell, NYSE Arca, and Molly Kim, Division of Market Regulation, Commission, on November 13, 2006.

[8] *Id*.

[9] *See* note 5 *supra*.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

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)(iii) of the Act [12] and Rule 19b–4(f)(6) thereunder,[13] because it: (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 after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[14]

NYSE Arca requests that the Commission waive the 30-day operative period under Rule 19b–4(f)(6)(iii).[15] The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, because waiving the operative delay will allow NYSE Arca investors to immediately trade and price complex orders in one cent increments on NYSE Arca.[16]

At any time within 60 days of the filing of such 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.[17]

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 No. SR–NYSEArca–2006–81 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEArca–2006–81. 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 NYSE Arca. 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–NYSEArca–2006–81 and should be submitted on or before December 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19737 Filed 11–21–06; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] As required by Rule 19b–4(f)(6)(iii) of the Act, NYSE Arca provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description of the text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 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).

[17] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54760; File No. SR–Phlx–2006–76]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Rule 185A, Intermarket Sweep Orders—Temporary

November 15, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 13, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been 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 adopt Phlx Rule 185A, Intermarket Sweep Orders—Temporary, which describes: (1) The obligations of the Exchange sending orders to other market centers, and (2) the obligations of XLE Participants sending Intermarket Sweep Orders (''ISOs'') [5] or IOC Cross Orders that are marked as meeting the requirement to route to other market centers [6] (both types of orders hereinafter are referred to as ''Incoming Sweep Orders''). Specifically, before Rule 611 of Regulation NMS [7] is operative on the Exchange (the ''Trading Phase Date''),[8] Phlx would use away market obligations instead of immediate-or-cancel intermarket sweep orders. An away market obligation is an immediate or cancel limit order for an NMS stock generated by Phlx in connection with

[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* Phlx Rule 185(b)(2)(C).

[6] *See* Phlx Rule 185(c)(2)(D).

[7] 17 CFR 242.611.

[8] The Trading Phase Date is February 5, 2007. *See*Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006) (File No. S7–10–04).

the execution of an order by Phlx and routed to one or more away market centers to execute against all better-priced protected quotations displayed by the other market centers up to their displayed size. If the away market center is capable of receiving an intermarket sweep order, the Exchange may generate and utilize an intermarket sweep order as the away market obligation. In addition, before the Trading Phase Date, the proposed new rule would expressly require XLE Participants sending Incoming Sweep Orders to simultaneously send an intermarket sweep order (or comparable order) for the full displayed size of the top of book of every other market center displaying a better-priced protected quotation. The text of the proposed rule change is available on Phlx's Web site, *http://www.phlx.com*, at Phlx'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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify the operation of XLE's outbound routing and Incoming Sweep Orders before the Trading Phase Date. Currently, Phlx Rules 185(b)(1)(C)(i)–(ii) and (b)(2)(B) state that when routing out to away market centers, Phlx will use ''immediate-or-cancel intermarket sweep orders'' to execute against any away market centers with better-priced quotations. However, prior to the Trading Phase Date, not all away market centers will accept intermarket sweep orders. Therefore, in order to implement away routing before the Trading Phase Date, Phlx will use ''away market obligations'' instead of ''immediate-or-cancel intermarket sweep orders.'' In addition, before the Trading Phase Date, Phlx will require XLE Participants who send Incoming Sweep Orders to the Exchange to simultaneously send an intermarket sweep order (or comparable order) for the full displayed size of the top of book of every other market center displaying a better-priced protected quotation. This requirement is intended to mirror the requirement, which will be operative after the Trading Phase Date, that all such Incoming Sweep Orders meet the requirement of intermarket sweep orders in Rule 600(b)(30) of Regulation NMS.[9] The Exchange notes that it has requested an exemption from the provisions of the Intermarket Trading System Plan to allow, among other things, the Exchange and its XLE Participants to implement outbound routing and Incoming Sweep Orders in this manner prior the Trading Phase Date.[10]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14] As required under Rule 19b–4(f)(6)(iii) under the Act,[15] 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 [16] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) under the Act [17] 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 it allows the Exchange to implement this proposal without delay in order to accommodate the Exchange's plans to commence operation of XLE. The Commission notes that the Exchange has represented that the proposed rule change is based upon a proposed rule change of the American Stock Exchange LLC (''Amex'').[18] For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[19]

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

[9] 17 CFR 242.600(b)(30).

[10] *See* Letter from John Dayton, Director and Counsel,Phlx, to Nancy M. Morris, Secretary, Commission, dated November 9, 2006. *See also* Letter from David Shillman, Associate Director, Division of Market Regulation, Commission, to John Dayton, Director and Counsel, Phlx, dated November 14, 2006.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] *See* Securities Exchange Act Release No. 54709 (November 3, 2006), 71 FR 65847 (November 9, 2006) (SR–Amex–2006–72) (approval order for Amex's new electronic trading system on a pilot basis, specifically Amex Rules 126A–AEMI–One and 131–AEMI–One).

[19] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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.[20]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2006–76 on the subject line.

Paper comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2006–76. 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–2006–76 and should be submitted on or before December 13, 2006.

[20] *See* 15 U.S.C. 78s(b)(3)(C).

[21] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19730 Filed 11–21–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54756; File No. SR–SCCP–2006–03]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Trade Recording and Value Fees and NMS Linkage

November 15, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 26, 2006, Stock Clearing Corporation of Philadelphia (''SCCP'') 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 SCCP. 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

SCCP, pursuant to Section 19(b)(1) of the Act[3] and Rule 19b–4 thereunder,[4] is amending its Trade Recording Fee and its Value Fee (together ''Fees'') that are set forth in its Fee Schedule. The amendment extends the application of the Fees to an order that is executed by way of an outbound NMS Linkage order when such outbound NMS Linkage order reflects the PACE order's clearing information after being delivered to the Philadelphia Stock Exchange, Inc. (''Phlx'') by the PACE system.[5] The Fees will not apply where a PACE order was executed against an inbound NMS Linkage order.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] PACE is Phlx's automated order routing, delivery, execution and reporting system for equities. Phlx Rule 229.

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP 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. SCCP 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

The purpose of the proposed rule change is treat PACE trades that interact with NMS Linkage[6] orders the same as Intermarket Trading System (''ITS'') commitments with respect to the Fees.[7] The NMS Linkage Plan is the successor plan to the ITS Plan. While there are some operational differences between the two plans, both facilitate intermarket linkage among market centers trading certain listed securities, and SCCP believes the NMS Linkage Plan will be used in a similar manner as the ITS Plan by Phlx members and member organizations. Therefore, SCCP proposes to apply the Fees to PACE trades that interact with NMS Linkage orders in the identical manner as PACE trades that interact with ITS commitments. This is accomplished by adding the words ''or NMS Linkage order'' to footnote 1 in the SCCP Fee Schedule.

SCCP believes that the proposed rule change is consistent with Section 17A of the Act and with Section 17A(b)(3)(D) in particular because it provides for the equitable allocation of reasonable fees and other charges among its participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

[6] The Commission published notice of the NMS Linkage Plan in Securities Exchange Act Release No. 54239 (July 28, 2006), 71 FR 44328 (August 4, 2006) [File No. 4–524]. A NMS Linkage Plan, dated August 1, 2006, and reflecting Phlx's inclusion as a Participant, was sent to the Commission on August 8, 2006.

[7] Securities Exchange Act Release No. 47922 (May 23, 2003), 68 FR 33560 (June 4, 2003) [File No. SR–SCCP–2002–08] (order adopting the current fee treatment of PACE trades that interact with ITS commitments).

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.

I. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [8] and Rule 19b–4(f)(2) [9] thereunder because it establishes or changes a due, fee, or other charge. 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–SCCP–2006–03 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–SCCP–2006–03. 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 SCCP. 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–SCCP–2006–03 and should be submitted on or before December 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19736 Filed 11–21–06; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #10715, Alaska Disaster #AK–00010

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of ALASKA (FEMA–1666–DR), dated 10/27/2006.

Incident: Hooper Bay Fire.

Incident Period: 08/03/2006 Through 08/04/2006.

Effective Date: 10/27/2006.

Physical Loan Application Deadline Date: 12/26/2006.

Addresses: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/27/2006, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

The City Of Hooper Bay Within The Lower Yukon Area.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.000
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10715.

(Catalog of Federal Domestic Assistance Number 59008)

Jane M. Pease,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6–19711 Filed 11–21–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5618]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Iraqi Young Leaders Exchange Program for Undergraduate Students

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E/USS–07–IYL.

Catalog of Federal Domestic Assistance Number: 00.000.

Dates: Key Dates: Application Deadline: January 12, 2007.

Executive Summary: The Branch for the Study of the United States, Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs, announces an open competition for the ''Iraqi Young Leaders Exchange Program for Undergraduate Students,'' a series of six-week thematic institutes to take place at four different host institutions during the summers of 2007 and 2008. Accredited post-secondary education institutions in the United States and public and private non-profit organizations or consortia of organizations may submit proposals to cooperate with the Bureau in the administration and implementation of this program. Each institute should provide a group of 15–20 highly motivated Iraqi undergraduate students with an integrated and imaginatively designed academic program that includes structured classroom instruction in one of the following four

themes: science and technology; media and journalism; entrepreneurship; and public policy. Each institute should incorporate a leadership component and integrate practical learning opportunities related to the institute's theme. In addition, each institute will include an educational travel program that will give participants a deeper understanding of U.S. culture and society. All participants will be expected to return to Iraq immediately following the conclusion of the program. The awarding of the grant for this program is contingent upon the availability of funds (prior year Economic Support Funds, which, at the time of this publication, are pending transfer to ECA for obligation).

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose

In July 2006, President Bush announced the creation of the ''Iraqi Young Leaders Exchange Program.'' The Bureau of Educational and Cultural Affairs, Branch for the Study of the U.S., will administer this program. Recently graduated high school seniors and undergraduates completing the first and second years of university will participate in intensive, thematic institutes, which will enhance their understanding of the United States, while developing their leadership skills. The Branch will sponsor a total of 150 Iraqi undergraduate student leaders over a two-year period during the summers of 2007 and 2008. In each of these years, the institutes for the ''Iraqi Young Leaders Exchange Program for Undergraduate Students'' should provide 75 undergraduate student leaders, aged 18–20, with an integrated and imaginatively designed program through four institutes running concurrently at different U.S. host institutions. The program will consist of an academic component that includes leadership training and community service, as well as an educational travel component in the United States.

The principal objective of the institutes is to heighten the participants' awareness of the history and evolution of U.S. society, culture, values and institutions. All campus programs should include cultural enrichment activities and should actively engage American undergraduate or graduate student peers as mentors or escorts for the Iraqi students.

In addition to promoting a better understanding of the United States, an important objective of the institutes is to develop the participants' leadership and collective problem-solving skills. In this context, the academic program should include group discussions, training and exercises that focus on such topics as the essential attributes of leadership; teambuilding; effective communication; and management skills for diverse organizational settings. There should also be a community service component, whereby the students experience firsthand how not-for-profit organizations and volunteerism play a key role in American civil society.

Local site visits and educational travel to cities and other destinations outside the immediate area of the host institutions should provide opportunities to observe varied aspects of American life and discuss issues raised in the academic program. The program should also include opportunities for participants to meet American citizens from a variety of backgrounds, to interact with their American peers, and to speak to appropriate student and civic groups about their experiences and life in Iraq. ECA plans to award a single grant for the recruitment and administration of all institutes for the ''Iraqi Young Leaders Exchange Program for Undergraduate Students.''

The Bureau is seeking detailed proposals for the institutes from U.S. not-for-profit organizations that will administer the institutes in collaboration with four different U.S. colleges, universities or other not-for-profit academic organizations, who will act as program host institutions. Applicant organizations may submit grant proposals requesting funds not exceeding $2,312,500 to implement a total of eight institutes between June and August 2007, and June and August 2008, or one institute per host institution each summer. Applicant organizations will be evaluated on the functionality of their partnerships with their four selected host institutions. Selected host institutions must have an established reputation in the field or discipline related to their specific program theme (i.e., science and technology; media and journalism; entrepreneurship; and public policy). Applicant organizations are also encouraged to partner with host institutions that together reflect the geographic diversity of the United States. The grantee organization will be ECA's primary point of contact in communicating with the four selected host institutions.

The grant recipient organization will recruit, screen, and nominate the exchange participants, in consultation with, but without reliance on the U.S. Embassy in Baghdad. The grantee organization should make every effort to recruit a balanced pool of male and female participants from across Iraq, who represent the ethnic, religious, and cultural diversity of the Iraqi population. The grantee organization will conduct a nation-wide recruitment campaign in Iraq that includes special provisions for the recruitment of female participants and participants from Southern Iraq. The grantee organization will prepare the students for both the content and the logistics of the exchange, and will be responsible for the entire cycle of each program to include: management of travel documents; international and domestic airline reservations for students; preparation and oversight of all programmatic components in the U.S.; and the provision of follow on activities and support for grantee alumni.

The Bureau of Educational and Cultural Affairs recognizes that the grantee organization will be conducting all Iraq-based activity in an inherently challenging working environment. As such, applicant organizations must provide a detailed plan for arranging all activities in the U.S. and Iraq directly or in collaboration with partner organizations, which must be identified in the proposal. This plan must also demonstrate the capacity to ensure the participants' security during all phases of Iraq-based activity.

The applicant should take into account that Iraqi student participants may have little or no prior knowledge of the United States and varying degrees of experience in expressing their opinions in a classroom setting, therefore, component activities will be tailored accordingly. Every effort should be made to encourage active student participation in all aspects of a program.

Program Design

The ''Iraqi Young Leaders Exchange Program for Undergraduate Students'' should consist of four intensive thematic academic programs, to be implemented each summer during 2007 and 2008 for a total of eight institutes, with approximately 75 participants per summer (i.e., 19 per institute). The program should be organized through a carefully integrated series of panel presentations, seminar discussions, debates, individual and group activities, lectures and reading assignments, as well as local site visits, regional educational travel, and participation in community service activities. In addition to host-college or university faculty and professionals from the region where the institutes take place (e.g., in government, media, religious and civic organizations), course presenters should include outstanding scholars and other professional experts from throughout the United States, as appropriate.

The institutes must not simply replicate existing or previous lectures, workshops, or group activities designed for American students. Rather, they should be a specially designed and well-integrated seminar that creatively combines lectures, discussions, readings, debates, local site visits and regional travel into a coherent whole. The grantee organization will be required to select four host institutions to develop a program that provides ample time and opportunity for discussion and interaction among students, lecturers and guest speakers, not simply standard lectures or broad survey reading assignments. Reading and writing assignments should be adjusted to the participants' knowledge of English.

Capacity of Administering Organization

U.S. applicant organizations or consortia must have the necessary capacity in the United States and Iraq to implement the program through either their own offices or partner institutions. Organizations may demonstrate their direct expertise, or they may partner with other organizations to best respond to the requirements outlined in the RFGP. Organizations that opt to work in sub-grant arrangements should clearly outline all duties and responsibilities of the partner organization, ideally in the form of sub-grant agreements and accompanying budgets.

Organizations or consortia applying for this grant must demonstrate their (or their partners') capacity for conducting projects of this nature.

Program Administration

The grantee organization should designate a project director who will oversee all Iraq and U.S. based activity, and serve as the primary liaison with ECA on program and administrative matters. There should also be an academic director at each host institution who will be present throughout the program to ensure the continuity, coherence and integration of all aspects of the academic program, including the educational travel program. In addition to the academic director(s), an administrative director or coordinator should be assigned at each host institution to oversee all student support services, including supervision of the program participants, budgetary, logistical, and other administrative arrangements. For the purposes of this program, it is important that the grantee organization also retain qualified U.S. undergraduate or graduate students as peer mentors or escorts who exhibit cultural sensitivity, an understanding of the program's objectives, and a willingness to accompany the students throughout the program sessions.

Iraq-based Activity

The grantee organization will demonstrate a capacity to work effectively in Iraq and manage the following activities in consultation with, but without reliance on the U.S. Embassy in Baghdad.

(1) Recruit, screen, and nominate 75 Iraqi undergraduate student leaders and an appropriate number of alternates for six-week programs in the United States during summer 2007, with a second cycle of recruitment for programs in the summer of 2008. Recruitment and nomination will be coordinated in consultation with, but without reliance upon the Public Affairs Section (PAS) at the U.S. Embassy in Baghdad.

(2) Assist selected participants in submitting J–1 visa applications via the electronic version of the application form (EVAF). Process DS–2019 forms and U.S. visa applications with sufficient lead-time to allow for visa interviews at the U.S. Embassy in Baghdad no later than 100 days before the beginning of travel to the United States.

(3) Provide orientations in a third country en route to the U.S., or in Washington, DC for all Iraqi undergraduate students chosen to participate.

(4) Provide international roundtrip travel arrangements to Washington, DC for participants.

(5) Create and manage an online communication portal for alumni to continue dialogue and carry out action plans that promote program objectives. The portal can also be used to track alumni addresses, and should take every precaution to safeguard student security.

Participants

Participants in the ''Iraqi Young Leaders Exchange Program for Undergraduate Students'' should be highly motivated and exemplary recently graduated high school seniors and those completing the first and second years at colleges, universities and teacher training institutions from across Iraq, who display leadership through academic achievement, community involvement, and extracurricular activities, and who demonstrate the willingness and preparedness to participate in this program. Their major fields of study will be varied, and will include the sciences, social sciences, humanities, education and business. All participants will have a good knowledge of English.

The grantee organization will recruit and recommend participants for selection to the appropriate institute in accordance with the applicant's qualifications and primary fields of interest. Confirmation of final selection will be made by ECA's Branch for the Study of the United States. Participants will be students aged 18–20 from across Iraq, who represent the ethnic, religious, and cultural diversity of the Iraqi population. Every effort should be made to select a balanced mix of male and female participants. The grantee organization should make a particular effort to recruit participants who are from non-elite or underprivileged backgrounds, from both rural and urban areas, and have had little or no prior experience in the United States or elsewhere outside of their home country. Applicant organizations must submit a detailed plan for conducting a nation-wide recruitment campaign that includes special provisions for the recruitment of female participants and participants from Southern Iraq.

Program Dates: The institutes, which should be a maximum of 44 days in length (including participant arrival and departure days), should begin in June 2007, with a similar cycle of programs in the summer of 2008.

Program Guidelines: It is essential that proposals provide a detailed and comprehensive narrative describing how the partner organizations and/or host institutions will achieve the objectives of the program. For host institutions, this includes listing the title, scope and content of each session, planned site visits, and how each

session relates to each institute's theme. A syllabus must be included that indicates the subject matter for each lecture, panel discussion, group presentation or other activity. The syllabus should also confirm or provisionally identify proposed speakers, trainers, and session leaders, and clearly show how assigned readings will advance the goals of each session. A calendar of all program activities must be included in the proposal, as well as a description of plans for public and media outreach in connection with each institute. Overall, proposals will be reviewed on the basis of their coherence, clarity, and attention to detail.

Please note: In a cooperative agreement, the Branch for the Study of the United States is substantially involved in program activities above and beyond routine grant monitoring. The Branch will assume the following responsibilities for the institutes: confirm the final selection of participants in consultation with the U.S. Embassy in Baghdad; oversee the institutes through one or more site visits; debrief participants in Washington, D.C. and consult on the implementation of a four-day conclusion program in Washington, DC at the end of the institutes; and engage in follow-on communication with the participants after they return to their home countries. The Branch may require changes in the content or scope of activities of the institutes, either before or after the grant is awarded. The recipient will be required to obtain approval of any significant agenda/syllabus changes in advance of their implementation.

II. Award Information

Type of Award: Cooperative Grant. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: Prior year Economic Support Funds (ESF) which, at the time of this publication, are pending transfer to ECA for obligation.

Approximate Total Funding: $2,312,500.

Approximate Number of Awards: 1.

Anticipated Award Date: Pending availability of funds, March 1, 2007.

Anticipated Project Completion Date: August 2008.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for one additional fiscal year in accordance with the original announcement.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs that are claimed as your contribution, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements: (a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant, in the amount not to exceed $2,312,500 to support program and administrative costs required to implement this exchange program. Therefore, applicant organizations with less than four years experience in conducting international exchanges are ineligible under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information To Request an Application Package:

Please contact the Branch for the Study of the United States, ECA/A/E/USS, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547; tel. (202) 453–8532; fax (202) 453–8533; e-mail: *WalshBM@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/USS–07–IYL located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Brendan M. Walsh and refer to the Funding Opportunity Number ECA/A/E/USS–07–IYL located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*, or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document ''and the Project Objectives, Goals and Implementation (POGI) document'' for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years,

you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3.d.1. Adherence to all regulations governing the J visa:

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements. The grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547; Telephone: (202) 203–5029; FAX: (202) 453–8640.

Please refer to Solicitation Package for further information.

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to, ethnicity, race, gender, religion, geographic location, socioeconomic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and are usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.
2. *Participant learning*, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. *Participant behavior*, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. *Institutional changes*, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe your plans for overall program management, staffing, and coordination with each host institution and the Branch for the Study of the United States. The Branch considers these to be essential elements of your program; please be sure to give sufficient attention to them in your proposal. Please refer to the Technical Eligibility Requirements and the POGI

in the Solicitation Package for specific guidelines.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) Institute staff salary and benefits.

(2) Advertisement of program, recruitment, and selection of participants.

(3) Participant housing and meals.

(4) Participant travel and per diem.

(5) Textbooks, educational materials and admissions fees.

(6) Honoraria for guest speakers .

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3F. Application Deadline and Methods of Submission:

Application Deadline Date: January 12, 2007.

Reference Number: EAC/A/E/USS–07–IYL.

Methods of Submission: Applications may be submitted in one of two ways: (1) In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) electronically through *http://www.grants.gov*.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. Submitting Printed Applications.

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and (8) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/USS–07–IYL, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

IV.3f.2—Submitting Electronic Applications.

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center.

Phone: 800–518–4726.

Business Hours: Monday–Friday, 7AM–9PM Eastern Time.

E-mail: *support@grants.gov*.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3f.3 Grant applicants may submit only one proposal for this competition. However, partner institutions and sub-grantee organizations are eligible for inclusion in multiple proposals provided they meet the criteria for eligible applicants as outlined under ''Other Eligibility Requirements'' in section III.3.a. of this announcement.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process. The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of Program Idea/Plan*: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity.

2. *Ability to Achieve Overall Program Objectives*: Objectives should be reasonable, feasible, and flexible.

Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Support for Diversity*: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (program venue, study tour venue, and program evaluation) and program content (orientation and wrap-up sessions, site visits, program meetings and resource materials).

4. *Evaluation and Follow-Up*: Proposals should include a plan to evaluate the institute's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to each institute's objectives is strongly recommended. Proposals should also discuss provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

5. *Cost-effectiveness/Cost-sharing*: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

6. *Institutional Track Record/Ability*: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be fully qualified to achieve the institute's goals.

VI. Award Administration Information

VI.1a. Award Notices: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements:

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus one (1) copy of the final program and financial report no more than 90 days after the expiration of the award.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. Please refer to Application and Submission Instructions (IV.3d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. The organization awarded the grant will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Brendan M. Walsh, Bureau of Educational and Cultural Affairs, ECA/A/E/USS, Room 314, ECA/A/E/USS–07–IYL, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, tel. (202) 453–8536; fax (202) 453–8533, e-mail: *WalshBM@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ''Iraqi Young Leaders Exchange Program for Undergraduate Students'' and number (ECA/A/E/USS–07–IYL).

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: November 16, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E6–19803 Filed 11–21–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5619]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: 2007 Summer Institute for English Language Educators from South Africa

Announcement Type: New Grant.

Funding Opportunity Number: ECA/A/E/AF–07–01.

Catalog of Federal Domestic Assistance Number: 00.000

DATES:

Key Dates: Application Deadline: Friday, February 2, 2007.

Executive Summary: The African Programs Branch, Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the 2007 Summer Institute for English Language Educators from South Africa. Accredited, post-secondary educational institutions meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to provide a six-week training program for approximately 28 English language educators from South Africa. Subject to availability of funds, one grant will be awarded to conduct the 2007 Institute.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: American institutions of higher education having an acknowledged reputation in the field of English as a Second Language (ESL) and in curriculum design may apply to develop and deliver a six-week summer program for approximately twenty-eight English language educators from South Africa. The Summer Institute should be programmed to encompass about 45 days and should begin on or about June 11, 2007. A variation in start date, up to one week beyond June 11, 2007, will be considered if it is necessitated by the host institution's academic calendar. The first five weeks of the program will consist of academic coursework specializing in project-based ESL materials development and teaching methodology focusing on three theme-based areas: HIV–AIDS, Civic Education and Civil Society, and Economics/Entrepreneurship. The Institute will include instruction in classroom management and curriculum design to support these ESL theme-based projects at the secondary and tertiary levels. The host institution, with the help of participants, will develop a website featuring program information and resource materials. The sixth week will consist of an escorted cultural and educational visit to Washington DC.

From primary grade four, English is the medium of instruction and assessment in all subjects for most South African students. For the majority of students and teachers, however, English is a second or third language. Academic literacy in English is a major obstacle to quality education in South Africa. Given the need to teach theme-based English across the South African curriculum, English language educators are key personnel for quality learning.

Presently, there exists a severe shortage of skilled classroom educators. South African teachers need to produce and deliver culturally appropriate and pedagogically sound content-based materials in a multi-cultural setting.

The 2007 Summer Institute for English Language Educators from South Africa will provide participants with intensive training in the fundamentals of theme-based ESL materials development and classroom methodology, continuous assessment, multicultural, multilingual classroom management, and lesson and course design. These four areas are critical in South Africa where teachers are attempting to implement a new curriculum in a context of educational transformation and Outcomes Based Education (OBE). The Summer Institute will also provide structured exposure to the culture and diversity of the U.S.

The program should maintain a relative balance among discussion sessions, lectures and collaborative workshops. Lengthy lectures should be kept to a minimum. Participants should be given ample opportunity to work together and learn from each other as well as from their American instructors. Given the project-based orientation exploring the themes of HIV–AIDS, Civic Education and Civil Society, and Economics/Entrepreneurship, participants will be able to share not only content but relevant ESL materials with their colleagues and home institutions. Participants will receive a book allowance.

Few participants will have visited the United States previously. In view of this, an initial orientation to the host institution community and a brief introduction to U.S. society and education should be an integral part of the Institute and should be held on the first two to three days of the program.

Program Design: Applicants should design a two-part program:

(1) A five-week academic program supporting South Africa's goal of education transformation through the delivery of intensive training in theme-based materials development, teaching methodology, continuous assessment and curriculum design for Outcomes Based Education (OBE) and ESL learning at the secondary and tertiary levels. Division of the group into 3–4 manageable project teams, each with a selected thematic focus and each targeting the particular needs of the secondary and tertiary levels is essential. Training should be sensitive to any special needs of the South African participants.

(2) A one-week escorted visit to Washington, DC, planned, arranged, and conducted by the Institute Program Director and principal Institute staff. The Washington program should be seen as an integral part of the Summer Institute, complementing and reinforcing both the academic and thematic content. This escorted visit should take place at the end of the Institute. Programming in Washington will include a half-day briefing session at the Bureau of Educational and Cultural Affairs, United States Department of State. Additionally, visits to such organizations as TESOL headquarters, major academic institutions in the area with TESOL and adult education ESL programs, as well as organizations and groups working in the thematic areas of the program (HIV/AIDS, Civic Education and Civil Society, and Economics/Entrepreneurship) should be included. A visit to the Embassy of South Africa should also be planned. Proposals may include cultural and educational visits en route to Washington, if such stops contribute to program quality and are cost-effective. The participants will return to South Africa at the conclusion of the Washington program.

Specific areas to address in the Institute are:

(1) Preparation of pre-and/or in-service teacher training modules and workshops designed by participants for delivery to specific audiences of teachers and colleagues upon their return to South Africa.

(2) ESL materials development and teaching methodology with an emphasis on theme-based ESL instruction. Thematic issues should include HIV–AIDS and Health, Civic Education and Civil Society (with special attention to human rights and gender issues), and

Economics/Entrepreneurship. Materials should include literary texts as well as other authentic materials. Techniques for continuous assessment should also be addressed.

(3) Classroom management with special reference to teaching in large, multi-lingual, multi-ethnic classrooms.

(4) Introduction to Action Research as an aid to professional development and more reflective and responsive teaching practices.

(5) Education Technology:

(a) Introduction and/or enrichment of knowledge of computer-based word processing and appropriate software for participants who lack these skills. Introduction to computer networks for ESL professionals.

(b) Introduction and/or enrichment of knowledge of e-mail, usenet and the World Wide Web as pedagogic and research tools.

(c) Introduction to Power Point and other applications that participants can use with learners and with colleagues in teacher training sessions when they return to South Africa.

(6) Visits to:

(a) Local institutions and organizations related to thematic areas, including Junior Achievement programs.

(b) On-going ESL classes at the host institution, other universities, and in local educational or community centers, providing participants with opportunities to observe ESL methodology, materials, and multi-cultural classrooms featuring content-based language learning across the curriculum.

(7) Involvement of participants in American culture through community/cultural activities. This should include interaction with Americans from a variety of backgrounds. In this regard, the Institute should incorporate cultural features such as field trips to places of local interest; homestays with families in the area (with teachers and other educators if possible), and events that will bring the participants into contact with Americans from a variety of backgrounds.

(8) Formative evaluation and adjustment of program components accordingly, as well as summative evaluation of the entire Institute upon its completion.

(9) Selection and purchase of books and materials that support the goals and content of the program. Shipment of the same materials at the end of the Institute to the participants' South African addresses.

In accordance with the objectives of the Summer Institute, participants will concentrate on their thematic projects. However, the academic program should provide time for interaction with American students, faculty, and school administrators, and the local community to promote mutual understanding between the people of the United States and South Africa.

Participants:

Participants, to be selected by the Public Affairs Section of the U.S. Embassy in Pretoria, will be South African educators involved with English as a second language (ESL) teaching and teacher training. The selected participants will be drawn from public and private sectors including the national and provincial departments of education, teacher resource centers, non-governmental organizations, university departments of education and teacher training colleges. Minimum qualification for all participants will be a university degree in English or Education. Recruitment will concentrate on English language classroom teachers at intermediate phase levels (grades 4–6), and university and Department of Education officials actively involved with intermediate phase teacher training, and curriculum and materials development. Depending upon availability of funds, approximately 28 participants from South Africa will participate in the Institute.

Program Elements:

The proposal should be designed to support the following specific activities:

1. Pre-program communication among participants and the U.S. institution to facilitate an exchange of ideas developed for the Institute. Communication should be e-mail based.

2. Creation of a Web site identifying the program goals/syllabus and on-going participant thematic projects. The site should be a dynamic resource, with weekly updates during the duration of the program, and regular updates in South Africa following program completion. The Web site should display each of the three completed theme-based projects. The participants should develop site content, while site construction and Internet hosting should be provided by the grantee institution. All Institute participants should receive a CD–ROM of their Web site creation.

3. A five-week academic program comprising coursework on

—Topic-specific ESL theme-based materials development and teaching methodology with a focus on academic literacy (writing and reading, including ESL remedial reading and reading recovery instruction);
—Effective in-service and pre-service teacher training sessions featuring the skills and knowledge gained on the program to enable participants to conduct workshops upon return to South Africa;
—Theory and practice of continuous assessment;
—Action Research design and practice for professional development and better teaching and learning;
—Use of software applications such as Power Point, and Internet and Web resources for materials development and teacher training.

4. Cultural activities facilitating interaction among the South African participants, American students, faculty, and administrators and the local community to promote mutual understanding between the people of the United States and the people of South Africa, planned within the five-week academic program.

5. A one-week, escorted, cultural and educational visit to Washington, DC, complementing and reinforcing the academic material. The visit will be planned, arranged and conducted by the Institute Program Director and staff.

6. Follow-on communication among participants and the U.S. institution to continue exchanges of ideas developed during the Institute.

7. Selection, purchase and shipment of books and materials for participants' use in follow-on activities and training projects in South Africa.

Orientation:

The host institution should plan to conduct either a pre-program needs assessment if time allows, or a needs assessment upon the arrival of the participants. The Institute Director should be prepared to adjust program emphasis as necessary to respond to participants' professional concerns.

The Public Affairs Section of the U.S. Embassy, Pretoria, will hold a pre-departure orientation for all participants in South Africa. The grantee institution will be expected to provide general orientation materials for this meeting. This material might include a tentative program outline with suggested goals and objectives, relevant background information about the U.S. institutions and individuals involved in the project, and information about the local housing, climate, and available services.

Program Administration:

All Summer Institute programming and administrative logistics, management of the academic program and the educational tour, and on-site arrangements will be the responsibility of the grantee institution. The grantee institution is responsible for arrangements for lodging, food, maintenance and local travel for

participants while at the host institution and in Washington, DC. The grantee institution should strive to balance cost-effectiveness in accommodations and meal plans with flexibility for differing diets and personal habits among the participants. Single rooms or housing in residential suites, which offer privacy, are preferable.

The Bureau will provide the grantee institution with participants' curricula vitae and travel itineraries and will be available to offer guidance throughout the Institute. The Bureau will arrange participants' international travel. The participants will arrive directly at the Institute site from their home countries. It is expected that the Institute program staff will make arrangements to have participants met upon arrival at the airport nearest the host institution. Departures will be from Washington, DC. Participants will be given international roundtrip tickets, which will include the leg from the host institution to Washington, DC, if necessary.

The Institute staff will plan for ground transportation to and from Washington area airports.

Proposals should describe the available health care system and the plan to provide health care access to Institute participants. The Department of State will provide limited health insurance coverage to all participants. The host institution will be responsible for enrolling the participants in the insurance program with materials supplied by the Department.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: FY 2007.

Approximate Total Funding: $200,000.

Approximate Number of Awards: 1.

Approximate Average Award: $200,000.

Anticipated Award Date: Pending availability of funds, April 1, 2007.

Anticipated Project Completion Date: July 21, 2007.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by accredited, post-secondary educational institutions meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements:

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant, in an amount up to $200,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information to Request an Application Package: Please contact the African Programs Branch, ECA/A/E/AF, Room 232, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, tel: (202) 453–8119 and fax (202) 453–8121, e-mail: *gilpinvr@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/AF–07–01 located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

Please specify Bureau Program Officer, Valerie Gilpin and refer to the Funding Opportunity Number ECA/A/E/AF–07–01 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via the Internet:

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm,* or from the Grants.gov Web site at *http://www.grants.gov.* Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence To All Regulations Governing The J Visa. The Bureau of

Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements.

ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547; Telephone: (202) 203–5029; FAX: (202) 453–8640.

Please refer to Solicitation Package for further information.

IV.3d.2 Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation. Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and are usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) Instructional costs (for example: instructors' salaries, honoraria for outside speakers, educational course materials);

(2) Lodging, meals, and incidentals for participants;

(3) Expenses associated with cultural activities planned for the group of

participants (for example: tickets, transportation);

(4) Administrative costs as necessary.

(5) U.S. ground transportation costs to U.S. appointments, meetings and to/from airports.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline And Methods Of Submission:

Application Deadline Date: Friday, February 2, 2007.

Reference Number: ECA/A/E/AF–07–01.

Methods of Submission:

Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications. Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and 8 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/AF–07–01, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section at the U.S. embassy for its review.

IV.3f.2—Submitting Electronic Applications. Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to:Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time.

E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea/plan: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Proposals should demonstrate effective use of community and regional resources to enhance the cultural and educational experiences of participants. A detailed agenda and relevant work plan should demonstrate how the institution will meet the program's objectives. Proposals should show substantive program activities and must adhere to the program guidelines described above.

2. Institutional Capacity: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals.

3. Multiplier effect/impact: Proposed programs should strengthen long-term

mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. Support of Diversity: Proposals should demonstrate the applicant's commitment to promoting the awareness and understanding of diversity. Program administrators should strive for diversity among Institute staff, university students, and the host communities which interact with participants.

5. Evaluation and Follow-on Activities: Proposals should include a plan to evaluate the program's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to link outcomes to original project objectives is recommended. Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

6. Cost-effectiveness and Cost Sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions. Homestays are not allowed as a grant-funded or cost-sharing item.

VI. Award Administration Information

VI.1a. Award Notices. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants*; *http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus two copies of the following reports: A final program and financial report no more than 90 days after the expiration of the award.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Valerie Gilpin, African Programs Branch, ECA/A/E/AF, Room 232, Reference Number ECA/A/E/AF–07–01, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, tel: (202) 453–8119 and fax (202) 453–8121, e-mail: *gilpinvr@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/AF–07–01.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: November 16, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E6–19810 Filed 11–21–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Delegation of Authority No. 295]

Delegation by the Secretary of State to the Under Secretary for Arms Control and International Security of Authorities in Executive Order 13382

By virtue of the authority vested in me as Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), I hereby delegate to the Under Secretary for Arms Control and International Security the functions conferred on the Secretary of State in Executive Order 13382 of June 28, 2005.

Any act, executive order, regulation or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation or procedure as amended from time to time.

Notwithstanding this delegation of authority, the Secretary or the Deputy Secretary may at any time exercise any authority or function delegated by this delegation of authority.

This delegation of authority shall be published in the **Federal Register**.

Dated: November 14, 2006.

Condoleezza A. Rice,

Secretary of State, Department of State.

[FR Doc. E6–19764 Filed 11–21–06; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–04–19856]

Pipeline Safety: Notice to Operators of Natural Gas and Hazardous Liquid Pipelines To Accurately Locate and Mark Underground Pipelines Before Construction-Related Excavation Activities Commence Near the Pipelines

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: This advisory reminds and reinforces the importance of safe locating excavation practices near underground pipelines. PHMSA's pipeline safety regulations require pipeline operators to implement damage prevention programs to protect underground pipelines during construction related excavation. In addition, PHMSA recommends pipeline operators excavating in areas populated with other pipelines and utilities follow all consensus best practices and guidelines developed by the Common Ground Alliance. Recent serious incidents especially reinforce the importance of accurately locating and marking pipelines and highlight an urgent need for pipeline operators to review how they implement their damage prevention programs to prevent further accidents caused by construction related damage. This Advisory Bulletin provides guidance on how to do this.

ADDRESSES: This document can be viewed on the PHMSA home page at: *http://www.phmsa.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Joy Kadnar, (202) 366–0568, or by e-mail at *Joy.Kadnar@dot.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

Recently several construction related incidents have caused damage to underground natural gas and hazardous liquid pipelines in several States, including California, Texas, Virginia, and Wyoming. Some of these incidents have resulted in deaths, injuries, property damage, and disruption to communities. Following an appropriate damage prevention program is the best way to prevent such incidents in the future.

This is the second bulletin PHMSA has issued on locating damage prevention this year. In Advisory Bulletin 06–01, published in the **Federal Register** on January 17, 2006 (71 FR 2613), we described other preventable accidents caused by construction-related damage. Advisory Bulletin 06–01 specifically called on operators to ensure that individuals critical to damage prevention at construction sites are qualified to perform the necessary safety tasks. These tasks include one-call notifications, line locating and marking, and inspection of construction activities. In Advisory Bulletin 02–01, published in the **Federal Register** on May 24, 2002 (67 FR 36667), we pointed to the best practices on damage prevention found in the Common Ground Study and urged operators to follow them (see *http://ops.dot.gov/init/prevent/damage.htm*). The Common Ground Alliance is continuing the work on developing best practices begun with the Common Ground Study. These best practices are widely accepted as providing the basis for conducting safe locating excavation near pipelines.

Investigations by PHMSA and its State partners continue to show that the pipeline operators involved in construction related incidents may not always comply with Federal pipeline safety regulations or their own construction and maintenance practices. Among the problems discovered are the following:

- Pipeline operators do not always follow their procedures for constructing, repairing, ditching, and backfilling in areas where there are existing pipelines. Typically, procedures prohibit machine excavation within two feet of existing pipelines.
- Inspectors working for pipeline operators at construction sites sometimes fail to assist the operator's employees, the operator's contractors, and third-party construction contractors in verifying the marked locations of the existing pipeline facilities.
- Operators do not always verify pipeline ''as-built'' drawings and make them available to locators and excavators at construction sites before activities began.
- Operators do not always mark pipelines at cross-overs.
- In locations with parallel pipelines, operators sometimes mark the wrong pipeline.
- Pipeline operators do not always correctly mark all pipelines in the vicinity of the construction and maintenance activities, and sometimes fail to assign personnel skilled enough to observe excavation and backfilling tasks.

Good procedures can prevent accidents only if they are followed.

II. Advisory Bulletin (ADB–06–03)

To: Owners and Operators of Natural Gas and Hazardous Liquid Pipeline Systems.

Subject: Accurately Locating and Marking Underground Pipelines Before Construction-Related Excavation Activities Commence Near the Pipelines.

Advisory: Construction-related excavation damage continues to be one of the three leading causes of pipeline damage. PHMSA continues to find pipeline operators damaging regulated pipelines, production and gathering pipelines, and other utilities adjacent to where construction and maintenance is being performed. This damage jeopardizes the safety of excavators, pipeline employees, construction personnel, and others in the vicinity of the excavation. To guard the integrity of buried pipelines and prevent injury, death, and property and environmental damage, PHMSA advises pipeline operators to take the following damage prevention measures:

- Use safe locating excavation practices. Follow your procedures and processes for excavation and backfill. When constructing a new pipeline, honor the marking of existing pipelines.
- Locate and mark pipelines accurately before locating excavation begins. Do not rely solely on maps, drawings, or other written materials to locate pipelines.
- Make sure that individuals locating and marking the pipelines have the knowledge, skills, and abilities to read and understand pipeline alignment and as-built drawings, and that they know what other buried utilities exist in the construction area.
- Make sure that individuals locating and marking the pipelines have up-to-date pipeline alignment and as-built drawings.
- Make sure that individuals locating and marking the pipelines are familiar with state and local requirements on marking.
- Mark all pipelines, including laterals. This is especially important in areas where there is a considerable amount of new pipeline and utility construction.
- Consider environmental conditions such as rain and snow when selecting marking methods.
- In areas where the pipelines are curved or make sharp bends to avoid other utilities or obstructions, consider the visibility and frequency of markers.
- Confirm the accuracy of pipe locating before excavation begins. This applies when the pipeline operator conducts the excavation using its own employees, a contractor, or a third party.

• Use qualified personnel for locating and marking pipelines. At a minimum, they should have received appropriate training such as that outline in the National Utility Locating Contractors Association locator training standards and practices.

• Make sure excavators have sufficient information about underground pipelines at the construction site to avoid damage to the pipeline. Facilitate communication during the construction activity.

• Calibrate tools and equipment used for line locating and make sure they are in proper working order.

• Individually mark pipelines located within the same trench where possible.

• Follow the best practices on locating and marking pipelines developed by the Common Ground Alliance.

• When pipelines are hit or almost his during excavation, evaluate the practices and procedures in use before continuing the construction activity.

Operators should use the full range of safe locating excavation practices. In particular, pipeline operators should ensure the use of qualified personnel to accurately locate and mark the location of its underground pipelines.

Authority: 49 U.S.C. chapter 601; 49 CFR 1.53.

Issued in Washington, DC, on November 17, 2006.

Jeffrey D. Wiese,

Acting Deputy Associate Administrator for Pipeline Safety

[FR Doc. 06–9354 Filed 11–17–06; 3:36 pm]

BILLING CODE 4910–10–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2006–25803; Notice 1]

Pipeline Safety: Request for Waiver; Kinder Morgan Louisiana Pipeline, L.L.C.

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice of Intent to Consider Waiver Requests.

SUMMARY: Kinder Morgan Louisiana Pipeline L.L.C. (KMLP) requests a waiver to use a 0.80 design factor in the steel pipe design formula for Class 1 locations on Leg 1 of its proposed natural gas interstate Kinder Morgan Louisiana Pipeline. The waiver will allow KMLP to design, construct and operate Leg 1 of its pipeline at hoop stresses up to 80 percent of the specified minimum yield strength (SMYS) in Class 1 locations. KMLP seeks relief from the related capacity design requirements for pressure relieving and pressure limiting stations on the same segment of the proposed pipeline.

DATES: Persons interested in submitting comments regarding this waiver request must do so by December 22, 2006.

ADDRESSES: Comments should reference Docket No. PHMSA–2006–25803 and may be submitted in the following ways:

• The DOT Web site: *http://dms.dot.gov.* To submit comments on the DOT electronic docket site, click ''Comments/Submissions,'' click ''Continue,'' fill in the requested information, click ''Continue,''enter your comment, then click ''Submit.''

• Fax: 202–493–2251.

• Mail: Docket Management System: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

• Hand Delivery: DOT Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• E-Gov Web site: *http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Instructions for submitting comments: You should identify the docket number (PHMSA–2006–25803) at the beginning of your comments. If you submit your comments by mail, please submit two copies. If you wish to receive confirmation that PHMSA received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov*, and may access all comments received by DOT at *http://dms.dot.gov* by performing a simple search for the docket number.

Note: All comments will be posted without changes or edits to *http://dms.dot.gov*, including any personal information provided.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Alan Mayberry by telephone at (202) 366–5124; by fax at (202) 366–4566; by mail at DOT, Pipeline and Hazardous Materials Safety Administration, Pipeline Safety Program, 400 Seventh Street, SW., Room 2103, Washington, DC 20590; or by e-mail at *alan.mayberry@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Kinder Morgan Louisiana Pipeline L.L.C. (KMLP) requests a waiver of compliance from certain regulatory requirements in 49 CFR 192.111 and 192.201 for Class 1 locations on Leg 1 only of its proposed natural gas interstate pipeline. KMLP specifically requests a waiver to allow the use of a 0.80 design factor in the steel pipe design formula in § 192.105 in lieu of the design factor of 0.72 specified § 192.111 for Class 1 locations. The waiver will allow KMLP to design, construct and operate Leg 1 of its pipeline at hoop stresses up to 80 percent of the specified minimum yield strength (SMYS) in Class 1 locations. KMLP neither seeks a waiver from any other design factors, nor for any other segments of its pipeline.

A waiver allowing an increase of the design factor from 0.72 to 0.80 in the steel pipe design formula in § 192.105 requires a modification in the required design capacities of pressure relieving and limiting stations installed to protect the pipeline. Therefore, KMLP also requests a waiver of § 192.201(a)(2)(i), which prescribes the design capacity requirements for pressure relieving and limiting stations on pipelines with a maximum allowable operating pressure (MAOP) of 60 pounds per square inch gauge (psig) or more. KMLP specifically wants to design the pressure relieving and pressure limiting stations on Leg 1 of its pipeline such that the maximum pressure will not exceed the MAOP plus 4 percent or the pressure that produces a hoop stress of 83 percent of SMYS, whichever is lower.

System Description

KMLP plans to construct and operate its pipeline to deliver approximately 3,395,000 Dekatherms per day (Dth/d) of regasified liquefied natural gas (LNG) from the Sabine Pass LNG terminal (currently under development) in Cameron Parish, Louisiana (LA), to markets in the eastern half of the United States. The pipeline will consist of two legs and two laterals. The pressure to operate the pipeline will be supplied by the LNG terminal so the proposed project does not include the construction of compressor stations.

Four major segments comprise the KMLP pipeline project as follows:

• Leg 1 is a 137-mile, 42-inch diameter, pipeline running

northeasterly from within the LNG terminal in Cameron Parish, LA, to an interconnection with a Columbia Gulf Transmission Company pipeline in Evangeline Parish, LA. Along this route, the pipeline connects to ten or more interstate and intrastate transmission pipelines and has a peak day capacity of approximately 2,130,000 Dth/d. This is the only leg of the pipeline to which the waiver will apply.

- Leg 2, is a 1-mile, 36-inch diameter pipeline, running northerly from the LNG terminal to an interconnection with a Natural Gas Pipeline Company of America (NGPL) pipeline, located approximately 0.41 miles north of the terminal. This leg is entirely within Cameron Parish, LA.
- The Florida Gas Transmission (FGT) lateral is 2.2-mile, 24-inch diameter, lateral pipeline extending from Leg 1 to an existing compressor station owned by FGT in Acadia Parish, LA.
- The Bi-Directional Tie-in line is an interconnection between Leg 1 and Leg 2. The tie-in allows Leg 1 to receive gas from NGPL when not receiving gas from the LNG terminal.

Pipeline Design, Specifications and Quality Control

KMLP's waiver petition describes various qualitative characteristics of its proposed pipeline system and it believes the proposed pipeline system meets and/or exceeds current PHMSA pipeline safety regulations. KMLP plans to design and construct the pipeline using steel pipe that conforms to Kinder Morgan's Material Standard M8270. KMLP also states that the Class 1 location line pipe for its proposed pipeline conforms to American Petroleum Institute's (API) 5L Grade X80 and X70 longitudinal or helical seam submerged are welded pipe. This specific pipe is externally coated with plan fusion bonded epoxy (FBE) as specified in Kinder Morgan's Engineering Standard (M8370).

In its waiver request, KMLP states all pipeline welds will undergo nondestructive testing during construction. Crews will repair or remove and replace any weld imperfections discovered during testing that do not meet the pipeline safety regulations. To help and inspect the pipeline, KMLP will install pig launchers and receivers designed to allow the use of inline inspection (ILI) tools. KMLP will survey the pipeline with a multi-channel geometry ILI ''smart'' tool capable of detecting anomalies (including dents and buckles) before commissioning the pipeline for nature gas service. KMLP will also conduct a hydrostatic test of the pipeline to no less than 100 percent of SMYS before the pipeline is placed into service.

Risk Analysis

KMLP stated it conducted a risk analysis for the pipeline project using a proprietary risk assessment program to compare the risks associated with using a 0.80 design criteria for a Class 1 location pipeline with the risks associated with the 0.72 design criteria required by § 192.111. The analysis determined there was no significant increase in the risk associated with using the 0.80 design criteria for this pipeline design and location. The risk analysis considered the following nine risk areas: (1) Stress corrosion cracking, (2) manufacturing defects, (3) weather/outside factors, (4) welding and fabrication defects, (5) equipment failure, (6) equipment impact (third party damage), (7) external corrosion, (8) external corrosion and (9) incorrect operation. For the first five of these risk areas, the analysis showed zero or a negligible increase in the risk of failure between 0.70 and 0.80 design factor pipelines.

Though KMLP's risk analysis did not show a significant risk increase, it did find a slightly higher degree of risk in the areas of external and internal corrosion when using a 0.80 design factor as compared to a 0.72 design factor. KMLP attributes this to the thinner pipe wall designed using a 0.80 design factor as compared to a pipe wall using a 0.72 design factor. Additionally, the risk analysis shows a slightly higher risk for incorrect operation because a pipe designed with a 0.80 design factor operates a higher stress levels and with a smaller margin between MAOP and SMYS. KMLP plans to employ several control and prevention programs to mitigate these slightly higher risks,

PHMSA will consider a KMLP's waiver request and whether its proposal will yield an equivalent or greater degree of safety than currently provided by the regulations. After considering any comments received, PHMSA may grant a waiver to KMLP as proposed, with modifications and conditions, or deny the request. If PHMSA grants a waiver and subsequently determines the effects of the waiver are inconsistent with pipeline safety, PHMSA reserves the right to revoke the waiver at any time.

Authority: 49 U.S.C. 60118(c) and 49 CFR 1.53.

Issued in Washington, DC on November 16, 2006.

Theodore L. Willke,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 06–9355 Filed 11–17–06; 3:36 pm]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34951]

Portland & Western Railroad, Inc.—Trackage Rights Exemption—BNSF Railway Company

Pursuant to a trackage rights agreement dated October 30, 2006, between Portland & Western Railroad, Inc. (PNWR), and BNSF Railway Company (BNSF), BNSF has agreed to grant PNWR overhead trackage rights: (a) Between milepost 10.0 in Vancouver, WA, on the BNSF Fallbridge Subdivision, and milepost 0.69 (Main Track 1) and milepost 0.91 (Main Track 2) in Portland, OR; and (b) between milepost 132.5 and milepost 136.5 in Vancouver, WA, on the BNSF Seattle Subdivision, a total distance of approximately 13.31 miles.[1]

The transaction was scheduled to be consummated on or after November 13, 2006. On November 13, 2006, PNWR filed a petition for partial revocation to permit the expiration of the trackage rights on May 30, 2016, the termination date agreed to by the parties.[2] The purpose of the trackage rights is to allow PNWR and BNSF to shift their interchange from Salem or Albany, OR, to Vancouver, WA.[3]

As a condition to this exemption, any employee affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or

[1] A redacted version of the trackage rights agreement between PNWR and BNSF was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The request for a protective order is being addressed in a separate decision.

[2] The petition for partial revocation will be handled in a separate Sub-No. 1 docket in this proceeding.

[3] To accomplish this shift, PNWR will also use trackage rights between Labish, OR, and Portland, OR. *See Portland & Western Railroad, Inc.—Trackage Rights Exemption—Union Pacific Railroad Company,* STB Finance Docket No. 34883 (STB served July 19, 2006).

misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34951, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Four Penn Center Plaza, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103–2808.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Dated: November 17, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–19775 Filed 11–21–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34177]

Iowa, Chicago & Eastern Railroad Corporation—Acquisition and Operation Exemption—Lines of I&M Rail Link, LLC

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Availability of Environmental Appendix and Request for Public Review and Comment.

SUMMARY: The purpose of this notice is to announce the availability of, and invite public review and comment on, the Environmental Appendix prepared by the Dakota, Minnesota and Eastern Railroad Corporation (DM&E) and the Iowa, Chicago & Eastern Railroad Corporation (IC&E), which the railroads submitted to the Board on November 9, 2006. The Environmental Appendix sets forth the contention of DM&E and IC&E that their acquisition of rail lines formerly owned by I&M Rail Link (IMRL) will not materially alter the traffic projections or routings for DM&E's Powder River Basin coal traffic that have already been considered in a separate but related rail construction case, and that therefore no formal analysis of the cumulative impacts of these transactions is required under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.,* or the National Historic Preservation Act of 1966 (NHPA), 16 U.S.C. 470.

Briefly summarized, in a separate proceeding initiated in 1998, four years before the filing of the instant acquisition proceeding, DM&E sought approval to construct and operate some 280 miles of new rail line so that it could reach coal mines in Wyoming's Powder River Basin (PRB) and thereby generate adequate revenue to rehabilitate DM&E's existing rail system in South Dakota and Minnesota (DM&E Construction). During that proceeding it was contemplated that DM&E's PRB coal traffic would move from DM&E's new line to various interchange points with other carriers on DM&E's existing line. One of the interchange points considered in detail was Owatonna, Minnesota, where DM&E's PRB coal traffic was expected to be transferred to the lines that were then owned by IMRL to reach some of the utilities in DM&E's core markets.

Following extensive environmental review, the Board authorized the DM&E Construction in 2002. Following litigation, a remand by the Eighth Circuit Court of Appeals, and subsequent supplemental environmental analysis, the Board once again authorized the DM&E construction project in 2006. Judicial review of that decision is currently pending.

On June 7, 2002, about 5 months after the Board had authorized the DM&E Construction, IC&E filed a notice of exemption in this proceeding to acquire and operate the lines of IMRL. In a related transaction, on August 29, 2002, DM&E and its subsidiary Cedar American Rail Holdings, Inc., filed an application with the Board seeking approval for control of IC&E. In decisions issued on July 22, 2002 and February 3, 2003, the Board allowed both IC&E's acquisition of IMRL and DM&E's control of IC&E to go forward subject to a traffic restriction prohibiting DM&E and IC&E from moving DM&E coal trains to or from the PRB over the newly acquired IMRL lines until the Board could consider what, if any, environmental review of cumulative environmental impacts (that is, impacts from more DM&E coal trains operating over the former IMRL lines as a result of the change in ownership of IMRL than would otherwise have moved over the IMRL lines) was warranted. The Board also directed that it be notified if and when DM&E starts construction of its new rail line and be provided with information regarding any anticipated additional DM&E PRB coal trains that would move on the IMRL lines as a result of the acquisition.

In response to a petition filed by DM&E and IC&E asking that the above conditions should be lifted, the Board issued a decision on October 18, 2006, in the acquisition proceeding. In that decision, the Board agreed with DM&E and IC&E that it is not necessary to wait until DM&E actually begins construction of its new line to determine the level of further environmental review, if any, that is appropriate to consider in the acquisition case any cumulative effects of the construction and acquisition proceedings. The Board further directed DM&E and IC&E to prepare an Environmental Appendix setting out the basis for their contention that the change in ownership of IMRL does not materially alter the traffic projections or routings for DM&E's PRB coal traffic previously considered in the DM&E Construction case and that therefore there is no need for any further environmental review under NEPA or historic review under the NHPA.

The railroads submitted their Environmental Appendix to the Board on November 9, 2006. To afford the public an opportunity to review and comment on DM&E's and IC&E's position, the entire text of the Environmental Appendix has been posted on the Board's Web site. The railroads also have distributed the Environmental Appendix to certain agencies and communities, as well as all of the parties on the Board's service list in the acquisition case and have published newspaper notices.

Interested members of the public are invited to submit comments on any potentially significant impacts related to the cumulative effects, if any, of the acquisition and DM&E Construction to the Board's Section of Environmental Analysis (SEA) by December 11, 2006. Directions on how to submit comments are set forth below.

Based on SEA's consideration of all timely comments and its own independent review of all available environmental information, SEA will make a recommendation to the Board regarding what level of further environmental review, if any, is warranted here. The Board will then determine whether to issue a finding of no significant environmental impact (FONSI), or, alternatively, to prepare either an Environmental Impact Statement or an Environmental Assessment to examine cumulative effects of the two proceedings.

The Environmental Appendix may be viewed on the Board's Web site by going to *http://www.stb.dot.gov* and clicking on ''E-Library,'' then clicking on ''Filings.'' The Environmental Appendix is listed under November 9, 2006, and

is identified by Filing ID No. 218058 and Docket No. FD_34117_0.

If you wish to submit written environmental comments, please provide SEA with a signed original. Environmental comments may also be filed electronically on the Board's Web site, *http://www.stb.dot.gov*, by clicking on the ''E-FILING'' link. Please refer to STB Finance Docket No. 34177 in all correspondence, including e-filings, to the Board in this proceeding. Written comments are due to SEA by December 11, 2006, and should be sent to the following address: Finance Docket No. 34177, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

Please write the following in the lower left-hand corner of the envelope: *Environmental Filing.*

Any questions or requests for additional information about the Board's environmental review process should be directed to Victoria Rutson of the Board's Section of Environmental Analysis at (202) 565–1545.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. E6–19808 Filed 11–21–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34949]

Georgia Southwestern Railroad, Inc.—Acquisition Exemption—The South Western Rail Road Company and Central of Georgia Railroad Company

Georgia Southwestern Railroad, Inc. (GSWR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire (by purchase) pursuant to an agreement entered into with Norfolk Southern Railway Company (NSR) portions of a rail line from two NSR subsidiaries: (1) The South Western Rail Road Company, extending between milepost H–275.00, at Smithville, GA, and milepost H–339.00, at Eufaula, AL; and (2) Central of Georgia Railroad Company, extending between milepost H–333.59 (which equates to milepost L–333.59), at Eufaula, and milepost L–349.00 near White Oak, AL. The total distance of the rail line to be purchased by GSWR is 79.41 miles. GSWR has been leasing and operating the rail line from NSR and will continue as the operator after it purchases the line.

GSWR certifies that its projected annual revenues as a result of this transaction will not result in GSWR's becoming a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

The transaction was expected to be consummated on or shortly after November 8, 2006.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34949, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 15, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–19690 Filed 11–21–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Philadelphia Indemnity Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 5 to the Treasury Department Circular 570, 2006 Revision, published June 30, 2006, at 71 FR 37694.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company:

Philadelphia Indemnity Insurance Company (NAIC #18058). *Business Address:* One Bala Plaza, Suite 100, Bala Cynwyd, Pennsylvania 19004. *Phone:* (610) 617–7900 x7680. *Underwriting Limitation* b/: $59,578,000. *Surety Licenses* c/: AL, AK, CA, CO, DE, DC, HI, ID, IL, IN, IA, KY, MD, MA, MN, MS, MO, MT, NE, NV, NH, NJ, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. *Incorporated In:* Pennsylvania.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2006 Revision, to reflect this addition. Certificates of Authority expire on June 30th each year, unless revoked prior to that data. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (*see* 31 CFR part 223). A list of qualified companies is published annually as of July 1 in the Circular, which outlines details as to underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570*.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: November 9, 2006.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 06–9327 Filed 11–21–06; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held on the National Book-Entry System

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury is announcing a new fee schedule for the transfer of book-entry securities maintained on the National Book-Entry System (NBES). This fee schedule will take effect on January 2, 2007. The basic fee for the transfer of a Treasury book-entry security will increase from $.22 to $.26. The Federal Reserve funds movement fee will increase from $.04 to $.05, resulting in a combined fee of $.31 for each Treasury securities transfer.

In addition to the basic fee, off-line transfers have a surcharge. The surcharge for an off-line Treasury book-

entry transfer in CY 2007 will be $33.00, unchanged from CY 2006.

DATES: *Effective Date:* January 2, 2007.

FOR FURTHER INFORMATION CONTACT: James Sharer, Government Securities Specialist, Bureau of the Public Debt, 799 9th Street, NW., Washington, DC 20239, telephone (202) 504–3658.

Kristina Yeh, Financial Systems Analyst, Bureau of the Public Debt, 799 9th Street, NW., Washington, DC 20239, telephone (202) 504–3679.

Ed Errigo, Financing Specialist, Bureau of the Public Debt, 799 9th Street, NW., Washington, DC 20239, telephone (202) 504–3611.

Terri Roddy, Financial Systems Analyst, Bureau of the Public Debt, 200 3rd Street, Room 527, Parkersburg, WV 26106, telephone (304) 480–6035.

SUPPLEMENTARY INFORMATION: On October 1, 1985, the Department of the Treasury established a fee structure for the transfer of Treasury book-entry securities maintained on NBES.

Based on the latest review of book-entry costs and volumes Treasury will increase its basic fee from the current levels in effect. Effective January 2, 2007, the basic fee will increase from $.22 to $.26 for each Treasury securities transfer and reversal sent and received, changed from fees in effect since CY 2006. The surcharge for an off-line Treasury book-entry transfer will be $33.00, unchanged from CY 2006.

The basic transfer fee assessed to both sends and receives is reflective of costs associated with the processing of a security transfer. The off-line surcharge reflects the additional processing costs associated with the manual processing of off-line securities transfers.

The Treasury does not charge a fee for account maintenance, the stripping and reconstitution of Treasury securities, or the wires associated with original issues, or interest and redemption payments. The Treasury currently absorbs these costs and will continue to do so.

The fees described in this notice apply only to the transfer of Treasury book-entry securities held on NBES. Information concerning book-entry transfers of government Agency securities, which are priced by the Federal Reserve System, is set out in a separate **Federal Register** notice published by the Board of Governors of the Federal Reserve System on November 22, 2006, Docket No. OP–1269.

The following is the Treasury fee schedule that will take effect on January 2, 2007, for the book-entry transfers on NBES:

TREASURY-NBES FEE SCHEDULE [1]

Effective January 2, 2007 (In Dollars)

Transfer type	Basic fee	Off-line surcharge	Funds [2] movement fee	Total fee
On-line transfer originated	.26	N/A	.05	.31
On-line transfer received	.26	N/A	.05	.31
On-line reversal transfer originated	.26	N/A	.05	.31
On-line reversal transfer received	.26	N/A	.05	.31
Off-line transfer originated	.26	33.00	.05	33.31
Off-line transfer received	.26	33.00	.05	33.31
Off-line account switch received	.26	.00	.05	.31
Off-line reversal transfer originated	.26	33.00	.05	33.31
Off-line reversal transfer received	.26	33.00	.05	33.31

[1] The Treasury does not charge a fee for account maintenance, the stripping and reconstituting of Treasury securities, or the wires associated with original issues, or interest and redemption payments. The Treasury currently absorbs these costs and will continue to do so.

[2] The funds movement fee is not a Treasury fee, but is charged by the Federal Reserve for the cost of moving funds associated with the transfer of a Treasury book-entry security.

Authority: 31 CFR 357.45.

Dated: September 20, 2006.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. E6–19601 Filed 11–21–06; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 9452

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 9452, Filing Assistance Program (Do you have to file a Federal Income Tax Return?).

DATES: Written comments should be received on or before January 22, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Filing Assistance Program (Do you have to file a Federal Income Tax Return?).

OMB Number: 1545–1316.

Form Number: 9452.

Abstract: Form 9452 aids individuals in determining whether it is necessary to file a Federal tax return. Form 9452 will not be collected by IRS; it is to be used by individuals at their discretion. Form 9452 is used by the Service's taxpayer assistance programs. It is also available on the internet, and it is distributed in an annual mailout to taxpayers.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,650,000.

Estimated Time Per Respondent: 30 min.

Estimated Total Annual Burden Hours: 825,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (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 estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 2, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–19773 Filed 11–21–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 9783T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 9783T, EFTPS Individual Enrollment with Third Party Authorization Form.

DATES: Written comments should be received on or before January 22, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: EFTPS Individual Enrollment with Third Party Authorization Form.

OMB Number: 1545–XXXX.

Form Number: 9783T.

Abstract: The information derived from the Form 9783T will allow individual taxpayers to authorize a Third Party to pay their federal taxes on their behalf using the Electronic Federal Tax Payment System (EFTPS).

Current Actions: This is a new form.

Type of Review: New collection.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 10 min.

Estimated Total Annual Burden Hours: 167.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (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 estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 2, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–19781 Filed 11–21–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Publication of the Tier 2 Tax Rates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Publication of the tier 2 tax rates for calendar year 2007 as required by section 3241(d) of the Internal Revenue Code (26 U.S.C. 3241). Tier 2 taxes on railroad employees, employers, and employee representatives are one source of funding for benefits under the Railroad Retirement Act.

DATES: The tier 2 tax rates for calendar year 2007 apply to compensation paid in calendar year 2007.

FOR FURTHER INFORMATION CONTACT: Ligeia M. Donis, CC:TEGE:EOEG:ET1, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 622–0047 (not a toll-free number).

TIER 2 TAX RATES: The tier 2 tax rate for 2007 under section 3201(b) on employees is 3.9 percent of compensation. The tier 2 tax rate for 2007 under section 3221(b) on employers is 12.1 percent of compensation. The tier 2 tax rate for 2007 under section 3211(b) on employee representatives is 12.1 percent of compensation.

Dated: November 9, 2006.

Nancy Marks,

Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities).

[FR Doc. E6–19777 Filed 11–21–06; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
November 22, 2006

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Arenaria ursina (Bear Valley sandwort), Castilleja cinerea (ash-gray Indian paintbrush), and Eriogonum kennedyi var. austromontanum (southern mountain wild-buckwheat); Proposed Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU80

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Arenaria ursina (Bear Valley sandwort), Castilleja cinerea (ash-gray Indian paintbrush), and Eriogonum kennedyi var. austromontanum (southern mountain wild-buckwheat)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for *Arenaria ursina* (Bear Valley sandwort), *Castilleja cinerea* (ash-gray Indian paintbrush), and *Eriogonum kennedyi* var. *austromontanum* (southern mountain wild-buckwheat) under the Endangered Species Act of 1973, as amended (Act). In total approximately 1,511 acres (ac) (611 hectares (ha)) of land in San Bernardino County, California, fall within the boundaries of the proposed critical habitat designation for these three plant species. The majority of the lands within the proposed designation are under Federal ownership (1,394 ac (564 ha)); however, some State (4 ac (2 ha)) and private lands (112 ac (45 ha)) are also included.

DATES: We will accept comments from all interested parties until January 22, 2007. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by January 8, 2007.

ADDRESSES: If you wish to comment on the proposed rule, you may submit your comments and materials identified by RIN 1018–AU80, by any of the following methods:

(1) You may send comments by electronic mail (e-mail) to *fw8cfwocomments@fws.gov.* Include ''RIN 1018–AU80'' in the subject line.

(2) You may fax your comments to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office at 760–431–9624.

(3) You may mail or hand-deliver your written comments and information to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011.

(4) You may submit your comments at the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the instructions for submitting comments.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office at the above address (telephone 760–431–9440).

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the address or telephone number listed under **ADDRESSES**. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation.

(2) Specific information on the amount and distribution of *Arenaria ursina, Castilleja cinerea,* or *Eriogonum kennedyi* var. *austromontanum* habitat, and what areas that were occupied at the time of listing that contain features essential for the conservation of the species should be included in the designation and why, and what areas that were not occupied at the time of listing are essential to the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities.

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). Please submit e-mail comments to *fw8cfwocomments@fws.gov.* Please include ''Attn: RIN 1018–AU80'' in your e-mail subject line and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760–431–9440. Please note that comments must be received by the date specified in **DATES** in order to be considered.

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

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under section 4(b)(2) of the Act, there are significant limitations on the regulatory effect of designation under section 7(a)(2) of the Act. In brief, (1) designation provides additional protection to habitat only where there is a federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require

specific actions to restore or improve habitat.

Currently, only 476 species, or 36 percent of the 1,311 listed species in the United States under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,311 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, the section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas proposed for designation, we evaluate the benefits of designation in light of *Gifford Pinchot*. In that case, the Ninth Circuit invalidated the Service's regulation defining ''destruction or adverse modification of critical habitat.'' In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This proposed critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this proposed designation. The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a timeframe that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, the Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

Background

This proposed rule addresses critical habitat for *Arenaria ursina* (Bear Valley sandwort), *Castilleja cinerea* (ash-gray Indian paintbrush), and *Eriogonum kennedyi* var. *austromontanum* (southern mountain wild-buckwheat) because they largely occupy the same habitat, referred to as pebble plain habitat. For additional information on the biology and ecology of these species, refer to the final rule listing them as threatened that was published in the **Federal Register** on September 14, 1998 (63 FR 49006). It is our intention to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule.

Pebble Plain Habitat

Pebble plains are characteristically treeless openings surrounded by montane pinyon-juniper woodland or coniferous forest. This ''dry meadow-like'' habitat, which occurs on clay soils covered with quartzite pebbles, is unique to the San Bernardino Mountains of San Bernardino County, California. Pebble plains are remnants of a Pleistocene lake bed (Derby 1979, pp. 11–14; Krantz 1983, pp. 9–10). Pebble plains are the result of a combination of soil and climatic factors that support a unique assemblage of plant species, some of which are restricted endemics while others represent disjunct occurrences of species more common elsewhere (USFS 2002, p. 12).

Pebble plain vegetation is comprised of various combinations of the 73 plant taxa recorded from pebble plains (USFS 2002, p. 12). While *Arenaria ursina* and *Eriogonum kennedyi* var. *austromontanum* were the two indicator species that characterized pebble plains when they were first described as a unique habitat type (as pavement plains) (Derby 1979, p. 77), *Ivesia argyrocoma* (silver-haired ivesia) is also considered a strong indicator of pebble plain habitat (USFS 2002, p. 14). *Castilleja cinerea* is nearly restricted to pebble plain habitat but does occur in non-pebble plain habitat, such as upper montane coniferous forest, meadows, and pinyon-juniper woodland. These non-pebble plain areas lack either one or both of the two former indicator species and quartzite pebbles or cobbles.

Each of the three listed pebble plains species has a natural mosaic distribution among the various pebble plain complexes. The distribution of each plant may change locally over time but generally extends throughout a pebble plain complex. The fact that these three plant taxa essentially occupy the same habitat is reflected here in the

description and mapping of the critical habitat units and subunits. In a study on the distribution of pebble plain plant species within three pebble plains in the San Bernardino Mountains, Derby (1979, p. 77–78) concluded that, while perennial plant species present on pebble plains tend toward evenly spaced overall distributions, some perennial species, including *Arenaria ursina* and *Castilleja cinerea*, are restricted to microhabitat niches within the habitat (such as on northwest exposures). Each of the pebble plain complexes identified by the Forest Service supports all three of the pebble plain species with five exceptions: Coxey Meadow, Rattlesnake, Grinnell Ridge, Snow Valley, and Sugarloaf Ridge (USFS 2002). Coxey Meadow and Rattlesnake complexes do not support any of the three listed species and are not proposed as critical habitat. Grinnell Ridge and Snow Valley complexes support only *C. cinerea*. Grinnell Ridge is not considered in this proposed designation because the area was last surveyed in 1994 and we are unable to determine whether the mapped area represents the species occurrence or the pebble plain boundary (Eliason 2006b, p. 1). Of the five pebble plain complexes mentioned above, only two, Snow Valley and Sugarloaf Ridge, are being proposed as critical habitat for *C. cinerea* and *A. ursina* , respectively.

Pebble plain complexes were first described and delineated by Neal and Barrows (1990, p. 11) who grouped pebble plains that were clearly clustered and isolated from other complexes and presumed to have comparable origins. According to the final listing rule, nine pebble plain complexes were described at that time (Neel and Barrows 1990, pp. 1–33): Arrastre/Union Flat, Big Bear Lake, Coxey Meadow, Gold Mountain, Holcomb Valley, North Baldwin Lake Onyx Ridge/Broom Flat, Sawmill, and South Baldwin Ridge/Erwin Lake. The final listing rule also discussed pebble plains in the Lost Creek area (within the area now referred to as the Grinnell Ridge Complex) and the Snow Valley Ski area (within the area now referred to as Snow Valley Complex). The Grinnell Ridge and Snow Valley areas were named as pebble plain complexes in 2002 (USFS 2002, p. 30, 53). Of the 11 complexes discussed in the listing rule, all except Coxey Meadow were known to be occupied at that time (Table 1).

Each of the three listed species was known to occur in the 1970s, prior to the time of listing, on pebble plains within the area now referred to as the Fawnskin Complex (CNDDB 1997a, 1997b, 1997c) (#12 in Table 1). While this area was not identified in the final listing rule, we consider it to be occupied at the time of listing based on pre-listing occupancy records in our files. Since listing, two other pebble plain complexes have been identified and mapped—Rattlesnake and Sugarloaf Ridge (USFS 2002, p. 57, 66) (#13 and #14, respectively, in Table 1). However, only the Sugarloaf Ridge complex is known to be occupied by the species discussed in this proposed rule.

Species Descriptions

Arenaria ursina (Bear Valley sandwort)

Arenaria ursina is a low tufted perennial plant in the Caryophyllaceae (pink) family. *A. ursina* produces seeds by selfing (self-pollinating) and entomophilous (insect-mediated) outcrossing (O'Brien 1979, p. 80). The seeds of *Arenaria ursina* are flat, reticulate, measure 2 millimeters (mm) (0.079 inches (in)) long, remain in open erect capsules for up to 2 months, and can bounce out of the capsule in a strong wind (O'Brien 1979, p. 81). Small syrphid flies and bees appear to be the primary insect pollinators for this species (O'Brien 1979, p. 82; Freas and Murphy 1990, p. 6). However, Freas and Murphy (1990, pp. 7, 8) state that there is no evidence indicating that either wind- or pollinator-mediated dispersal plays a role in gene flow between pebble plain sites. Therefore, it appears that species persistence in each pebble plain is regulated by internal processes.

Arenaria ursina is found on pebble plains and dry slopes in pinyon and juniper woodland in the northeastern San Bernardino Mountains (63 FR 49006; September 14, 1998). *A. ursina* has one of the most restricted ranges of any of the pebble plain restricted endemic plants, second only to *Eriogonum kennedyi* var. *austromontanum*. *A. ursina* exhibits a patchy distribution within pebble plains and appears to prefer areas with low levels of shade and leaf litter accumulation (Derby 1979, p. 42). Species associated with *A. ursina* include *E. k.* var. *austromontanum, Antennaria dimorpha, Arabis parishii, Dudleya abramsii* spp. *affinis,* and *Ivesia argyrocoma* (USFS 2002, p. 17).

According to the final listing rule, *Arenaria ursina* was known from eight pebble plain complexes in the vicinity of Big Bear and Baldwin Lakes (63 FR 49006). This species was also known to occur in the 1970s, prior to the time of listing, on pebble plains within the area now referred to as the Fawnskin Complex (CNDDB 1997a). As stated above, while this area was not identified in the final listing rule, we consider it to be occupied at the time of listing based on pre-listing occupancy records. Currently, *A. ursina* is known to occupy 10 pebble plain complexes in the vicinity of Big Bear and Baldwin Lakes (USFS 2002, p. 90). This occupancy includes the Sugarloaf Ridge complex, which was found to be occupied by this species about 3 years ago, after the 2002 Pebble Plain Management Guide was finalized (Eliason 2006a, p. 1).

TABLE 1.—PEBBLE PLAIN COMPLEXES IN THE SAN BERNARDINO MOUNTAINS, CALIFORNIA, OCCUPIED AT THE TIME OF LISTING (OTL), CURRENTLY OCCUPIED (CO), OR NOT KNOWN TO BE OCCUPIED AT THE TIME OF LISTING OR CURRENTLY (NO) FOR EACH OF THE THREE LISTED PEBBLE PLAIN SPECIES

[Pebble plain complex names follow USFS 2002]

	Pebble plain complex	*Arenaria ursina*	*Castilleja cinerea*	*Eriogonum kennedy* var. *austromontanum*
1	Arrastre/Union Flat	OTL, CO	OTL, CO	OTL, CO
2	Big Bear Lake	OTL, CO	OTL, CO	OTL, CO
3	Coxey Meadow	NO	NO	NO
4	Gold Mountain	OTL, CO	OTL, CO	OTL, CO
5	Holcomb Valley	OTL, CO	OTL, CO	OTL, CO
6	North Baldwin Lake	OTL, CO	OTL, CO	OTL, CO
7	Broom Flat (Onyx Ridge)	OTL, CO	OTL, CO	CO
8	Sawmill	OTL, CO	OTL, CO	OTL, CO
9	South Baldwin Ridge/Erwin Lake	OTL, CO	OTL, CO	OTL, CO
10	Grinnell Ridge		OTL.	

TABLE 1.—PEBBLE PLAIN COMPLEXES IN THE SAN BERNARDINO MOUNTAINS, CALIFORNIA, OCCUPIED AT THE TIME OF LISTING (OTL), CURRENTLY OCCUPIED (CO), OR NOT KNOWN TO BE OCCUPIED AT THE TIME OF LISTING OR CURRENTLY (NO) FOR EACH OF THE THREE LISTED PEBBLE PLAIN SPECIES—Continued

[Pebble plain complex names follow USFS 2002]

	Pebble plain complex	*Arenaria ursina*	*Castilleja cinerea*	*Eriogonum kennedy* var. *austromontanum*
11	Snow Valley		OTL, CO.	
12	Fawnskin	OTL, CO	OTL, CO	OTL, CO
13	Rattlesnake	NO	NO	NO
14	Sugarloaf Ridge	CO	CO.	

Castilleja cinerea (ash-gray paintbrush)

Castilleja cinerea is a semi-parasitic perennial in the Scrophulariaceae (figwort) family. Recent taxonomic studies (Olmstead et al. 2001, p. 350) have placed the genus *Castilleja* and other plant genera formerly in the Scrophulariaceae into the Orobanchaceae (broomrape) family. This proposed rule includes a change to the list of Endangered and Threatened Plants at 50 CFR 17.12(h) to reflect this taxonomic change. This taxonomic change was explained by Olmstead (2002, pp. 13–22) and is accepted here.

Known hosts for this root-parasite in pebble plain habitat include *Eriogonum kennedyi* var. *austromontanum, E. k.* var. *kennedyi*, *E. wrightii* var. *subscaposum*, and in non-pebble plain meadow margin habitat include *Artemisia tridentata*, *A. nova*, and *A. ludoviciana* (USFS 2002, p. 92). All *Castilleja* species are parasitic, and this species is distinguished from other *Castilleja* in its range by short-haired stems and leaves, yellowish flowers, calyx lobes of equal length, and perennial nature (63 FR 49006; September 14, 1998).

The seeds of *Castilleja cinerea* are loosely held in the open erect capsules, taking about a month to fall onto the ground after maturation. The dispersal agent (such as wind or foraging animals) for this species is unknown. Moreover, seeds are the product of self-pollinating outcrossing (O'Brien 1979, p. 67), and insect visitation does not appear significant for *Castilleja* species (Duffield 1972, pp. 110–114; O'Brien 1979, p. 69; Freas and Murphy 1990, p. 6).

Castilleja cinerea is usually found on pebble plain habitat, but also occurs in other habitats including upper montane coniferous forest, meadows, and pinyon-juniper woodland (USFS 2002, pp. 17, 92). Species associated with *C. cinerea* on pebble plain habitat include *Artemisia nova, Eriogonum kennedyi* var. *austromontanum, Erigeron aphanactis* (fleabane daisy), and *Poa secunda* ssp. *secunda* (pine bluegrass) (USFS 2002, p. 17).

According to the final listing rule (63 FR 49006; September 14, 1998), *Castilleja cinerea* was known from fewer than 20 localities, mostly on pebble plains, but also from several localities in pine forest habitats near the Snow Valley Ski area, along Sugarloaf Ridge (part of the Sawmill Complex), and in the vicinity of Lost Creek (within the area now referred to as the Grinnell Ridge Complex). This species was also known in the 1970s, prior to the time of listing, to occur on pebble plains within the area now referred to as the Fawnskin Complex and in non-pebble plain meadow margin habitat adjacent to Big Bear and Baldwin lakes (CNDDB 1997b). While these areas were not identified in the final listing rule, we consider them to be occupied at the time of listing based on pre-listing occupancy records in our files (CNDDB 1997b). This species is now known to occur in 11 pebble plain complexes (see Table 1 above) and several non-pebble plain habitat areas (USFS 2002, p. 92). The 11 pebble plain complexes include the Sugarloaf Ridge Complex, which was found to be occupied by this species about 3 years ago, after the 2002 Pebble Plain Management Guide was finalized (Eliason 2006a, p. 1). While the pebble plain in the Grinnell Ridge Complex was known to be occupied by *Castilleja cinerea* at the time of listing (Table 1), the area was last surveyed in 1994 and we are unable to determine whether the mapped area represents the species occurrence or the pebble plain boundary (Eliason 2006b, p. 1). Additional information is needed for us to determine if this area should be considered currently occupied by this species.

Eriogonum kennedyi var. *austromontanum* (southern mountain wild-buckwheat)

Eriogonum kennedyi var. *austromontanum* is a woody-based, cushion-like, perennial plant in the Polygonaceae (buckwheat family). This species is often confused with *E. k.* var. *kennedyi, E. k.* var. *alpigenum,* or *E. wrightii* spp. *subscaposum*, but it can be distinguished from these taxa by its longer, unbranched flower stalks, leaves, fruits, and involucres (63 FR 49006; USFS 2002, pp. 93–94).

Eriogonum kennedyi var. *austromontanum* produces seeds by self-pollinating and insect-mediated outcrossing (O'Brien 1979, p. 97). Numerous types of wasps, bees, and flies have been recorded as pollinators on this plant (O'Brien 1979, p. 99; Freas and Murphy 1990, p. 6). This species produces single-seeded fruits, the majority of which remain at the base of the parent plant after falling off (O'Brien 1979, p. 99). While Freas and Murphy (1990, pp. 7, 8) detected seeds of either *E. k.* var *austromontanum* or *E. k.* var. *kennedyi* in seed traps placed along pebble plain-forest edges, they state that there is no evidence indicating that either wind- or pollinator-mediated dispersal plays a role in gene flow between pebble plain sites. Therefore, it appears that species persistence in each pebble plain is regulated by internal processes.

Eriogonum kennedyi var. *austromontanum* has the most restricted range of any of the pebble plain restricted endemic plants, although it may be the dominant plant on pebble plains where it occurs. It was one of the taxa identified as characteristic of the unique pebble plain habitat first described by Derby (1979, p. 32). Although this taxon typically occupies clay soils with pebbles or cobbles, *E. k.* var. *austromontanum* also occurs on sandy, clay soils (*e.g.*, Burnt Flat) or clay soils lacking pebbles or cobbles (*e.g.*, areas at North Baldwin Lake) (USFS 2002, p. 94). This species prefers areas with low levels of shade and leaf litter accumulation (Derby 1979, p. 42).

Eriogonum kennedyi var. *austromontanum* was known from seven pebble plain complexes at the time of listing (63 FR 49006; September 14, 1998) (see Table 1 above). This species was also known in the 1970s, prior to the time of listing, to occur on

pebble plains within the area now referred to as the Fawnskin Complex (CNDDB 1997c). As stated above, while this area was not identified in the final listing rule, we consider it to be occupied at the time of listing based on pre-listing occupancy records in our files (CNDDB 1997c). The species is now known to occur in nine pebble plain complexes (see Table 1 above) including the Broom Flat Complex that was not known to be occupied by this species at the time of listing (USFS 2002, pp. 62, 94). However, the Broom Flat complex was known to be occupied by *Arenaria ursina* and *Castilleja cinerea* at the time of listing.

Threats to Pebble Plain Habitat

Major threats to the listed pebble plains species include development on private lands, off-highway vehicle (OHV) use off of designated routes, road maintenance activities, ground disturbance that affects surface hydrology, mining activities, recreational activities, habitat fragmentation, and the invasion of nonnative *Bromus tectorum* (cheatgrass). See the ''Special Management Considerations or Protection'' section for further discussion of the threats to the listed pebble plains species.

Previous Federal Actions

Arenaria ursina, Castilleja cinerea, and *Eriogonum kennedyi* var. *austromontanum* were federally listed as threatened on September 14, 1998 (63 FR 49006). These species are not currently listed as endangered, threatened, or rare by the State of California. At the time these plants were federally listed, the Service compared the value of designating critical habitat to the detrimental effects of increased collection, vandalism, and other human activities. The Service found, based on these factors, that designation of critical habitat for *A. ursina, C. cinerea,* and *E. k.* var. *austromontanum* was not prudent. On September 13, 2004, the Center for Biological Diversity and the California Native Plant Society filed a joint lawsuit challenging the Service's failure to designate critical habitat for six California plant species, including *A. ursina, C. cinerea*, and *E. k.* var. *austromontanum* (*Center for Biological Diversity, et al.* v. *Norton, No. ED CV–04–1150 RT (SGLx*)). In an April 14, 2005, settlement agreement, the Service agreed to submit to the **Federal Register** a proposed rule to designate critical habitat, if prudent, on or before November 9, 2006, and a final rule by November 9, 2007. This proposed rule complies with the April 14, 2005, settlement agreement.

We have reconsidered our not prudent finding, and now believe that identification of primary constituent elements and essential areas (critical habitat designation) may provide educational information to individuals, local and State governments, and other entities. Because these species are so limited in their ecological and geographical ranges, and many of these pebble plains are adjacent to or bisected by classified and unclassified roads, most landowners and collectors have been aware of their presence since publication of the final listing rule in 1998. We do not have any documentation that over-collection has increased significantly since these species were listed and now believe that the benefits of identifying essential habitat for these species outweighs the potential risk of over-collection.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under section 3 of the Act means to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management considerations or protection. Areas outside of the geographic area occupied by the species at the time of listing may only be included in critical habitat if they are essential for the conservation of the species. Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. An area currently occupied by the species but not known to be occupied at the time of listing will likely, but not always, be essential to the conservation of the species and, therefore, typically included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional

information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act, we use the best scientific data available in determining areas that contain the features that are essential to the conservation of *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum* and the habitat requirements of these species. These sources included, but were not limited to, the proposed (60 FR 39337; August 2, 1995) and final (63 FR 49006; September 14, 1998) rules to list these species; data and information published in peer-reviewed articles; data and information contained in reports prepared for or by the U.S. Forest Service (USFS); discussions and site visits with species experts including USFS personnel; data and information presented in academic research theses and dissertations; data provided by the California Department of Fish and Game Natural Diversity Data Base (CNDDB); herbarium records; data submitted during section 7 consultations; and regional Geographic Information Systems (GIS) data.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those areas occupied by the species at the time of listing that contain physical and biological features (primary constituent elements or PCEs) that are essential to the conservation of the species, and that may require special management considerations or protection. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring germination and seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific primary constituent elements required for *Arenaria ursina, Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* are derived from the biological needs described in the Background section of this proposal. They include those habitat components essential for the biological needs of each species, including seed germination and seedling growth, flower production, pollination, fruit production and seed set, and genetic exchange.

Space for Individual and Population Growth and Normal Behavior; Food, Water, Air, Light, Minerals, or other Nutritional or Physiological Requirements

Arenaria ursina, Castilleja cinerea, and *Eriogonum kennedyi* var. *austromontanum* require pebble plains or dry meadows in openings within upper montane coniferous forest, pinyon'juniper woodlands, or Mojavean desert scrub at elevations between 5,900 to 9,800 feet (1,830 to 2,990 m) for individual and population growth (PCE 1).

These typically treeless openings are the result of a combination of soil and climatic factors that support an assemblage of plant species found only in the San Bernardino Mountains, California (USFS 2002, p. 12). Frost heaving and alternating wet and dry cycles force associated quartzite pebbles to the soil surface in areas of shallow clay deposits (PCE 2) to create the characteristic appearance of the pebble plains (Derby 1979, p. 61; Krantz 1983, p. 10; USFS 2002, p. 22). These soils have an extremely slow infiltration rate and, thus, have a high runoff potential (Neel and Barrows 1990, p. 8).

The establishment of tree species on pebble plains appears to be limited primarily by high clay content in the soil (Derby 1979, p. 74). Trees that become established alter the surrounding microhabitat by increasing leaf litter and shading and probably reducing temperature extremes (USFS 2002, p. 15). The increase in leaf litter under trees appears to reduce the densities of all three of the listed pebble plains species and increase tree and shrub seedlings under the tree canopy (Derby 1979, p. 72). Pebble plain species flourish in their specific environment, but they cannot compete with other plant species adapted to shaded areas, or areas where heavy litter layers accumulate (USFS 2002, p. 15).

Pebble plains are typified by the presence of one or more of the following associated species: *Ivesia argyrocoma, Eriogonum kennedyi* var. *kennedyi, Allium parryi, Antennaria dimorpha, Arabis parishii, Astragalus purshii* var. *lectulus, Dudleya abramsii* var. *affinis, Echinocereus engelmannii, Erigeron aphanactis* var. *congestus, Eriogonum wrightii* var. *subscaposum, Lewisia rediviva* var. *minor*, and *Mimulus purpureus*.

In addition to pebble plain habitat, *Castilleja cinerea* is also found in dry meadow margin areas that lack either *Arenaria ursina* and *Eriogonum kennedyi* var. *austromontanum* or both and quartzite pebbles or cobbles. However, as a semi-parasitic perennial plant, this root-parasite requires host plant species found in pebble plain habitat (*Eriogonum kennedyi* var. *austromontanum, E. k.* var. *kennedyi,* and *E. wrightii* var. *subscaposumon*) and host plant species found in both pebble plain and non-pebble plain habitat (*Artemisia tridentata, A. nova,* and *E. wrightii* var. *subscaposumon*) for individual and population growth and for its nutritional and physiological requirements (PCE 3) (USFS 2002, p. 92).

Sites for Reproduction, Germination, Seed Dispersal, or Pollination

While pollination (via selfing, wind, or insect) is important for maintaining genetic diversity within a pebble plain (Duffield 1972, pp. 110–114; O'Brien 1979, pp. 67, 82, 97, 99; Freas and Murphy 1990, p. 6), limited research indicates that little genetic material is exchanged among pebble plains (Freas and Murphy 1990, pp. 6–8). According to Freas and Murphy (1990, p. 6), observed pollen transfer distances were less than 4 meters (13 feet).

Primary Constituent Elements for Arenaria ursina, Eriogonum kennedyi var. austromontanum and Castilleja cinerea

Under our regulations, we are required to identify the known physical and biological features (PCEs) essential to the conservation of *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum.* All areas proposed as critical habitat for each taxon are currently occupied, within the taxon's historical geographic range, and contain sufficient PCEs to support at least one life history function.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the PCEs for *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum* are:

(1) Pebble plains or dry meadows in openings within upper montane coniferous forest, pinyon'juniper woodlands, or Mojavean desert scrub in the San Bernardino Mountains of San Bernardino County, California; at elevations between 5,900 to 9,800 feet (1,830 to 2,990 m) that provide space for individual and population growth, reproduction and dispersal; and

(2) Seasonally wet clay or sandy, clay soils, generally containing quartzite pebbles, subject to natural hydrological processes that include water hydrating the soil and freezing in winter and drying in summer causing lifting and churning of included pebbles, to provide adequate water, air, minerals, and other nutritional or physiological requirements to the species.

We have determined that *Castilleja cinerea* also requires the following PCE:

(3) The presence of one or more of its known host species, such as *Eriogonum kennedyi* var. *austromontanum, E. k.* var. *kennedyi,* and *E. wrightii* var. *subscaposumon* in pebble plain habitat and species such as *Artemisia tridentata, A. nova,* and *E. wrightii* var. *subscaposumon* in pebble plain and non-pebble plain meadow margin habitat that provide some of the physiological requirements for this species.

This proposed designation is designed for the conservation of those areas containing the PCEs necessary to support the life history functions that are the basis for the proposal. Because not all life history functions require all the PCEs, not all critical habitat will contain all the PCEs.

Units are designated based on sufficient PCEs being present to support one or more of the species' life history functions. Some units contain all PCEs and support multiple life processes, while some units contain only a portion of the PCEs necessary to support the species' particular use of that habitat.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available in determining areas that contain the features that are essential to the conservation of *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum.* To delineate the proposed critical habitat boundaries associated with habitat occupied by the listed species, we relied on GIS data provided by the USFS's San Bernardino National Forest (SBNF). SBNF personnel mapped pebble plain and some non-pebble plain habitat on SBNF lands for the 2002 Pebble Plain Management Guide using a combination of 1:10,000 air photos, 1:24,000 orthographic photos, 1:24,000 topographic maps, and ground-truthing with global positioning system (GPS) units (USFS 2002, p. 30). We also worked with SBNF personnel with species and habitat expertise to determine the status of pebble plains being considered for designation (habitat quality and land ownership).

Working with SBNF personnel with knowledge of pebble plains species and habitats, we then identified pebble plains within each of the 12 occupied pebble plain complexes that met the following criteria for each of the three listed species: (1) Contained the PCEs, (2) known to be occupied at the time of listing and currently occupied; (3) if not known to be occupied at the time of listing, currently occupied and essential to the conservation of the species; (4) large or well-defined relative to other pebble plains in the complex; and (5) least disturbed by anthropogenic threats (such as unauthorized vehicle use) relative to other pebble plains in the complex. The majority of the pebble plains (14 of 22) being proposed as critical habitat contain all three of the listed species. To the extent possible, we included the larger pebble plains within a complex that were proximal to other relatively large pebble plains occupied by the listed species in order to capture areas with presumably higher species diversity. Ciano (1984, p. 14) examined species variability on pebble plains in relation to island biogeography theory and found that the number of species within a pebble plain increased with the size of the pebble plain and decreased as distance from other pebble plains increased; thus larger pebble plains located closer to other pebble plains had higher species diversity.

For non-pebble plain meadow margin areas (Mojavean desert scrub—PCE 1) containing *Castilleja cinerea*, we identified those occupied areas that: (1) Contain unique habitat characteristics (such as soil type—PCE 2)) relative to other non-pebble plain areas occupied by the species, and (2) are within areas with the least amount of disturbance by anthropogenic threats (such as unauthorized vehicle use) relative to other occupied non-pebble plain habitat.

For the purposes of this rule, occupied ''at the time of listing'' is defined as those occurrences or areas identified in the final listing rule (63 FR 49006; September 14, 1998) or those areas known to be occupied prior to the publication of the listing rule according to occupancy data in our files (CNDDB 1997a, 1997b, 1997c). Table 1 above lists the pebble plain complexes occupied at the time of listing and currently occupied for each of the three listed pebble plain species. We are not proposing any unoccupied areas or areas outside the geographic area presently occupied by the species.

When determining proposed critical habitat boundaries, we tried to avoid including within the boundaries of the proposed critical habitat developed areas such as buildings, paved areas, and other structures that lack PCEs for *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum.* The scale of the maps prepared under the parameters for publication within the *Code of Federal Regulations* may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, Federal actions limited to these areas would not trigger

section 7 consultation, unless they may affect the species or primary constituent elements in adjacent critical habitat.

We are proposing to designate critical habitat on lands that we have determined were occupied at the time of listing or are currently occupied by *Arenaria ursina, Castilleja cinerea*, or *Eriogonum kennedyi* var. *austromontanum* and that contain one or more of the primary constituent elements to support life history functions essential for the conservation of these species.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing contain primary constituent elements that may require special management considerations or protection.

As stated in the final listing rule, major threats to all three listed pebble plains species throughout their range include land development, off-highway vehicle (OHV) use off of designated routes, road maintenance activities, ground disturbance that affects surface hydrology, mining activities, recreational activities, and nonnative plant species (63 FR 49006; September 14, 1998). The use of OHVs off of designated routes has historically been the greatest threat to pebble plains habitat (63 FR 49006). The primary constituent elements for the listed pebble plains species may require special management considerations or protection to minimize impacts associated with—(1) Vehicle use and road maintenance; (2) recreational activities; and (3) the presence of nonnative species (63 FR 49006; USFS 2002, p. 17; USFS 2005, pp. 207, 249, 293).

All of the pebble plain complexes have some degree of impact associated with the USFS-authorized and unauthorized use of vehicles and associated maintenance (USFS 2002, pp. 20, 25, 30–68). Vehicle use and road maintenance could introduce invasive, nonnative plants, increase the potential for unauthorized routes to develop (leading to the crushing and burying of individual plants and soil compaction), and cover individuals with dust and mud that can impair physiological functions (USFS 2002, p. 20; USFWS 2005, pp. 233, 238, 243).

Along with soil compaction, soil erosion resulting from vehicle use could significantly alter the soil composition required by the listed species (PCE 2). During the wet season, vehicle traffic directly disturbs or destroys vegetation and creates deep ruts that change the hydrological patterns over the pebble plain (USFS 2002, p. 20). Vehicle traffic also increases breakdown in natural soil aggregates (structure) (Sadler, pers. comm. 1989 cited in USFS 2002, p. 22). Changes in the hydrological pattern associated with a pebble plain could alter the soil composition by allowing for erosion of clay sediments during rainfall events, leaving only large cobbles and pebbles (PCE 2). These changes to the soil morphology and composition could result in alterations to the vegetation structure and composition of the area, allowing for the invasion of native and nonnative plant species that could out-complete the listed species for space and resources and further alter the soil composition by increasing organic debris (PCEs 1, 2, and 3).

The invasion of nonnative plant species can result in crowding, overshadowing, and altering fuel loads and hydrology (USFS 2002, p. 25). While fire has not been considered an important factor in shaping the pebble plain community, the establishment of an introduced species, such as cheatgrass, might provide the fine fuels to allow fire to spread more readily and result in alterations to the composition and structure of the pebble plain community (USFS 2002, pp. 19–20). Pebble plain species flourish in their specific environment, but they cannot complete with other plant species adapted to shaded areas or sites where heavy litter layers accumulate (USFS 2002, p. 15). The invasion of nonnative species may alter the soil composition (PCE 2) or cause an increase in the amount of leaf litter, allowing for the eventual encroachment of adjacent native shrub and tree species into the pebble plain, and diminishing the habitat available to pebble plain obligate species and host species (PCE 1). Derby (1979, p. 72) found lower densities of all three of the listed species in pebble plain areas where leaf litter was abundant under trees.

The USFS prepared the 2002 Pebble Plain Management Guide (USFS 2002, p. i) as an update to the 1990 Pebble Plain Habitat Management Guide and Action Plan by Neal and Barrows. The 2002 Pebble Plain Management Guide was designed to provide management direction for the conservation of pebble plain habitat in the SBNF, to aid in recovery of the three federally listed plants, and to improve conditions for Forest sensitive species occurring in this habitat. The 2002 Pebble Plain Management Guide identifies the following management goals necessary to reduce impacts to pebble plain habitat—protecting pebble plain habitat throughout its geographic range, reducing habitat loss and fragmentation, maintaining site viability, and encouraging compatible uses (USFS 2002, p. i).

The USFS has completed many of the actions outlined in the plan to avoid and minimize impacts to the three listed pebble plain species including, but not limited to permanently closing some roads bisecting pebble plains, installing fencing or gates along some roads to prevent unauthorized access onto adjacent pebble plains, establishing alternate trails, adding law enforcement patrols, relocating special events out of pebble plain habitat, and posting of signs to keep vehicles out of sensitive habitat; however, ongoing unauthorized use is still occurring in all of the pebble plain complexes (USFS 2002, pp. 30–68). See the ''Unit Description'' section for a discussion of the special management considerations or protection that may be needed for each unit or subunit being proposed as critical habitat.

Proposed Critical Habitat Designation

We are proposing a total of 1,511 ac (611 ha) of Federal, State, and private land within 11 units, with 9 of these units further divided into 20 subunits, as critical habitat for *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum*. Table 2 below provides the approximate area of each unit or subunit being proposed as critical habitat for *Arenaria ursina, Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*. Table 3 below provides landownership sizes in each unit or subunit. Table 4 outlines the units and subunits proposed as critical habitat and the total area for each species. Since these species often occur in the same pebble plains, the total area being proposed as critical habitat for each species will not equal the total area being proposed for all three species combined.

While the pebble plain in the Grinnell Ridge Complex was known to be occupied by *Castilleja cinerea* at the time of listing (Table 1), the area was last surveyed in 1994 (Eliason 2006b, p. 1), and we cannot determine whether the mapped area represents the species occurrence or the pebble plain boundary. Moreover, this pebble plain is located in a remote area in the San Gorgonio Wilderness Area on SBNF and is not easily accessible. We do not have sufficient information to determine that this area has the features that are essential to the conservation of the species as defined for the purposes of this critical habitat designation, and therefore we are not proposing to

designate the Grinnell Ridge Complex as essential habitat.

The critical habitat areas described below constitute our best assessment at this time of areas determined to be occupied at the time of listing, containing primary constituent elements that may require special management considerations or protection, and those additional areas that were not occupied at the time of listing but were found to be essential to the conservation of *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum.*

TABLE 2.—PROPOSED CRITICAL HABITAT (ACRES (AC), HECTARES (HA)) FOR ARENARIA URSINA, CASTILLEJA CINEREA, AND ERIOGONUM KENNEDYI VAR. AUSTROMONTANUM. THE ABBREVIATION "PPN." REFERS TO THE PEBBLE PLAIN NUMBER IDENTIFIED IN THE USFS PEBBLE PLAIN MANAGEMENT GUIDE (2002)

[Area estimates reflect all land within critical habitat unit boundaries]

Proposed critical habitat unit	Pebble plain complex and subunit name	Total area of unit (ac (ha))	Total area of subunit (ac (ha))	Listed species in unit or subunit [1]
1	Arrastre/Union Flat			
	1A (ppn. 100)	298 (121)	69 (28)	1,2,3
	1B (ppn. 87)		229 (93)	1,2,3
2	Big Bear Lake			
	2A (ppn. 248)	28 (11)	21 (9)	1,2
	2B (ppn. 254)		6 (2)	1,2,3
3	Broom Flat			
	3A (ppn. 311)	384 (156)	58 (23)	1,2,3
	3B (ppn. 285 & 309)		326 (132)	1,2
4	Fawnskin			
	4A (ppn. 301)	41 (17)	15 (6)	1,2,3
	4B (ppn. 302)		24 (10)	1,2,3
	4C (Juniper Point)		2 (1)	2
5	Gold Mountain			
	5A (ppn. 188)	105 (42)	62 (25)	1,2,3
	5B (ppn. 192)		43 (17)	1,2,3
	5C (South Baldwin meadow)		0.3 (0.1)	2
6	Holcomb Valley			
	6A (ppn. 98 & 109)	72 (29)	28 (11)	1,2,3
	6B (ppn. 153)		44 (18)	1,2,3
7	North Baldwin Lake			
	7A (ppn. 128)	351 (142)	320 (129)	1,2,3
	7B (ppn. 168)		4 (2)	2
8	Sawmill			
	8A (ppn. 236)	50 (20)	44 (18)	1,2,3
	8B (ppn. 224)		5 (2)	1,2,3
9	Snow Valley (ppn. 270)	26 (10)	NA	2
10	South Baldwin Ridge/Erwin Lake (ppn. 212)	23 (9)	NA	1,2,3
11	Sugarloaf Ridge			
	11A (ppn. 294)	161 (65)	127 (51)	1,2
	11B (ppn. 289)		34 (14)	1,2
Total	22	1,511 (611)		

[1] 1 = *Arenaria ursina*, 2 = *Castilleja cinerea*, 3 = *Eriogonum kennedyi* var. *austromontanum.*

TABLE 3.—LANDOWNERSHIP (ACRES (AC), HECTARES (HA)) IN UNITS OR SUBUNITS BEING PROPOSED AS CRITICAL HABITAT FOR ARENARIA URSINA, CASTILLEJA CINEREA, AND ERIOGONUM KENNEDYI VAR. AUSTROMONTANUM

Unit or subunit	Landowner[1]	Total area (ac (ha))
1A	USFS	69 (28)
1B	USFS	229 (93)
2A	USFS	21 (9)
2B	USFS	6 (2)
3A	USFS	58 (23)
3B	USFS	255 (103)
	Private (The Wildlands Conservancy)	71 (29)
4A	USFS	15 (6)
4B	USFS	24 (10)
4C	USFS	2 (1)
5A	USFS	62 (25)
5B	USFS	43 (17)
5C	USFS	0.2 (0.1)
6A	USFS	22 (9)
	Private	6 (2)
6B	USFS	44 (18)
7A	USFS	320 (129)

TABLE 3.—LANDOWNERSHIP (ACRES (AC), HECTARES (HA)) IN UNITS OR SUBUNITS BEING PROPOSED AS CRITICAL HABITAT FOR ARENARIA URSINA, CASTILLEJA CINEREA, AND ERIOGONUM KENNEDYI VAR. AUSTROMONTANUM—Continued

Unit or subunit	Landowner[1]	Total area (ac (ha))
7B	CDFG	4 (2)
8A	USFS	15 (6)
	Private	30 (12)
8B	Private	5 (2)
9	USFS	26 (10)
10	USFS	23 (9)
11A	USFS	127 (51)
11B	USFS	34 (14)
Total		1,511 (611)

[1] USFS = U.S. Forest Service (lands in the San Bernardino National Forest), CDFG = California Department of Fish and Game.

TABLE 4.—UNITS OR SUBUNITS AND TOTAL AREA (ACRES (AC), HECTARES (HA)) BEING PROPOSED AS CRITICAL HABITAT FOR ARENARIA URSINA, CASTILLEJA CINEREA, AND ERIOGONUM KENNEDYI VAR. AUSTROMONTANUM

Species	Unit or subunits	Total area (ac (ha))*
Arenaria ursina	All except 4C, 5C, 7B, 9	1,478 (598)
Castilleja cinerea	All	1,511 (611)
Eriogonum kennedyi var. *austromontanum*	All except 2A, 3B, 4C, 5C, 7B, 9, 11A, 11B	970 (393)

* These species often occur in the same pebble plains. Therefore the total area being proposed as critical habitat for each species will not equal the total area being proposed for all three species combined.

Unit Descriptions

We present brief descriptions of all units and subunits below and reasons why they meet the definition of critical habitat for *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum.* Each subunit is named using the pebble plain occurrence number (for example ''ppn. 100'') as identified in the USFS's 2002 Pebble Plain Management Guide.

Unit 1: Arrastre/Union Flat

The Arrastre/Union Flat pebble plain complex consists of 33 pebble plains of varying size that total approximately 377 ac (153 ha) of habitat, the majority of which are on the San Bernardino National Forest (SBNF) land (USFS 2002, pp. 32, 47). Pebble plains in this complex have historically been, and continue to be, impacted by vehicle use related to woodcutting and camping activities not authorized by the USFS (USFS 2002, p. 47). Pebble plains in this complex are also threatened by the invasion of nonnative cheatgrass (USFS 2002, pp. 47–48).

We are proposing to designate as critical habitat approximately 298 ac (121 ha) within this complex consisting of two pebble plains in the SBNF: Subunit 1A (ppn. 100) is 69 ac (28 ha) and Subunit 1B (ppn. 87) is 229 ac (93 ha) (Tables 2, 3). Subunits 1A and 1B were known to be occupied by all three listed plants at the time of listing, and all three listed species continue to occur within these subunits (Table 1). Subunits 1A and 1B contain the PCEs for each of the listed species; are large, well defined pebble plains; are within the northernmost pebble plains in the designation; are within the geographic range occupied by the species at time of listing; and represent the least disturbed pebble plains in this complex.

Both subunits are bisected by existing USFS roads. As outlined in the USFS's Pebble Plain Management Guide (USFS 2002) and the USFS's Biological Assessment for the Revised Land Management Plans (USFS 2005), the USFS has undertaken various actions to minimize impacts to pebble plains under its jurisdiction in this complex, including permanently closing roads, installing fencing along roads to prevent unauthorized access on the adjacent pebble plain, ripping (defacing) some roads to discourage vehicle trespass around fences, and posting signs to keep vehicles out of sensitive habitat. However, unauthorized vehicle use still occurs on the pebble plains in this complex (USFS 2002, pp. 48, 48a). Special management may be required to protect and maintain the PCEs supported by Subunits 1A and 1B due to the potential impacts of unauthorized use and invasive nonnative plant species (such as cheatgrass) that occur in some of the other pebble plain complexes.

Unit 2: Big Bear Lake

The Big Bear Lake pebble plain complex consists of a series of 39 pebble plains of varying sizes within and adjacent to the City of Big Bear Lake. This complex totals approximately 96 ac (39 ha) of habitat on private and SBNF lands (USFS 2002, pp. 31, 37). Prior to residential development in Big Bear Valley and the construction of Big Bear Dam, pebble plain habitat was more widespread and more contiguous in this complex (USFS 2002, p. 38). Threats to pebble plain habitat on private lands include residential development and trampling from horses and hikers, and on USFS lands they include trampling, soil compaction, and unauthorized vehicle use through dispersed recreation (USFS 2002, p. 39). Pebble plains in this complex may also be threatened by the presence of invasive nonnative plant species (such as cheatgrass) that occur in other pebble plain complexes (USFS 2002, pp. 47–48, 45, 50, 56, 64).

We are proposing to designate as critical habitat approximately 28 ac (11 ha) within this complex consisting of two pebble plains in the SBNF—Subunit 2A (ppn. 248) is 21 ac (9 ha) and Subunit 2B (ppn. 254) is 6 ac (2 ha) (Tables 2, 3). Subunit 2A was known to be occupied at the time of listing by *Arenaria ursina* and *Castilleja cinerea*, and both species continue to grow within this subunit (Table 1). This subunit is not proposed as critical habitat for *Eriogonum kennedyi* var.

austromontanum. Subunit 2A contains the PCEs for both species, is a relatively large and well defined pebble plain, represents the least disturbed pebble plains remaining in this complex, and is within the geographic range occupied by the species at time of listing. Subunit 2B was known to be occupied at the time of listing by all three listed species, and these species still occur within this subunit (Table 1). Subunit 2B contains the PCEs for each of the three species, is a relatively large and well defined pebble plain, represents the least disturbed pebble plains remaining in this complex, and is within the geographic range occupied by the species at time of listing.

Both Subunits 2A and 2B historically have been impacted by recreational activities (USFS 2002, pg. 38). Subunit 2A, in the Aspen Glen area, is bisected by a recreational trail, which is used by horses, hikers, and mountain bikers. Subunit 2B, in the former Snow Summit Ski Area, has historically been the site of annual bicycle races and is bisected by several classified and unclassified bicycle trails. USFS has undertaken various actions to minimize impacts to pebble plains under its jurisdiction in this complex, including installing fencing along trails to prevent further encroachment into the pebble plain, establishing alternate paths, installing gates and fencing to prevent motorized access to pebble plains, relocating annual bicycle races to other sites (USFS 2002, p. 39; USFS 2005, p. 208), and closing the Snow Summit Ski Area (USFS 2005, p. 250; USFWS 2005, p. 233). However, special management may be required to protect and maintain the PCEs supported by Subunits 2A and 2B.

Unit 3: Broom Flat

The Broom Flat pebble plain complex consists of 23 pebble plains of varying size that total approximately 752 ac (304 ha) of habitat, the majority of which are in the SBNF (USFS 2002, pp. 33, 62). Pebble plains in this complex have historically been impacted primarily by unauthorized vehicle use and are now being impacted by the presence of invasive nonnative plant species (such as cheatgrass and common knotweed (USFS 2002, p. 64)).

We are proposing to designate as critical habitat approximately 384 ac (156 ha) within this complex consisting of two pebble plains on Federal (SBNF) and private lands (The Wildlands Conservancy): Subunit 3A (ppn. 311) is 58 ac (23 ha) and Subunit 3B (ppn. 285 and 309) is 326 ac (132 ha) (Tables 2, 3). Subunit 3A was known to be occupied at the time of listing and is currently occupied by *Arenaria ursina* and *Castilleja cinerea. Eriogonum kennedyi* var. *austromontanum* is also currently found in this subunit, but it was not known from here at the time of listing (Table 1). Subunit 3A contains the PCEs for each of the species, and is essential to the conservation of *E. k.* var. *austromontanum* because it is a relatively large pebble plain that represents the least disturbed pebble plains in this complex, and is within the eastern/most pebble plain complex in this designation. Subunit 3B was known to be occupied at the time of listing by *Arenaria ursina* and *Castilleja cinerea,* and both species still occur within this subunit (Table 1). Subunit 3B is only being proposed as critical habitat for these two species. Subunit 3B contains the PCEs for both species, is a relatively large pebble plain, represents the least disturbed pebble plains in this complex, is within the geographic range occupied by the species at time of listing, and is within the eastern/most pebble plain complex in this designation.

Both subunits are bisected by existing USFS roads. USFS has undertaken various actions to minimize impacts to pebble plains under its jurisdiction in this complex, including permanently closing roads, installing fencing along roads to prevent unauthorized access on the adjacent pebble plain, ripping some roads to discourage vehicle trespass around fences, and posting signs to keep vehicles out of sensitive habitat; however, these barriers are in need of constant monitoring and repairs (USFS 2002, p. 64). The pebble plain in Subunit 3A may also be impacted by cattle trespass from the Rattlesnake grazing allotment and burro use associated with the Burro Herd Management Area (USFS 2002, p. 64). Special management may be required to protect and maintain the PCEs supported by Subunits 3A and 3B.

Unit 4: Fawnskin

The Fawnskin pebble plain complex consists of 15 pebble plains of varying sizes that total approximately 64 ac (26 ha) of habitat on private and SBNF lands (USFS 2002, pp. 32, 44). Pebble plains in this complex have historically been and are currently being impacted by urban development, unauthorized vehicle use, and the presence of invasive nonnative species (such as cheatgrass) (USFS 2002, pp. 45).

We are proposing to designate as critical habitat approximately 41 ac (17 ha) within this complex consisting of two pebble plains and one non-pebble plain meadow margin area in the SBNF. Subunit 4A (ppn. 301) is 15 ac (6 ha), Subunit 4B (ppn. 302) is 24 ac (10 ha), and Subunit 4C (Juniper Point) is 2 ac (1 ha) (Tables 2, 3). Subunits 4A and 4B were known to be occupied at the time of listing by all three listed species and these plants continue to occur within these subunits. Subunit 4C was known to be occupied at the time of listing and is still occupied only by *Castilleja cinerea* (Table 1). Subunit 4C is being proposed as critical habitat only for *C. cinerea*. Subunits 4A and 4B contain the PCEs for all three of the listed species, are within the geographic range occupied by the species at time of listing, and are relatively large and the least disturbed pebble plains remaining in this complex. Subunit 4C (Juniper Point) is essential to the conservation of *Castilleja cinerea* because it contains the PCEs for the species, is within the geographic range occupied by the species at time of listing, represents a unique habitat type (non-pebble plain meadow margin) for the species (Engelhard 2006), and is important for maintaining genetic diversity for the species. This subunit is also one of the few occupied non-pebble plain meadow margin areas remaining that is relatively undisturbed.

Both Subunits 4A and 4B are bisected by several unclassified roads associated with existing USFS roads. While USFS has undertaken various actions such as permanently closing roads and posting signs to keep vehicles out of sensitive habitat, barriers have been repeatedly breached over the past decade and unauthorized vehicle use along some of the unclassified roads still continues (USFS 2002, pp. 45–46). Subunit 4C is within a fenced area adjacent to Big Bear Lake owned by the USFS. The area contains a paved trail for hiking and is across the street from the ranger station. Special management may be required to protect and maintain the PCEs supported by Subunits 4A and 4B due to the potential impacts of public vehicle use outside of designated areas and the invasion of nonnative plant species (such as cheatgrass). Special management may also be required to protect and maintain the PCEs supported by Subunits 4A, 4B and 4C due to the potential impacts of dispersed recreation and OHV use outside of designed areas.

Unit 5: Gold Mountain

The Gold Mountain pebble plain complex consists of 18 pebble plains of varying sizes that total approximately 88 ac (36 ha) of habitat on private and SBNF lands (USFS 2002, pp. 32, 52). Pebble plains in this complex have historically been impacted by USFS-authorized vehicle use and vehicle use associated with woodcutting and rock

collecting not authorized by the USFS (USFS 2002, pg. 52). Pebble plains in this complex may also be threatened by the presence of invasive nonnative plant species (such as cheatgrass) that occur in other pebble plain complexes (USFS 2002, pp. 47–48, 45, 50, 56, 64).

We are proposing to designate as critical habitat approximately 105 ac (42 ha) of Federal land (SBNF) consisting of two pebble plains in this complex and one non-pebble plain meadow margin area adjacent to this complex. Subunit 5A (ppn. 188) is 62 ac (25 ha), Subunit 5B (ppn. 192) is 43 ac (17 ha), and Subunit 5C (South Baldwin meadow) is 0.3 ac (0.1 ha) (Tables 2, 3). Subunits 5A and 5B were known to be occupied at the time of listing and are still occupied by all three listed species (Table 1). While the non-pebble plain meadow margin habitat in Subunit 5C was not identified in the final listing rule (63 FR 49006; September 14, 1998), it is currently occupied by *Castilleja cinerea* and is considered to have been occupied at the time of listing based on pre-listing occupancy records (CNDDB 1997b). Subunit 5C is being proposed as critical habitat only for *C. cinerea.*

Subunits 5A and 5B contain the PCEs for each of the three listed species, are relatively large and well-defined pebble plains, represent the least disturbed pebble plains in this complex, and are within the geographic range occupied by the species at time of listing. Subunit 5C is essential to the conservation of *Castilleja cinerea* because it contains the PCEs for the species, it is within the geographic range occupied by the species at time of listing, and represents a unique habitat type (non-pebble plain meadow margin) for the species, representing an area that is important for maintaining genetic diversity for the species. This subunit is also one of the few occupied non-pebble plain meadow margin areas remaining that is relatively undisturbed and also supports other federally listed plant species (such as *Sidalcea pedata*).

Subunits 5A and 5B are bisected by Forest Road 3N69 and several unclassified roads. While USFS has undertaken various actions such as closing the area to woodcutting, permanently closing roads, and conducting area patrols, unauthorized vehicle use continues to impact these pebble plains (USFS 2002, p. 53; Engelhard 2006). Subunit 5C is threatened by occasional unauthorized access by equestrian and OHV use by adjacent private landowners (Engelhard 2006). Special management may be required to protect and maintain the PCEs supported by Subunits 5A, 5B, and 5C due to the potential impacts of dispersed recreation and OHV use outside of designed areas. Special management, such as the development of a routine monitoring and removal program, may also be required to protect and maintain the PCEs supported by Subunits 5A and 5B due to the invasion of nonnative plant species (such as cheatgrass).

Unit 6: Holcomb Valley

The Holcomb Valley pebble plain complex consists of 96 pebble plains of varying sizes that total approximately 460 ac (186 ha) of habitat primarily in the SBNF (USFS 2002, pp. 31, 40). Pebble plains in this complex have historically been impacted by USFS-authorized and unauthorized vehicle use, previous silviculture treatments, campground development, dispersed recreation, and access or maintenance associated with a gas pipeline (USFS 2002, pp. 41–42). Pebble plains in this complex may also be threatened by the presence of invasive nonnative plant species (such as cheatgrass) that occur in other pebble plain complexes (USFS 2002, pp. 47–48, 45, 50, 56, 64).

We are proposing to designate as critical habitat approximately 72 ac (29 ha) within this complex consisting of two pebble plains on Federal (SBNF) and private (Boy Scouts of America (BSA)) land: Subunit 6A (ppn. 98 and 109) is 28 ac (11 ha) and Subunit 6B (ppn. 153) is 44 ac (18 ha) (Tables 2, 3). The majority of Subunit 6A is in the SBNF, though a small portion occurs on private land owned by the BSA (Hitchcock Ranch). Subunit 6B is entirely within the SBNF. Subunits 6A and 6B were known to be occupied at the time of listing and are still occupied by all three listed species (Table 1). Subunits 6A and 6B contain the PCEs for each of the three listed species, are within the geographic range occupied by the species at time of listing, are among the northern most pebble plains in this designation, are relatively large and well-defined pebble plains, and represent the least disturbed pebble plains in this complex.

USFS has undertaken various actions, such decommissioning and rehabilitating certain roads, installing fencing along roads to prevent unauthorized access on the adjacent pebble plain, posting signs to keep vehicles out of sensitive habitat, relocating special events formerly in pebble plain habitat (such as the Mountain Man event), and discontinuing camping permits in certain areas to reduce the impact in these areas. However, pebble plains in the Holcomb Valley Complex continue to be impacted by unauthorized vehicle use (USFS 2002, p. 40). Special management may be required to protect and maintain the PCEs supported by Subunits 6A and 6B due to the potential impacts of dispersed recreation and OHV use outside of designed areas and the invasion of nonnative plant species (such as cheatgrass).

Unit 7: North Baldwin Lake

The North Baldwin Lake pebble plain complex consists of 12 pebble plains of varying sizes that totals approximately 527 ac (213 ha) of habitat primarily in the SBNF (USFS 2002, pp. 33, 54). Pebble plains in this complex were historically, and continue to be impacted, by authorized and unauthorized vehicle use, mining activity, residential development, burros, and invasive nonnative plant species (such as cheatgrass and *Lepidium perfoliatum* (clasping pepperweed)) (USFS 2002, pg. 56).

We are proposing to designate as critical habitat approximately 351 ac (142 ha) within this complex consisting of one pebble plain and one non-pebble plain meadow margin area on Federal (SBNF) and State (CDFG) lands: Subunit 7A (ppn. 128) is 320 ac (129 ha) and Subunit 7B (ppn. 168) is 4 ac (2 ha) (Tables 2, 3). All of Subunit 7A is in the SBNF and all of Subunit 7B in the CDFG's Baldwin Ecological Reserve. Subunit 7A was known to be occupied at the time of listing and continues to be occupied by all three listed plants (Table 1). While the non-pebble plains meadow margin habitat in Subunit 7B was not identified in the listing rule, it is currently occupied by *Castilleja cinerea* and is considered to have been occupied at the time of listing based on pre-listing occupancy records (CNDDB 1997b).

Subunit 7A contains the PCEs for each of the three of the listed species, is within the geographic range occupied by the species at time of listing, is a relatively large and well defined pebble plain in this complex, and represents one of the least disturbed pebble plain in this complex. Subunit 7B contains the PCEs for *Castilleja cinerea*, is within the geographic range occupied by the species at time of listing, and represents a unique habitat type (non-pebble plain meadow margin habitat with alkali soils) and the only area known to support this species on alkali soils. This occurrence represents a unique portion of the range of environmental variability for the species and is important for maintaining genetic diversity of the species. This subunit is also one of the few occupied non-pebble plain meadow margin areas remaining that is relatively undisturbed. This area also supports

other federally listed plant species (such as *Sidalcea pedata* and *Thelypodium stenopetalum*).

Subunit 7A is bisected by several unclassified roads associated with existing USFS roads and Subunit 7B is adjacent to an existing road. USFS has undertaken various actions such as permanently closing roads, installing fencing along major roads adjacent to pebble plain habitat, and posting signs to keep vehicles out of sensitive habitat. However, authorized and unauthorized vehicle use continues to impact pebble plains in the North Baldwin Lake Complex (USFS 2002, p. 57). Special management may be required to protect and maintain the PCEs supported by Subunits 7A and 7B due to the potential impacts of dispersed recreation and OHV use outside of designed areas and the invasion of nonnative plant species (such as cheatgrass).

Unit 8: Sawmill

The Sawmill pebble plain complex consists of 22 pebble plains of varying size that total approximately 396 ac (160 ha) of habitat on private and Federal land (SBNF) (USFS 2002, pp. 32, 49). Pebble plains in this complex were historically, and continue to be impacted by authorized and unauthorized vehicle use, residential development, and invasive nonnative plant species (such as cheatgrass) (USFS 2002, pp. 50).

We are proposing to designate as critical habitat approximately 50 ac (20 ha) within this complex consisting of two pebble plains on Federal (USFS) and private lands: Subunit 8A (ppn. 236) is 45 ac (18 ha) and Subunit 8B (a portion of ppn. 244) is 5 ac (2 ha) (Tables 2, 3). About half of Subunit 8A is in the SBNF, while the other half is on private land within an area protected from development by a conservation easement. Subunit 8B is entirely on private land within an area protected from development by a conservation easement. Subunits 8A and 8B were known to be occupied at the time of listing and continue to be occupied by all three listed species (Table 1). Subunits 8A and 8B contain the PCEs for each of the three listed species, are within the geographic range occupied by the species at time of listing, are relatively large and well-defined pebble plains, and represent the only pebble plains remaining in this complex that have not been destroyed or significantly degraded by residential development.

The southern portion of Subunit 8A is on private land and protected by a conservation easement held by the local homeowners' association and established as part of the Moonridge residential development (Engelhard 2006). The northern portion of this subunit is bisected by a partially devegetated vehicle track that allows foot access to this fenced pebble plain, which is used heavily by local residents. Subunit 8B is bisected by several unclassified roads associated with woodcutting and dispersed recreation (USFS 2002, pp. 50–51). USFS has undertaken or participated in various actions, such as posting signs to keep hikers and vehicles out of sensitive habitat. However, authorized and unauthorized dispersed recreation and unauthorized vehicle use continues to impact pebble plains in the Sawmill Complex, including the northern portion of Subunit 8A (USFS 2002, p. 51; Engelhard 2006). Special management may be required to protect and maintain the PCEs supported by Subunits 8A and 8B due to the potential impacts of dispersed recreation and OHV use outside of designed areas and the invasion of nonnative plant species (such as cheatgrass).

Unit 9: Snow Valley

The Snow Valley pebble plain complex consists of 3 pebble plains of varying sizes that total approximately 33 ac (13 ha) of habitat in the SBNF (USFS 2002, pp. 30, 31). Pebble plains in this complex were historically impacted by vehicle access, residential development, and heavy-use recreation (such as skiing or biking) (USFS 2002, pg. 30). Pebble plains in this complex may also be threatened by the presence of invasive nonnative plant species (such as cheatgrass) that occur in other pebble plain complexes (USFS 2002, pp. 47–48, 45, 50, 56, 64).

We are proposing to designate as critical habitat approximately 26 ac (10 ha) within this complex consisting of one pebble plain within the SBNF: Unit 9 (ppn. 270) (Tables 2, 3). Unit 9 was known to be occupied at the time of listing and is still occupied by *Castilleja cinerea* (Table 1). This unit is being proposed as critical habitat only for *C. cinerea*. It contains the PCEs for the species, is within the geographic range occupied by the species at time of listing, is within the western most pebble plain complex in this designation, represents a unique habitat type (pebble plain habitat with granitic soils), and supports the only known occurrence of this species on granitic soils. This occurrence represents a unique portion of the range of environmental variability for the species and is important for maintaining genetic diversity for the species.

Unit 9 borders Highway 18 and is within a heavy recreational use area. USFS has undertaken or participated in various actions, such as posting signs to keep hikers out of sensitive habitat. However, dispersed recreation, and unauthorized vehicle use continues to impact pebble plains in the Snow Valley (USFS 2002, p. 51). Special management may be required to protect and maintain the PCEs supported by Unit 9 due to the potential impacts of dispersed recreation and OHV use outside of designed areas and the invasion of nonnative plant species (such as cheatgrass).

Unit 10: South Baldwin Ridge/Erwin Lake

The South Baldwin Ridge/Erwin Lake pebble plain complex consists of 15 pebble plains of varying sizes that total approximately 87 ac (35 ha) of habitat on private and SBNF lands (USFS 2002, pp. 33, 49). Pebble plains in this complex were historically, and continue to be impacted by authorized and unauthorized vehicle use, residential development, and invasive nonnative plant species (such as cheatgrass) (USFS 2002, pg. 50).

We are proposing to designate as critical habitat approximately 23 ac (9 ha) within this complex consisting of one pebble plain in the SBNF: Unit 10 (ppn. 212) (Tables 2, 3). Unit 10 was known to be occupied at the time of listing and still is occupied by all three listed plants (Table 1). This unit contains the PCEs for each of the three of the listed species, is within the geographic range occupied by the species at time of listing, is a relatively large and well-defined pebble plain, and is the only occupied pebble plain in this complex that has not been destroyed or significantly degraded due to residential development.

Unit 10 is bisected by a partially devegetated vehicle track that allows foot access to this fenced pebble plain, which is used heavily by local residents (USFS 2002, pp. 50–51). USFS has undertaken or participated in various actions such as posting signs to keep hikers out of sensitive habitat. However, dispersed recreation, and unauthorized vehicle use continue to impact pebble plains in the South Baldwin Ridge Complex (USFS 2002, p. 51). Special management may be required to protect and maintain the PCEs supported by Unit 10 due to the potential impacts of dispersed recreation and OHV use outside of designed areas and the invasion of nonnative plant species (such as cheatgrass).

Unit 11: Sugarloaf Ridge

The Sugarloaf Ridge pebble plain complex consists of 22 pebble plains of

varying sizes that total approximately 573 ac (232 ha) of habitat in the SBNF (USFS 2002, pp. 33, 58). Pebble plains in this complex were historically and continue to be impacted by authorized and unauthorized vehicle use and dispersed recreation (USFS 2002, p. 58). Pebble plains in this complex may also be threatened by the presence of invasive nonnative plant species (such as cheatgrass) that occur in some of the other pebble plain complexes (USFS 2002, pp. 47–48, 45, 50, 56, 64).

We are proposing to designate as critical habitat approximately 161 ac (65 ha) within this complex consisting of two pebble plains within the SBNF: Subunit 11A (ppn. 294) is 127 ac (51 ha) and Subunit 11B (ppn. 289) is 34 ac (14 ha) (Tables 2, 3). Subunits 11A and 11B are known to be occupied by *Castilleja cinerea* and *Arenaria ursina*. However, since the Sugarloaf Ridge complex was found to be occupied by these species about 3 years ago, after the 2002 Pebble Plain Management Guide was finalized (Eliason 2006a), these subunits are not considered to have been occupied at the time of listing (Table 1).

Pebble plains in Subunits 11A and 11B are being proposed as critical habitat for *Arenaria ursina* and *Castilleja cinerea* only. They contain the PCEs for both species, are within the geographic range occupied by the species at time of listing, are relatively large pebble plains, and represent the least disturbed pebble plains in this complex. In addition, the *A. ursina* occurrence in the Sugarloaf Ridge complex is the within the southern most pebble plain complex in this designation, is the highest elevation occurrence known for this species, and is considered disjunct from populations in other complexes. The *C. cinerea* occurrence in this complex is morphologically distinctive from populations in other complexes (USFS 2002, p. 58; Bill 2006). These occurrences represent a unique portion of the range of environmental variability for these species and are important for maintaining genetic diversity for the species.

Several unclassified roads occur in or adjacent to Subunits 11A and 11B (USFS 2002, p. 59). USFS has undertaken various actions such as posting signs to keep walkers and vehicles out of sensitive habitat within the Sugarloaf Ridge Complex overall. However, dispersed recreation and unauthorized vehicle use continues to impact pebble plains in the Sugarloaf Ridge Complex (USFS 2002, pp. 58–59). Special management may be required to protect and maintain the PCEs supported by Subunits 11A and 11B due to the potential impacts of dispersed recreation and OHV use outside of designed areas and the invasion of nonnative plant species (such as cheatgrass).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report, while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

Once a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. Recent decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''adverse modification'' at 50 CFR 402.02 (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442F (5th Cir 2001)). Pursuant to current national policy and the statutory provisions of the Act, we determine destruction or adverse modification based on whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that are likely to adversely affect listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed

species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in certain instances, including where a new species is listed or critical habitat is subsequently designated that may be affected by the Federal action, where the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect *Arenaria ursina, Castilleja cinerea,* or *Eriogonum kennedyi* var. *austromontanum* or their designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local or private lands requiring a Federal permit (such as a permit from the Army Corps of Engineers under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to Arenaria ursina, Castilleja cinerea, and Eriogonum kennedyi var. austromontanum and Their Critical Habitat

Jeopardy Standard

The Service applies an analytical framework for *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum* jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of these species. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum* in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum will be used to complete section 7(a)(2) analyses for Federal actions affecting critical habitat for *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum*. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve its intended conservation role for the species. Generally, the conservation role of critical habitat units for these species is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for *Arenaria ursina, Castilleja cinerea,* or *Eriogonum kennedyi* var. *austromontanum* is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for the *Arenaria ursina, Castilleja cinerea,* or *Eriogonum kennedyi* var. *austromontanum* include, but are not limited to the following (please see the ''Special Management Considerations or Protection'' section for a more detailed discussion on the impacts of these actions to the listed species):

(1) Actions that result in ground disturbance to pebble plains. Such activities could include, but are not limited to: Residential or recreational development, OHV activity, dispersed recreation, new road construction or widening, existing road maintenance, and grazing (such as cattle and burros). These activities could impact pebble plains by damaging or eliminating habitat, altering soil composition due to increased erosion, and allowing nonnative invasive plant species to invade. In addition, changes in the soil composition may lead to cascading changes in the vegetation composition, such as growth of shrub cover that decreases density or eliminates pebble plain species.

(2) Actions that result in alteration of the hydrological regime of the pebble plain habitat. Such activities could include residential or recreational development adjacent to pebble plains, OHV activity, dispersed recreation, new road construction or widening, and existing road maintenance. These activities could alter surface layers and hydrological regime in a manner that promotes loss of clay components of soil matrix necessary to support the growth and reproduction of the pebble plain species.

All of the units and subunits proposed as critical habitat contain features essential to the conservation of *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum*. Federal agencies already consult with us on activities in areas currently occupied by *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum* or if these species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of these species.

Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific

data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion, and the Congressional record is clear that in making a determination under the section the Secretary has discretion as to which factors to consider and how much weight will be given to any factor.

Under section 4(b)(2), in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. In the following sections, we address a number of general issues that are relevant to any exclusions we may consider.

We are not aware of any habitat conservation plans under development for *Arenaria ursina, Castilleja cinerea,* or *Eriogonum kennedyi* var. *austromontanum* on any lands included in this proposal, and the proposed designation does not include any Tribal lands or trust resources. During the development of this proposal, we coordinated with SBNF staff to seek input on the appropriate areas to include in proposed critical habitat that would be essential to *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum* on SBNF lands.

We examined the USFS's 2002 Pebble Plain Management Guide (Management Guide), which was designed to provide management direction for the conservation of pebble plain habitat in the SBNF, to aid in recovery of the three federally listed plants, and to improve conditions for Forest Sensitive species occurring in this habitat and identifies the following management goals and actions necessary to reduce impacts to pebble plain habitat: protecting pebble plain habitat throughout its geographic range, reducing habitat loss and fragmentation, maintaining site viability, and encouraging compatible uses (USFS 2002, p. i).

We also examined the USFS's Revised Land and Resource Management Plans for the Four Southern California Forests, California (Forest Plan) that was approved in September 2005, and the Service's biological opinion that was issued on the Forest Plan on September 15, 2005. While the USFS has implemented many of the actions outlined in the Management Guide and Forest Plan, we believe ongoing unauthorized activities continue to require special management. Therefore, we are not proposing to exclude any areas under section 4(b)(2) of the Act.

The Service is conducting an economic analysis of the impacts of the proposed critical habitat designation and related factors, which will be available for public review and comment. Based on public comment on that document, the proposed designation itself, and the information in the final economic analysis, habitat containing essential features for *Arenaria ursina, Castilleja cinerea,* or *Eriogonum kennedyi* var. *austromontanum* may be excluded from final critical habitat by the Secretary under the provisions of section 4(b)(2) of the Act. This is provided for in the Act, and in our implementing regulations at 50 CFR 424.19.

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum* is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.fws.gov/carlsbad* or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES**).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers copies immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, Executive Order 12630,

Executive Order 13211, and Executive Order 12875.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments. The draft economic analysis can be obtained from the Internet Web site at *http://www.fws.gov/carlsbad* or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES**).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared under to section 4(b)(2) of the Act and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation for an additional 60 days. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this proposed rule to designate critical habitat for *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum* is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

Due to current public knowledge of the species' protection and the fact that virtually all of the proposed critical habitat is on Federal lands, we do not anticipate that this rule will significantly or uniquely affect small governments. As such, Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum* in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the *Arenaria ursina,*

Castilleja cinerea, and *Eriogonum kennedyi* var. *austromontanum* does not pose significant takings implications. However, we will further evaluate this issue as we conduct our economic analysis and review and revise this assessment as warranted.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by *Arenaria ursina, Castilleja cinerea,* or *Eriogonum kennedyi* var. *austromontanum* imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum.*

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands supporting habitat for *Arenaria ursina, Castilleja cinerea,* or *Eriogonum kennedyi* var. *austromontanum that meets the definition of critical habitat.* Therefore, designation of critical habitat for *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum* has not been proposed on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary author of this package is the staff of the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h), revise the entries for ''*Arenaria ursina*'', ''*Castilleja cinerea*'', and ''*Eriogonum kennedyi* var. *austromontanum*'' under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Arenaria ursina	Bear Valley sandwort.	U.S.A. (CA)	Caryophyllaceae	T	644	17.96(a)	NA
*	*	*	*	*	*		*
Castilleja cinerea	Ash-gray Indian paintbrush.	U.S.A. (CA)	Orobanchaceae	T	644	17.96(a)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Eriogonum kennedyi var. *austromontanum.*	Southern mountain wild-buckwheat.	U.S.A. (CA)	Polygonaceae	T	644	17.96(a)	NA
*	*	*	*	*	*		*

3. In § 17.96(a), as set forth below:

a. Add ''Family Caryophyllaceae'' and ''Family Orobanchaceae'' in alphabetical order of the family names;

b. Add a critical habitat entry for ''*Arenaria ursina*'' under Family Caryophyllaceae and a critical habitat entry for ''*Castilleja cinerea*'' under Family Orobanchaeae; and

c. Add a critical habitat entry for ''*Eriogonum kennedyi var. austromontanum*'' in alphabetical order under Family Polygonaceae.

§ 17.96 Critical habitat—plants.

* * * * *

(a) Flowering plants.

* * * * *

Family Caryophyllaceae: *Arenaria ursina* (Bear Valley sandwort)

(1) Critical habitat units for this species are found in San Bernardino County, California. The critical habitat units designated for this species are related to those set forth elsewhere in this section for Family Orobanchaceae: *Castilleja cinerea* (Ash-gray Indian paintbrush) and Family Polygonaceae: *Eriogonum kennedyi* var. *austromontanum* (Southern mountain wild-buckwheat). Because all of the critical habitat units for these three species are designated for Family Orobanchaceae: *Castilleja cinerea* (Ash-gray Indian paintbrush), the units are set forth in text and depicted on the maps in the critical habitat entry for that species.

(2) The primary constituent elements of critical habitat for *Arenaria ursina* are the habitat components that provide:

(i) Pebble plains or dry meadows in openings within upper montane coniferous forest, pinyon-juniper woodlands, or Mojavean desert scrub in the San Bernardino Mountains of San Bernardino County, California, at elevations between 5,900 to 9,800 feet (1,830 to 2,990 meters) that provide space for individual and population growth, reproduction, and dispersal; and

(ii) Seasonally wet clay or sandy, clay soils, generally containing quartzite pebbles, subject to natural hydrological processes that include water hydrating the soil and freezing in winter and drying in summer causing lifting and churning of included pebbles, to provide adequate water, air, minerals, and other nutritional or physiological requirements to the species.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they are located existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) The applicable units and subunits of critical habitat for *Arenaria ursina* are 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5A, 5B, 6A, 6B, 7A, 8A, 8B, 10, 11A, and 11B in the critical habitat entry for Family Orobanchaceae: *Castilleja cinerea* (Ash-gray Indian paintbrush).

* * * * *

Family Orobanchaceae: *Castilleja cinerea* (Ash-Gray Indian Paintbrush)

(1) Critical habitat units for this species are found in San Bernardino County, California. The critical habitat units designated for this species are related to those set forth elsewhere in this section for Family Caryophyllaceae: *Arenaria ursina* (Bear Valley sandwort) and Family Polygonaceae: *Eriogonum kennedyi* var. *austromontanum* (Southern mountain wild-buckwheat). Because all of critical habitat units for these three species are designated for Castilleja cinerea, the units are set forth in text and depicted on the maps below in the entry for this species.

(2) The primary constituent elements of critical habitat for Castilleja cinerea are the habitat components that provide:

(i) Pebble plains or dry meadows in openings within upper montane coniferous forest, pinyon-juniper woodlands, or Mojavean desert scrub in the San Bernardino Mountains of San Bernardino County, California, at elevations between 5,900 to 9,800 feet (1,830 to 2,990 meters) that provide space for individual and population growth, reproduction, and dispersal;

(ii) Seasonally wet clay or sandy, clay soils, generally containing quartzite pebbles, subject to natural hydrological processes that include water hydrating the soil and freezing in winter and drying in summer causing lifting and churning of included pebbles, to provide adequate water, air, minerals, and other nutritional or physiological requirements to the species; and

(iii) The presence of one or more of its known host species such as *Eriogonum kennedyi* var. *austromontanum*, *E. k.* var. *kennedyi*, and *E. wrightii* var. *subscaposumon* in pebble plain habitat and species such as *Artemisia tridentata*, *A. nova*, and *E. wrightii* var. *subscaposumon* in pebble plain and non-pebble plain habitat that provide some of the physiological requirements for this species.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they are located existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) Critical habitat map units. Data layers defining map units were created on a base of USGS 1:24,0000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) The applicable units and subunits of critical habitat for Castilleja cinerea are 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 4C, 5A, 5B, 5C, 6A, 6B, 7A, 7B, 8A, 8B, 9, 10, 11A, and 11B.

(6) *Note:* Index map of critical habitat units for Family Caryophyllaceae: *Arenaria ursina* (Bear Valley sandwort), Family Orobanchaceae: *Castilleja cinerea* (Ash-gray Indian paintbrush), and Family Polygonaceae: *Eriogonum kennedyi* var. *austromontanum* (Southern mountain wild-buckwheat) (Map 1) follows:

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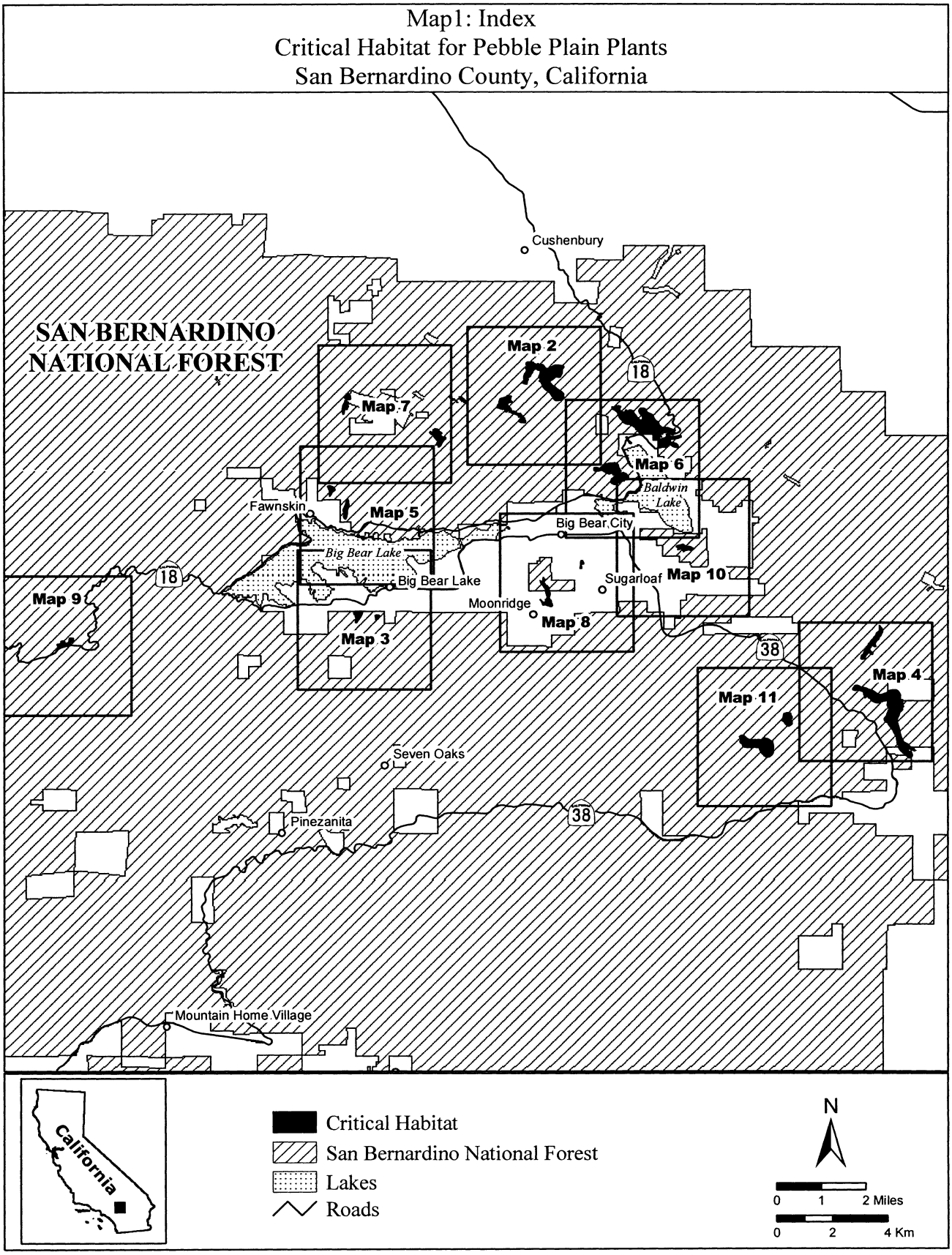

BILLING CODE 4310–55–C

(7) *Unit 1:* Arrastre/Union Flat, San Bernardino County, California. From USGS 1:24,000 quadrangle map Big Bear City.

(i) Subunit 1A. Land bounded by the following UTM NAD27 coordinates (E,N): 512434, 3795966; 512436, 3795961; 512446, 3795966; 512450, 3795966; 512469, 3795969; 512508, 3795965; 512533, 3795959; 512537, 3795959; 512539, 3795960; 512549, 3795964; 512560, 3795961; 512568, 3795954; 512573, 3795948; 512573, 3795936; 512571, 3795930; 512568, 3795927; 512565, 3795927; 512563, 3795927; 512563, 3795924; 512561, 3795914; 512556, 3795904; 512555, 3795903; 512554, 3795901; 512548, 3795879; 512535, 3795835; 512544, 3795791; 512546, 3795790; 512554, 3795787; 512568, 3795779; 512576, 3795774; 512582, 3795771; 512592, 3795764; 512595, 3795753; 512595, 3795747; 512591, 3795739; 512584, 3795732; 512581, 3795731; 512575, 3795727; 512569, 3795727; 512560, 3795728; 512552, 3795733; 512544, 3795739; 512542, 3795740; 512541, 3795739; 512540, 3795738; 512525, 3795717; 512469, 3795694; 512447, 3795680; 512445, 3795679; 512427, 3795653; 512428, 3795649; 512450, 3795617; 512476, 3795588; 512476, 3795588; 512504, 3795564; 512514, 3795552; 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(ii) Subunit 1B. Land bounded by the following UTM NAD27 coordinates (E,N): 513282, 3797202; 513312, 3797195; 513346, 3797179; 513347, 3797179; 513352, 3797178; 513378, 3797155; 513382, 3797151; 513404, 3797137; 513430, 3797126; 513434, 3797122; 513438, 3797119; 513475, 3797110; 513503, 3797106; 513500, 3797115; 513500, 3797124; 513510, 3797137; 513520, 3797137; 513532, 3797131; 513545, 3797124; 513554, 3797111; 513554, 3797108; 513567, 3797110; 513599, 3797116; 513650,

3797107; 513655, 3797103; 513659, 3797103; 513666, 3797099; 513668, 3797098; 513694, 3797083; 513708, 3797069; 513727, 3797057; 513758, 3797027; 513788, 3796985; 513797, 3796978; 513801, 3796976; 513815, 3796968; 513834, 3796962; 513876, 3796962; 513926, 3796970; 513952, 3796981; 513956, 3796985; 513979, 3797000; 514002, 3797019; 514028, 3797035; 514070, 3797061; 514093, 3797069; 514129, 3797075; 514136, 3797079; 514216, 3797087; 514238, 3797082; 514329, 3797076; 514364, 3797073; 514406, 3797069; 514444, 3797046; 514455, 3797019; 514448, 3797004; 514444, 3797001; 514441, 3796991; 514418, 3796945; 514401, 3796935; 514398, 3796928; 514393, 3796914; 514396, 3796911; 514384, 3796831; 514384, 3796806; 514387, 3796798; 514383, 3796764; 514375, 3796741; 514362, 3796721; 514357, 3796709; 514343, 3796691; 514329, 3796661; 514318, 3796650; 514303, 3796631; 514288, 3796623; 514276, 3796625; 514270, 3796622; 514239, 3796625; 514197, 3796645; 514171, 3796637; 514166, 3796635; 514151, 3796626; 514106, 3796587; 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(iii) *Note:* Map of Unit 1, Subunits 1A and 1B (Map 2), follows:

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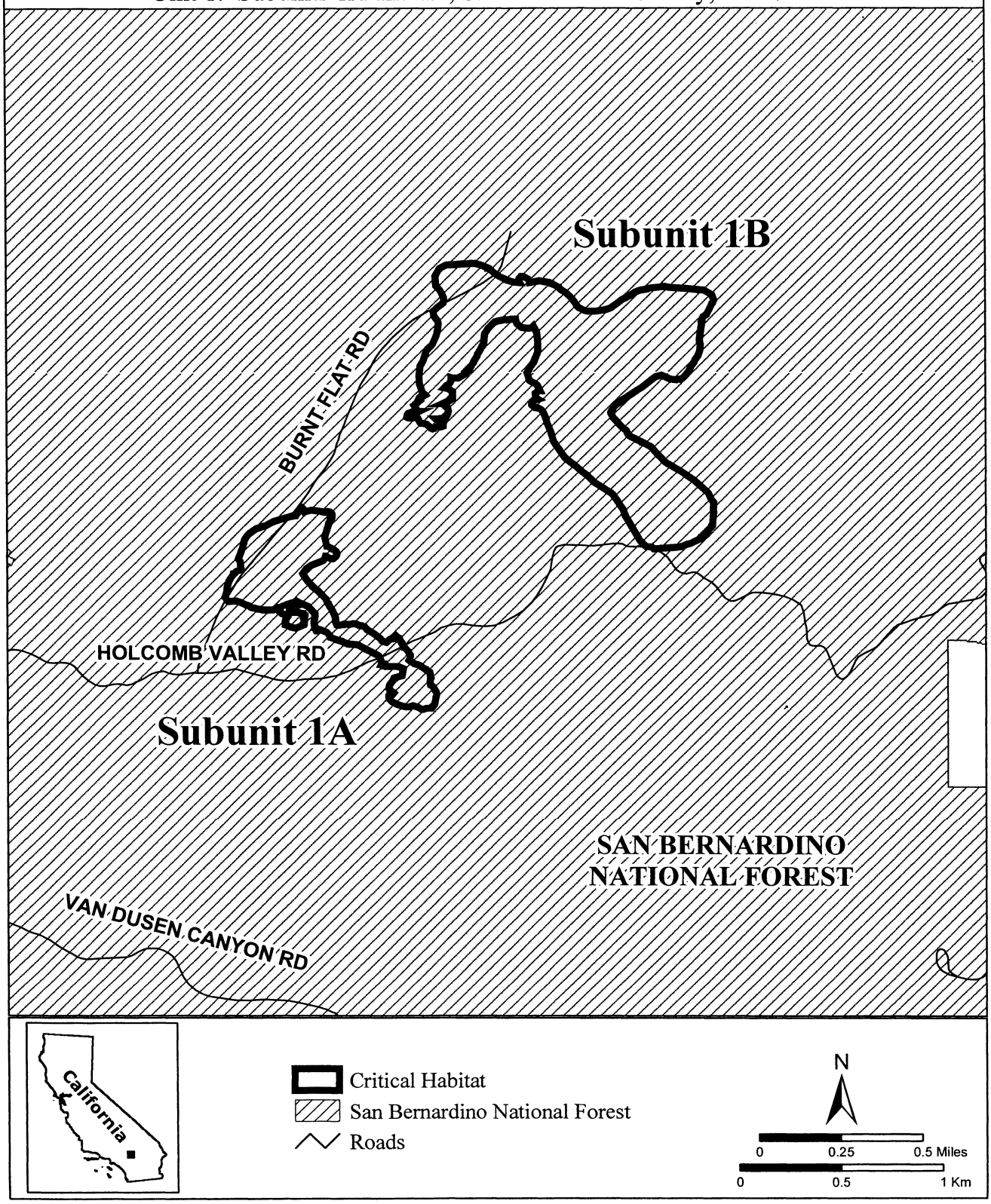
Map 2
Critical Habitat for Pebble Plain Plants
Unit 1: Subunits 1A and 1B, San Bernardino County, California



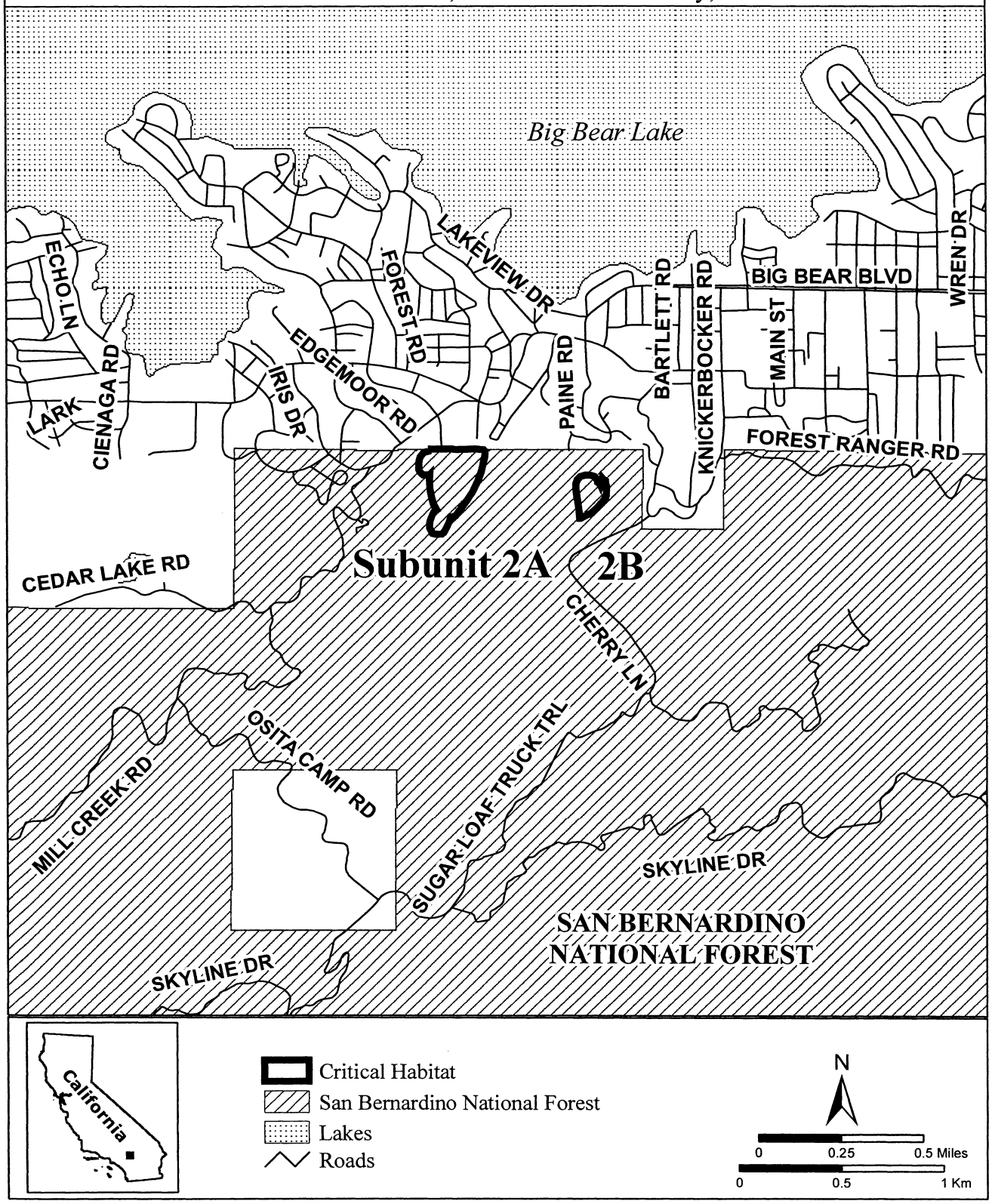
(8) *Unit 2:* Big Bear Lake, San Bernardino County, California. From USGS 1:24,000 quadrangle map Big Bear Lake.

(i) Subunit 2A. Land bounded by the following UTM NAD27 coordinates (E, N): 506933, 3788172; 506933, 3788172; 507055, 3788172; 507058, 3788169; 507058, 3788169; 507166, 3788172; 507208, 3788170; 507213, 3788165; 507215, 3788157; 507213, 3788134; 507205, 3788104; 507197, 3788062; 507176, 3788009; 507151, 3787955; 507123, 3787915; 507111, 3787897; 507087, 3787865; 507069, 3787840; 507045, 3787831; 507043, 3787831; 507040, 3787820; 507041, 3787818; 507036, 3787807; 507036, 3787807; 507036, 3787806; 507036, 3787806; 507025, 3787783; 507009, 3787755; 507006, 3787754; 507000, 3787747; 506974, 3787747; 506974, 3787747; 506973, 3787747; 506968, 3787747; 506967, 3787748; 506954, 3787751; 506938, 3787779; 506942, 3787811; 506954, 3787842; 506966, 3787866; 506974, 3787869; 506956, 3787901; 506949, 3787935; 506941, 3787974; 506938, 3788020; 506941, 3788043; 506939, 3788042; 506926, 3788042; 506907, 3788042; 506901, 3788049; 506892, 3788058; 506885, 3788071; 506885, 3788093; 506888, 3788115; 506895, 3788135; 506911, 3788153; 506933, 3788160; 506933, 3788172.

(ii) Subunit 2B. Land bounded by the following UTM NAD27 coordinates (E, N): 507777, 3788001; 507780, 3787993; 507783, 3788009; 507791, 3788029; 507801, 3788015; 507806, 3788013; 507806, 3788005; 507811, 3787989; 507811, 3787973; 507811, 3787949; 507810, 3787946; 507810, 3787941; 507807, 3787932; 507806, 3787930; 507804, 3787929; 507803, 3787925; 507802, 3787925; 507790, 3787909; 507764, 3787877; 507732, 3787851; 507704, 3787839; 507688, 3787829; 507686, 3787828; 507682, 3787826; 507682, 3787827; 507678, 3787826; 507674, 3787876; 507666, 3787929; 507659, 3787975; 507659, 3788001; 507669, 3788023; 507682, 3788035; 507707, 3788042; 507729, 3788042; 507752, 3788036; 507767, 3788013; 507769, 3788006; 507777, 3788001.

(iii) *Note:* Map of Unit 2, Subunits 2A and 2B (Map 3), follows:

Map 3
Critical Habitat for Pebble Plain Plants
Unit 2: Subunits 2A and 2B, San Bernardino County, California



BILLING CODE 4310–55–C

(9) *Unit 3:* Broom Flat, San Bernardino County, California. From USGS 1:24,000 quadrangle map Onyx Peak.

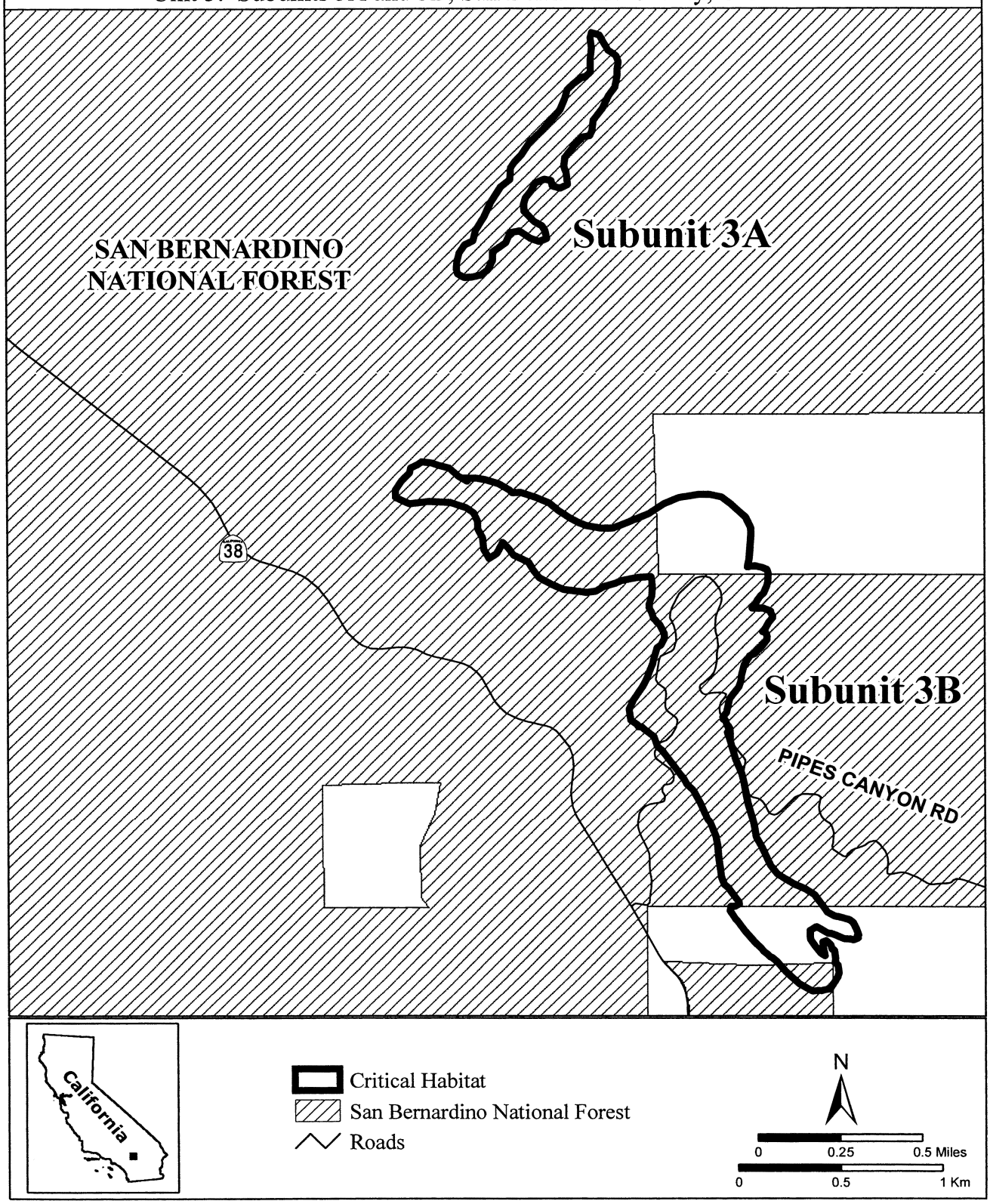
(i) Subunit 3A. Land bounded by the following UTM NAD27 coordinates (E,N): 525644, 3786958; 525650, 3786943; 525657, 3786886; 525619, 3786867; 525580, 3786879; 525577, 3786894; 525574, 3786905; 525542, 3786911; 525498, 3786892; 525473, 3786847; 525450, 3786817; 525440, 3786790; 525442, 3786753; 525491, 3786702; 525528, 3786682; 525545, 3786658; 525552, 3786616; 525518, 3786601; 525472, 3786618; 525418, 3786655; 525374, 3786645; 525352, 3786596; 525312, 3786569; 525288, 3786552; 525285, 3786508; 525261, 3786459; 525229, 3786435; 525185, 3786425; 525148, 3786423; 525114, 3786442; 525107, 3786462; 525112, 3786503; 525121, 3786543; 525151, 3786587; 525190, 3786606; 525202, 3786658; 525246, 3786724; 525278, 3786795; 525327, 3786873; 525374, 3786910; 525377, 3786968; 525396, 3786994; 525428, 3787032; 525469, 3787091; 525533, 3787152; 525580, 3787209; 525619, 3787254; 525644, 3787311; 525657, 3787355; 525688, 3787387; 525733, 3787419; 525746, 3787419; 525771, 3787444; 525771, 3787508; 525777, 3787565; 525771, 3787616; 525777, 3787641; 525815, 3787629; 525834, 3787597; 525860, 3787552; 525898, 3787527; 525911, 3787495; 525904, 3787457; 525904, 3787425; 525892, 3787368; 525860, 3787324; 525828, 3787260; 525784, 3787203; 525777, 3787152; 525765, 3787127; 525733, 3787121; 525688, 3787076; 525644, 3787019; 525638, 3786974; 525644, 3786958.

(ii) Subunit 3B. Land bounded by the following UTM NAD27 coordinates (E,N): 525111, 3785431; 525155, 3785406; 525142, 3785419; 525199, 3785419; 525250, 3785412; 525307, 3785393; 525365, 3785362; 525378, 3785345; 525421, 3785349; 525497, 3785323; 525558, 3785296; 525600, 3785262; 525661, 3785220; 525706, 3785197; 525744, 3785182; 525813, 3785170; 525870, 3785170; 525950, 3785201; 526053, 3785243; 526125, 3785292; 526198, 3785323; 526247, 3785330; 526297, 3785338; 526358, 3785338; 526411, 3785327; 526457, 3785292; 526491, 3785262; 526529, 3785227; 526556, 3785170; 526556, 3785132; 526552, 3785079; 526548, 3785022; 526540, 3784978; 526562, 3784983; 526585, 3784983; 526610, 3784977; 526632, 3784967; 526642, 3784945; 526639, 3784907; 526632, 3784885; 526616, 3784847; 526604, 3784834; 526588, 3784815; 526575, 3784789; 526562, 3784774; 526617, 3784774; 526651, 3784759; 526651, 3784751; 526662, 3784735; 526662, 3784724; 526642, 3784701; 526625, 3784671; 526614, 3784655; 526626, 3784653; 526636, 3784634; 526632, 3784615; 526616, 3784593; 526604, 3784577; 526594, 3784567; 526582, 3784558; 526575, 3784548; 526562, 3784542; 526550, 3784535; 526547, 3784534; 526522, 3784488; 526509, 3784440; 526506, 3784412; 526495, 3784379; 526459, 3784332; 526457, 3784330; 526449, 3784321; 526434, 3784252; 526415, 3784229; 526418, 3784219; 526423, 3784219; 526430, 3784207; 526436, 3784191; 526442, 3784178; 526445, 3784162; 526439, 3784151; 526445, 3784130; 526476, 3784019; 526510, 3783943; 526522, 3783890; 526541, 3783795; 526567, 3783692; 526579, 3783627; 526606, 3783581; 526647, 3783490; 526680, 3783446; 526713, 3783425; 526764, 3783396; 526818, 3783371; 526861, 3783342; 526873, 3783324; 526876, 3783323; 526878, 3783320; 526913, 3783270; 526922, 3783257; 526963, 3783235; 526981, 3783233; 527032, 3783219; 527050, 3783204; 527064, 3783175; 527075, 3783143; 527071, 3783137; 527074, 3783128; 527051, 3783117; 527037, 3783121; 527006, 3783124; 526970, 3783139; 526945, 3783150; 526930, 3783150; 526898, 3783168; 526872, 3783183; 526869, 3783183; 526840, 3783163; 526840, 3783139; 526843, 3783117; 526861, 3783088; 526890, 3783052; 526911, 3783037; 526907, 3783059; 526904, 3783081; 526901, 3783107; 526917, 3783113; 526926, 3783107; 526939, 3783094; 526946, 3783072; 526955, 3783069; 526958, 3783062; 526961, 3783031; 526961, 3783008; 526960, 3783003; 526974, 3782994; 526978, 3782969; 526979, 3782968; 526979, 3782967; 526981, 3782954; 526976, 3782944; 526975, 3782934; 526937, 3782873; 526904, 3782868; 526894, 3782863; 526880, 3782865; 526853, 3782861; 526788, 3782899; 526724, 3782957; 526678, 3783010; 526653, 3783029; 526644, 3783034; 526634, 3783043; 526613, 3783059; 526600, 3783077; 526571, 3783103; 526524, 3783161; 526489, 3783206; 526476, 3783219; 526473, 3783226; 526448, 3783262; 526452, 3783284; 526470, 3783284; 526495, 3783297; 526493, 3783306; 526477, 3783327; 526441, 3783378; 526419, 3783393; 526408, 3783425; 526401, 3783469; 526394, 3783531; 526390, 3783585; 526381, 3783631; 526351, 3783704; 526339, 3783719; 526299, 3783803; 526269, 3783859; 526263, 3783867; 526261, 3783869; 526234, 3783893; 526221, 3783921; 526209, 3783936; 526113, 3784063; 526089, 3784082; 526072, 3784131; 526026, 3784168; 526012, 3784180; 525995, 3784180; 525987, 3784194; 525958, 3784212; 525951, 3784270; 525969, 3784310; 526016, 3784379; 526029, 3784402; 526038, 3784423; 526068, 3784501; 526071, 3784513; 526089, 3784575; 526109, 3784589; 526125, 3784624; 526125, 3784644; 526103, 3784691; 526089, 3784702; 526083, 3784713; 526072, 3784721; 526062, 3784751; 526049, 3784775; 526052, 3784781; 526049, 3784789; 526065, 3784836; 526067, 3784883; 526064, 3784909; 526060, 3784931; 525995, 3784927; 525944, 3784916; 525912, 3784910; 525882, 3784896; 525828, 3784881; 525786, 3784858; 525737, 3784850; 525710, 3784854; 525630, 3784865; 525573, 3784888; 525508, 3784927; 525478, 3784965; 525455, 3785003; 525382, 3785037; 525360, 3785067; 525328, 3785099; 525326, 3785095; 525301, 3785044; 525263, 3785019; 525238, 3785063; 525231, 3785120; 525206, 3785165; 525206, 3785203; 525187, 3785247; 525149, 3785273; 525072, 3785298; 524965, 3785304; 524926, 3785298; 524869, 3785292; 524799, 3785323; 524799, 3785362; 524831, 3785406; 524869, 3785444; 524876, 3785470; 524914, 3785489; 524933, 3785501; 524984, 3785495; 525022, 3785482; 525066, 3785470; 525111, 3785431.

(iii) *Note:* Map of Unit 3, Subunits 3A and 3B (Map 4), follows:

BILLING CODE 4310–55–P

Map 4
Critical Habitat for Pebble Plain Plants
Unit 3: Subunits 3A and 3B, San Bernardino County, California



(10) *Unit 4:* Fawnskin, San Bernardino County, California. From USGS 1:24,000 quadrangle map Fawnskin.

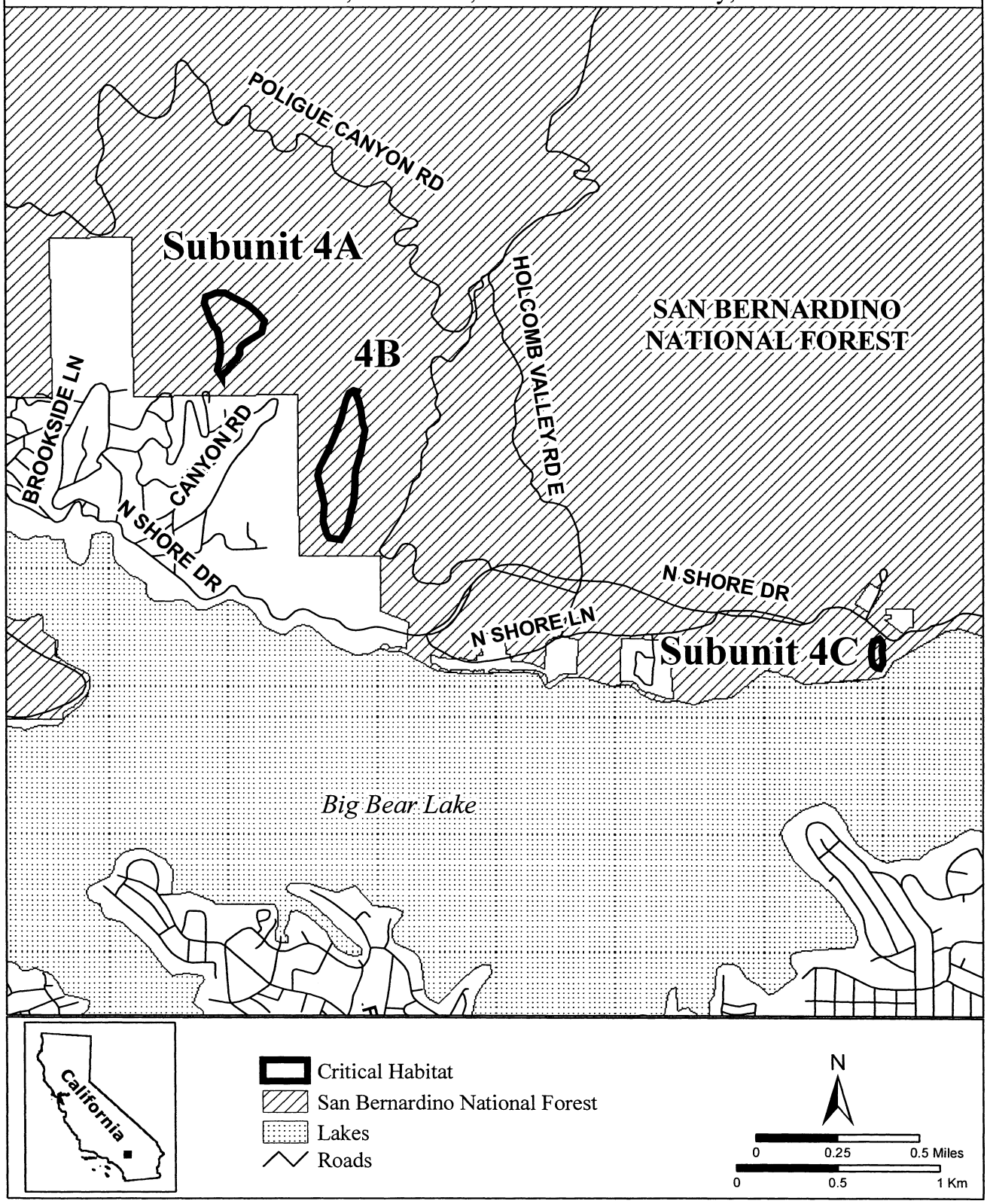
(i) Subunit 4A. Land bounded by the following UTM NAD27 coordinates (E, N): 506020, 3792309; 506020, 3792303; 506001, 3792335; 506014, 3792404; 506014, 3792468; 506001, 3792538; 505982, 3792557; 505963, 3792595; 505950, 3792639; 505937, 3792671; 505944, 3792703; 505994, 3792722; 506039, 3792722; 506109, 3792684; 506147, 3792665; 506191, 3792627; 506229, 3792582; 506217, 3792525; 506166, 3792493; 506121, 3792462; 506109, 3792442; 506109, 3792417; 506096, 3792392; 506077, 3792373; 506052, 3792335; 506020, 3792309.

(ii) Subunit 4B. Land bounded by the following UTM NAD27 coordinates (E, N): 506636, 3791541; 506604, 3791490; 506547, 3791496; 506534, 3791515; 506515, 3791579; 506522, 3791661; 506502, 3791757; 506490, 3791807; 506502, 3791852; 506547, 3791941; 506579, 3792017; 506610, 3792100; 506629, 3792182; 506649, 3792220; 506668, 3792233; 506687, 3792227; 506680, 3792214; 506693, 3792182; 506706, 3792138; 506712, 3792074; 506725, 3792036; 506706, 3791928; 506680, 3791846; 506674, 3791801; 506674, 3791744; 506668, 3791674; 506655, 3791623; 506636, 3791541.

(iii) Subunit 4C. Land bounded by the following UTM NAD27 coordinates (E, N): 509277, 3790880; 509264, 3790854; 509248, 3790857; 509229, 3790873; 509223, 3790908; 509223, 3790943; 509226, 3790972; 509232, 3790991; 509261, 3791003; 509273, 3790988; 509277, 3790969; 509273, 3790943; 509277, 3790908; 509277, 3790880.

(iv) *Note:* Map of Unit 4, Subunits 4A, 4B, and 4C (Map 5), follows:

Map 5
Critical Habitat for Pebble Plain Plants
Unit 4: Subunits 4A, 4B and 4C, San Bernardino County, California



(11) *Unit 5:* Gold Mountain, San Bernardino County, California. From USGS 1:24,000 quadrangle map Big Bear City.

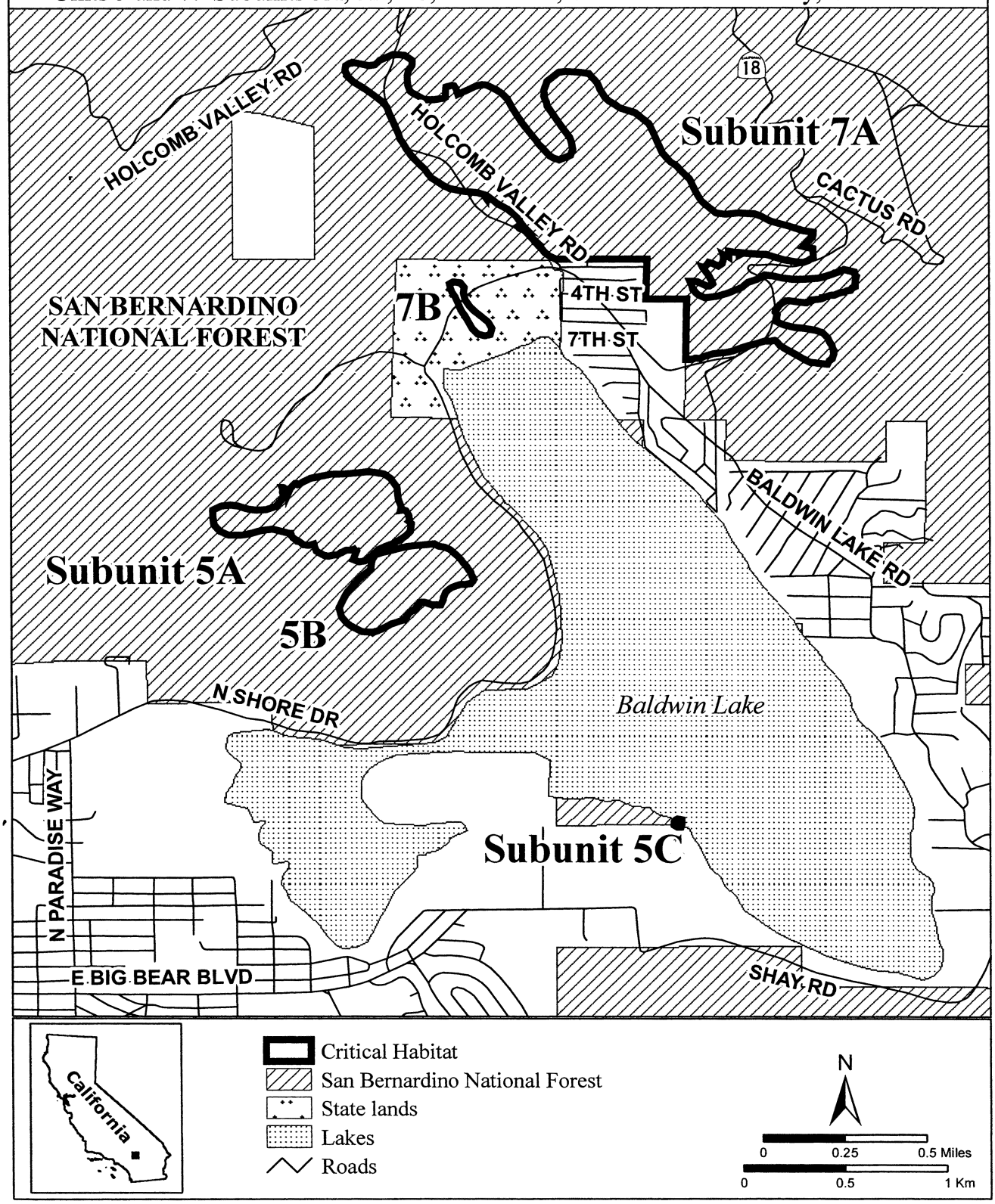
(i) Subunit 5A. Land bounded by the following UTM NAD27 coordinates (E, N): 516297, 3793523; 516342, 3793514; 516374, 3793491; 516405, 3793447; 516412, 3793390; 516424, 3793352; 516421, 3793333; 516437, 3793335; 516450, 3793331; 516463, 3793309; 516466, 3793281; 516465, 3793279; 516475, 3793268; 516469, 3793227; 516447, 3793207; 516421, 3793189; 516380, 3793166; 516345, 3793154; 516311, 3793139; 516272, 3793103; 516244, 3793081; 516215, 3793077; 516187, 3793090; 516206, 3793135; 516202, 3793144; 516207, 3793149; 516196, 3793141; 516172, 3793137; 516163, 3793137; 516157, 3793137; 516154, 3793135; 516147, 3793133; 516132, 3793125; 516128, 3793123; 516109, 3793112; 516096, 3793112; 516095, 3793112; 516081, 3793111; 516065, 3793105; 516045, 3793109; 516017, 3793126; 516016, 3793127; 516006, 3793132; 516003, 3793145; 515998, 3793153; 515995, 3793166; 515988, 3793165; 515980, 3793163; 515971, 3793161; 515961, 3793161; 515956, 3793162; 515943, 3793162; 515926, 3793178; 515919, 3793180; 515912, 3793182; 515905, 3793188; 515899, 3793193; 515893, 3793198; 515884, 3793209; 515881, 3793219; 515879, 3793220; 515793, 3793243; 515732, 3793233; 515685, 3793220; 515647, 3793211; 515577, 3793211; 515536, 3793230; 515507, 3793261; 515501, 3793303; 515501, 3793335; 515542, 3793357; 515586, 3793360; 515625, 3793357; 515666, 3793341; 515707, 3793335; 515761, 3793338; 515809, 3793354; 515828, 3793376; 515851, 3793399; 515851, 3793403; 515848, 3793408; 515845, 3793414; 515844, 3793417; 515842, 3793424; 515842, 3793431; 515843, 3793438; 515839, 3793448; 515845, 3793446; 515849, 3793444; 515856, 3793439; 515860, 3793433; 515872, 3793430; 515873, 3793429; 515879, 3793443; 515901, 3793468; 515904, 3793468; 515910, 3793468; 515917, 3793461; 515921, 3793461; 515935, 3793473; 515980, 3793495; 516015, 3793501; 516082, 3793514; 516132, 3793514; 516212, 3793520; 516262, 3793527; 516297, 3793523.

(ii) Subunit 5B. Land bounded by the following UTM NAD27 coordinates (E, N): 516768, 3792969; 516744, 3792965; 516720, 3792965; 516705, 3792961; 516685, 3792953; 516673, 3792949; 516652, 3792935; 516645, 3792926; 516642, 3792923; 516641, 3792918; 516633, 3792898; 516633, 3792891; 516633, 3792891; 516623, 3792868; 516621, 3792864; 516585, 3792863; 516581, 3792865; 516578, 3792862; 516562, 3792870; 516560, 3792871; 516556, 3792871; 516545, 3792873; 516540, 3792875; 516521, 3792875; 516510, 3792864; 516502, 3792855; 516496, 3792848; 516490, 3792840; 516477, 3792833; 516463, 3792824; 516461, 3792822; 516450, 3792804; 516447, 3792800; 516438, 3792788; 516423, 3792784; 516410, 3792780; 516377, 3792769; 516375, 3792768; 516364, 3792763; 516319, 3792740; 516318, 3792740; 516311, 3792737; 516304, 3792731; 516298, 3792731; 516283, 3792725; 516279, 3792728; 516271, 3792727; 516229, 3792731; 516176, 3792758; 516157, 3792773; 516130, 3792803; 516127, 3792815; 516119, 3792849; 516138, 3792891; 516157, 3792925; 516180, 3792952; 516203, 3792979; 516233, 3793009; 516268, 3793036; 516274, 3793041; 516275, 3793055; 516282, 3793087; 516298, 3793112; 516329, 3793125; 516364, 3793131; 516453, 3793154; 516520, 3793160; 516590, 3793166; 516610, 3793155; 516641, 3793150; 516668, 3793139; 516694, 3793116; 516717, 3793093; 516732, 3793074; 516748, 3793055; 516759, 3793039; 516770, 3793024; 516772, 3793012; 516775, 3793010; 516778, 3793004; 516778, 3793004; 516780, 3793001; 516784, 3792993; 516783, 3792989; 516783, 3792987; 516783, 3792987; 516783, 3792987; 516782, 3792985; 516780, 3792983; 516780, 3792981; 516777, 3792979; 516777, 3792978; 516775, 3792975; 516773, 3792971; 516772, 3792971; 516772, 3792971; 516771, 3792971; 516769, 3792970; 516768, 3792969.

(iii) Subunit 5C. Land bounded by the following UTM NAD27 coordinates (E,N): 517804, 3791769; 517801, 3791754; 517782, 3791754; 517766, 3791765; 517766, 3791780; 517774, 3791792; 517782, 3791796; 517804, 3791792; 517804, 3791769.

(iv) *Note:* Map of Unit 5, Subunits 5A, 5B, 5C, 7A, and 7B (Map 6), follows:

Map 6
Critical Habitat for Pebble Plain Plants
Units 5 and 7: Subunits 5A, 5B, 5C, 7A and 7B, San Bernardino County, California



(12) *Unit 6:* Holcomb Valley, San Bernardino County, California. From USGS 1:24,000 quadrangle map Fawnskin.

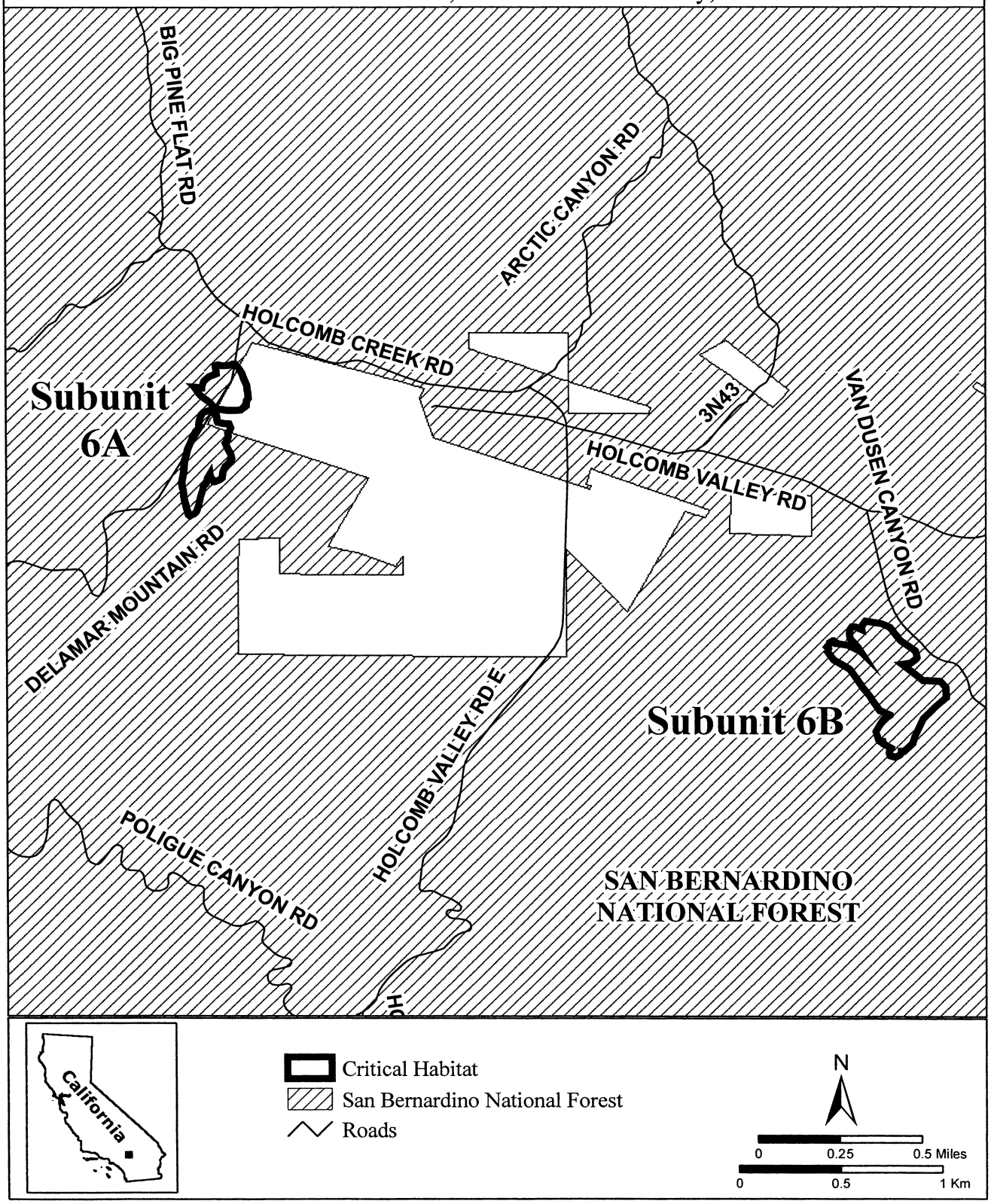
(i) Subunit 6A. Land bounded by the following UTM NAD27 coordinates (E, N): 506727, 3796049; 506738, 3796035; 506743, 3796031; 506761, 3796001; 506765, 3795985; 506767, 3795981; 506783, 3795942; 506785, 3795915; 506787, 3795910; 506790, 3795878; 506784, 3795872; 506782, 3795867; 506779, 3795843; 506773, 3795840; 506772, 3795835; 506767, 3795833; 506752, 3795821; 506730, 3795818; 506689, 3795818; 506663, 3795823; 506634, 3795825; 506624, 3795837; 506612, 3795847; 506606, 3795854; 506597, 3795862; 506571, 3795881; 506571, 3795883; 506557, 3795893; 506544, 3795910; 506529, 3795930; 506530, 3795930; 506528, 3795934; 506565, 3795933; 506565, 3795935; 506574, 3795964; 506600, 3795986; 506635, 3796001; 506633, 3796023; 506631, 3796041; 506632, 3796041; 506644, 3796045; 506663, 3796042; 506681, 3796042; 506707, 3796045; 506715, 3796049; 506727, 3796049. Land bounded by the following UTM NAD27 coordinates (E, N): 506666, 3795511; 506661, 3795481; 506647, 3795471; 506625, 3795463; 506622, 3795462; 506612, 3795476; 506604, 3795484; 506602, 3795500; 506591, 3795480; 506584, 3795455; 506569, 3795435; 506569, 3795428; 506562, 3795409; 506556, 3795389; 506547, 3795351; 506537, 3795317; 506532, 3795310; 506524, 3795303; 506512, 3795298; 506504, 3795291; 506495, 3795298; 506492, 3795307; 506487, 3795328; 506483, 3795347; 506477, 3795372; 506472, 3795393; 506470, 3795416; 506466, 3795433; 506463, 3795457; 506468, 3795488; 506472, 3795510; 506474, 3795533; 506477, 3795567; 506485, 3795593; 506494, 3795624; 506507, 3795657; 506517, 3795687; 506534, 3795715; 506555, 3795736; 506549, 3795747; 506552, 3795771; 506564, 3795799; 506572, 3795807; 506600, 3795819; 506616, 3795811; 506617, 3795807; 506620, 3795805; 506635, 3795794; 506639, 3795763; 506641, 3795759; 506670, 3795753; 506695, 3795750; 506705, 3795731; 506695, 3795712; 506690, 3795703; 506692, 3795687; 506687, 3795672; 506679, 3795655; 506689, 3795626; 506705, 3795598; 506708, 3795575; 506689, 3795550; 506677, 3795540; 506676, 3795537; 506666, 3795511.

(ii) Subunit 6B. Land bounded by the following UTM NAD27 coordinates (E, N): 509943, 3794740; 509997, 3794674; 510070, 3794623; 510076, 3794591; 510073, 3794585; 510044, 3794562; 510003, 3794556; 510054, 3794518; 510105, 3794477; 510124, 3794477; 510194, 3794473; 510219, 3794442; 510222, 3794391; 510168, 3794347; 510105, 3794283; 510067, 3794201; 510054, 3794162; 510013, 3794124; 509999, 3794124; 509999, 3794118; 509996, 3794110; 509991, 3794106; 509987, 3794102; 509981, 3794099; 509975, 3794097; 509968, 3794095; 509961, 3794096; 509955, 3794096; 509950, 3794098; 509946, 3794101; 509940, 3794109; 509940, 3794115; 509940, 3794122; 509943, 3794131; 509947, 3794139; 509911, 3794159; 509908, 3794173; 509894, 3794173; 509886, 3794181; 509874, 3794221; 509894, 3794256; 509914, 3794284; 509943, 3794302; 509943, 3794305; 509893, 3794327; 509858, 3794375; 509839, 3794404; 509807, 3794445; 509782, 3794480; 509747, 3794531; 509668, 3794579; 509639, 3794617; 509643, 3794633; 509635, 3794642; 509648, 3794660; 509649, 3794664; 509664, 3794674; 509668, 3794674; 509674, 3794667; 509680, 3794664; 509682, 3794659; 509737, 3794651; 509797, 3794623; 509800, 3794620; 509787, 3794641; 509771, 3794660; 509747, 3794684; 509743, 3794708; 509747, 3794731; 509755, 3794743; 509775, 3794743; 509791, 3794735; 509806, 3794729; 509803, 3794743; 509822, 3794772; 509902, 3794759; 509943, 3794740.

(iii) *Note:* Unit 6, Subunits 6A and 6B (Map 7), follows:

BILLING CODE 4310–55–P

Map 7
Critical Habitat for Pebble Plain Plants
Unit 6: Subunits 6A and 6B, San Bernardino County, California



BILLING CODE 4310–55–C

(13) *Unit 7:* North Baldwin Lake, San Bernardino County, California. From USGS 1:24,000 quadrangle map Big Bear City.

(i) Subunit 7A. Land bounded by the following UTM NAD27 coordinates (E, N): 516160, 3795525; 516163, 3795551; 516182, 3795563; 516194, 3795563; 516198, 3795566; 516240, 3795559; 516278, 3795551; 516308, 3795555; 516331, 3795578; 516396, 3795605; 516406, 3795603; 516415, 3795605; 516453, 3795601; 516491, 3795578; 516491, 3795574; 516491, 3795551; 516472, 3795525; 516466, 3795501; 516465, 3795486; 516468, 3795452; 516480, 3795422; 516486, 3795415; 516518, 3795399; 516552, 3795379; 516598, 3795380; 516649, 3795388; 516655, 3795391; 516654, 3795425; 516658, 3795442; 516685, 3795452; 516698, 3795449; 516708, 3795431; 516716, 3795406; 516765, 3795429; 516807, 3795448; 516810, 3795448; 516834, 3795456; 516857, 3795452; 516906, 3795429; 516933, 3795410; 516960, 3795383; 516971, 3795361; 516986, 3795334; 517009, 3795299; 517032, 3795262; 517063, 3795223; 517097, 3795181; 517110, 3795163; 517131, 3795140; 517165, 3795101; 517184, 3795090; 517207, 3795083; 517211, 3795082; 517269, 3795104; 517278, 3795133; 517272, 3795170; 517264, 3795193; 517230, 3795239; 517196, 3795288; 517154, 3795349; 517150, 3795370; 517146, 3795376; 517139, 3795399; 517141, 3795414; 517139, 3795425; 517146, 3795448; 517154, 3795471; 517211, 3795517; 517245, 3795521; 517314, 3795517; 517360, 3795509; 517381, 3795485; 517386, 3795479; 517388, 3795476; 517402, 3795460; 517413, 3795433; 517440, 3795387; 517460, 3795371; 517489, 3795353; 517506, 3795341; 517520, 3795334; 517584, 3795315; 517611, 3795292; 517653, 3795261; 517672, 3795219; 517699, 3795159; 517718, 3795115; 517749, 3795078; 517759, 3795070; 517786, 3795052; 517809, 3795029; 517840, 3794999; 517841, 3794997; 517851, 3794987; 517882, 3794923; 517908, 3794881; 517917, 3794871; 517939, 3794854; 517981, 3794819; 518023, 3794812; 518038, 3794812; 518095, 3794819; 518152, 3794816; 518155, 3794815; 518171, 3794816; 518202, 3794804; 518251, 3794778; 518339, 3794755; 518411, 3794732; 518461, 3794724; 518461, 3794713; 518457, 3794698; 518442, 3794683; 518439, 3794680; 518438, 3794679; 518415, 3794652; 518458, 3794642; 518462, 3794598; 518443, 3794587; 518438, 3794583; 518413, 3794573; 518371, 3794577; 518322, 3794586; 518279, 3794597; 518246, 3794608; 518230, 3794614; 518206, 3794614; 518133, 3794617; 518117, 3794619; 518097, 3794610; 518097, 3794615; 518097, 3794618; 518098, 3794621; 518069, 3794625; 518061, 3794625; 518045, 3794627; 518046, 3794602; 518045, 3794602; 518039, 3794605; 518034, 3794609; 518019, 3794610; 518017, 3794611; 518019, 3794605; 518019, 3794589; 518012, 3794567; 517993, 3794554; 517968, 3794567; 517946, 3794573; 517936, 3794560; 517920, 3794548; 517914, 3794549; 517917, 3794545; 517924, 3794535; 517931, 3794526; 517939, 3794516; 517948, 3794503; 517954, 3794493; 517959, 3794482; 517964, 3794473; 517964, 3794468; 517959, 3794461; 517950, 3794456; 517934, 3794458; 517923, 3794462; 517905, 3794469; 517892, 3794475; 517882, 3794478; 517869, 3794480; 517852, 3794480; 517859, 3794462; 517866, 3794439; 517889, 3794413; 517927, 3794397; 517988, 3794404; 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(ii) Subunit 7B. Land bounded by the following UTM NAD27 coordinates (E, N): 516869, 3794211; 516844, 3794205; 516809, 3794214; 516783, 3794239; 516764, 3794271; 516749, 3794300; 516733, 3794325; 516720, 3794347; 516710, 3794376; 516695, 3794405; 516682, 3794424; 516672, 3794449; 516669, 3794465; 516688, 3794475; 516723, 3794471; 516742, 3794449; 516739, 3794421; 516745, 3794385; 516771, 3794351; 516793, 3794329; 516822, 3794306; 516860, 3794275; 516879, 3794243; 516869, 3794211.

(iii) *Note:* Map of Unit 7, Subunit 7A and 7B (Map 6), is provided at paragraph (11)(iv) of this entry.

(14) *Unit 8*, Sawmill, San Bernardino County, California. From USGS 1:24,000 quadrangle maps Big Bear City and Moonridge.

(i) Subunit 8A. Land bounded by the following UTM NAD27 coordinates (E, N): 513776, 3789263; 513753, 3789217; 513753, 3789214; 513750, 3789205; 513748, 3789194; 513745, 3789182; 513744, 3789171; 513744, 3789168;

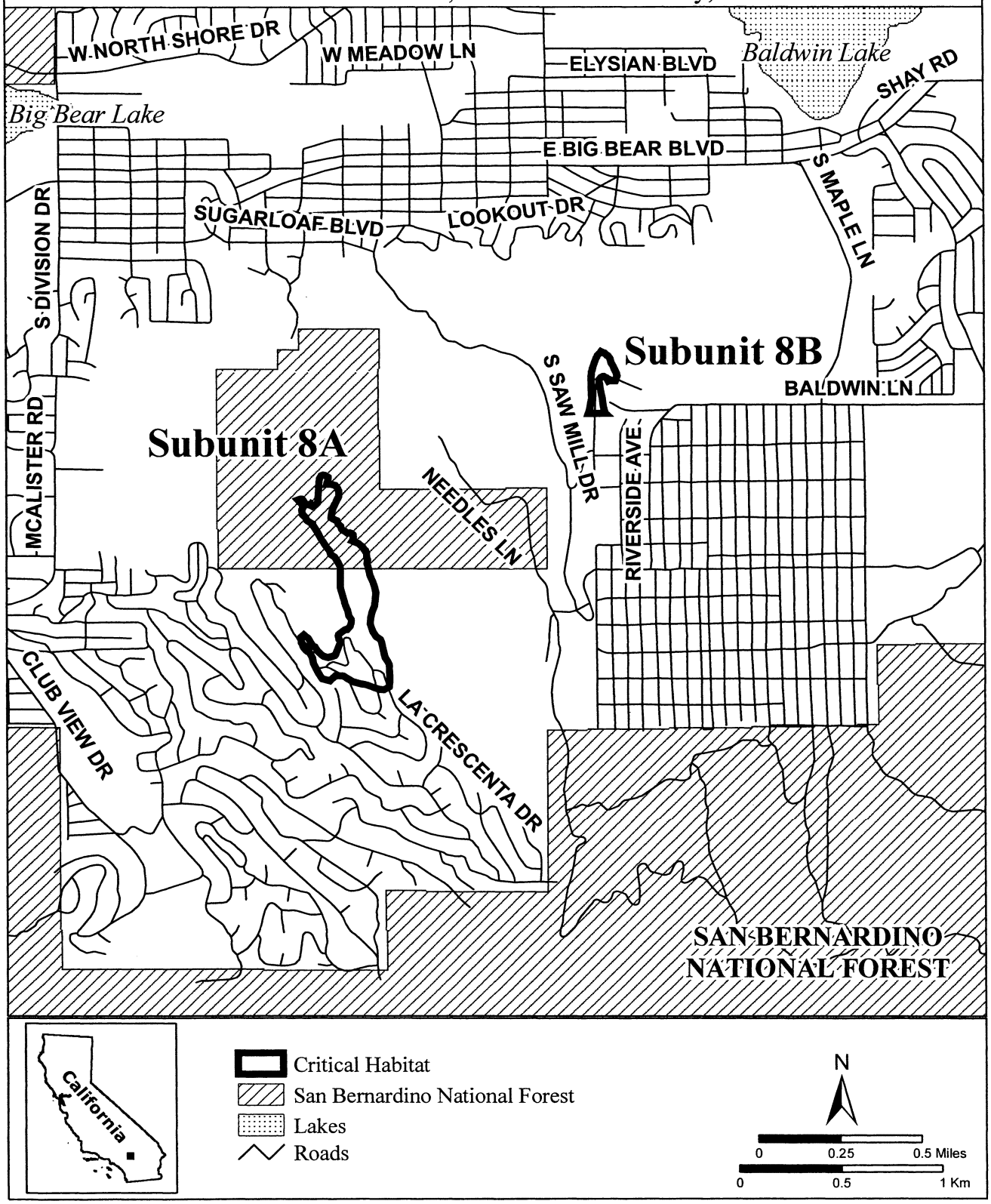
513759, 3789161; 513765, 3789157; 513772, 3789154; 513780, 3789137; 513792, 3789126; 513793, 3789113; 513798, 3789111; 513804, 3789105; 513812, 3789102; 513826, 3789091; 513836, 3789093; 513846, 3789090; 513853, 3789083; 513854, 3789059; 513850, 3789053; 513878, 3789041; 513902, 3789017; 513905, 3789013; 513906, 3789010; 513913, 3789005; 513913, 3789001; 513918, 3788993; 513918, 3788973; 513923, 3788961; 513919, 3788942; 513926, 3788919; 513935, 3788882; 513948, 3788850; 513957, 3788824; 513964, 3788796; 513957, 3788729; 513945, 3788701; 513938, 3788672; 513935, 3788640; 513948, 3788599; 513964, 3788577; 513986, 3788561; 513992, 3788542; 513999, 3788507; 514008, 3788472; 514021, 3788448; 514027, 3788437; 514027, 3788415; 514030, 3788373; 514030, 3788345; 514027, 3788326; 514002, 3788310; 513980, 3788313; 513951, 3788323; 513916, 3788335; 513884, 3788342; 513850, 3788351; 513821, 3788367; 513802, 3788380; 513767, 3788383; 513764, 3788382; 513736, 3788357; 513698, 3788366; 513678, 3788395; 513653, 3788442; 513650, 3788468; 513649, 3788469; 513634, 3788501; 513611, 3788529; 513596, 3788545; 513592, 3788564; 513592, 3788573; 513608, 3788586; 513630, 3788567; 513640, 3788548; 513649, 3788532; 513655, 3788526; 513663, 3788525; 513672, 3788509; 513673, 3788506; 513675, 3788504; 513697, 3788485; 513704, 3788479; 513728, 3788472; 513761, 3788481; 513764, 3788488; 513768, 3788499; 513787, 3788551; 513781, 3788561; 513779, 3788566; 513777, 3788572; 513775, 3788579; 513777, 3788585; 513784, 3788591; 513809, 3788609; 513815, 3788611; 513820, 3788612; 513823, 3788612; 513837, 3788627; 513843, 3788649; 513843, 3788659; 513842, 3788660; 513830, 3788680; 513826, 3788709; 513821, 3788716; 513811, 3788742; 513789, 3788818; 513789, 3788865; 513789, 3788897; 513789, 3788923; 513776, 3788948; 513761, 3788973; 513742, 3788986; 513735, 3789005; 513719, 3789024; 513703, 3789050; 513697, 3789059; 513691, 3789069; 513678, 3789094; 513665, 3789113; 513653, 3789135; 513652, 3789137; 513648, 3789140; 513624, 3789156; 513620, 3789168; 513604, 3789184; 513600, 3789208; 513606, 3789220; 513606, 3789228; 513608, 3789229; 513581, 3789259; 513591, 3789262; 513601, 3789262; 513605, 3789257; 513608, 3789253; 513611, 3789247; 513621, 3789233; 513636, 3789235; 513645, 3789230; 513648, 3789234; 513652, 3789230; 513658, 3789229; 513662, 3789230; 513670, 3789236; 513674, 3789239; 513679, 3789244; 513686, 3789364; 513695, 3789377; 513704, 3789381; 513715, 3789379; 513719, 3789377; 513728, 3789372; 513730, 3789357; 513724, 3789335; 513743, 3789335; 513747, 3789335; 513763, 3789331; 513766, 3789326; 513772, 3789321; 513778, 3789313; 513781, 3789306; 513783, 3789303; 513783, 3789275; 513778, 3789268; 513778, 3789266; 513776, 3789263.

(ii) Subunit 8B. Land bounded by the following UTM NAD27 coordinates (E, N): 515098, 3789689; 515095, 3789689; 515057, 3789689; 515014, 3789689; 515020, 3789706; 515021, 3789719; 515031, 3789764; 515027, 3789815; 515027, 3789875; 515029, 3789884; 515029, 3789895; 515034, 3789907; 515034, 3789909; 515035, 3789912; 515037, 3789923; 515053, 3789964; 515054, 3789966; 515058, 3789977; 515063, 3789983; 515066, 3789986; 515069, 3789988; 515077, 3789997; 515092, 3789990; 515094, 3789989; 515104, 3789979; 515113, 3789974; 515120, 3789962; 515128, 3789941; 515137, 3789925; 515140, 3789915; 515142, 3789911; 515153, 3789887; 515153, 3789881; 515156, 3789875; 515148, 3789851; 515132, 3789851; 515116, 3789851; 515113, 3789850; 515104, 3789865; 515098, 3789869; 515091, 3789873; 515089, 3789873; 515077, 3789867; 515066, 3789856; 515069, 3789834; 515073, 3789814; 515077, 3789790; 515085, 3789759; 515089, 3789723; 515097, 3789691; 515098, 3789689.

(iii) *Note:* Unit 8, Subunits 8A and 8B (Map 8), follows:

BILLING CODE 4310–55–P

Map 8
Critical Habitat for Pebble Plain Plants
Unit 8: Subunits 8A and 8B, San Bernardino County, California



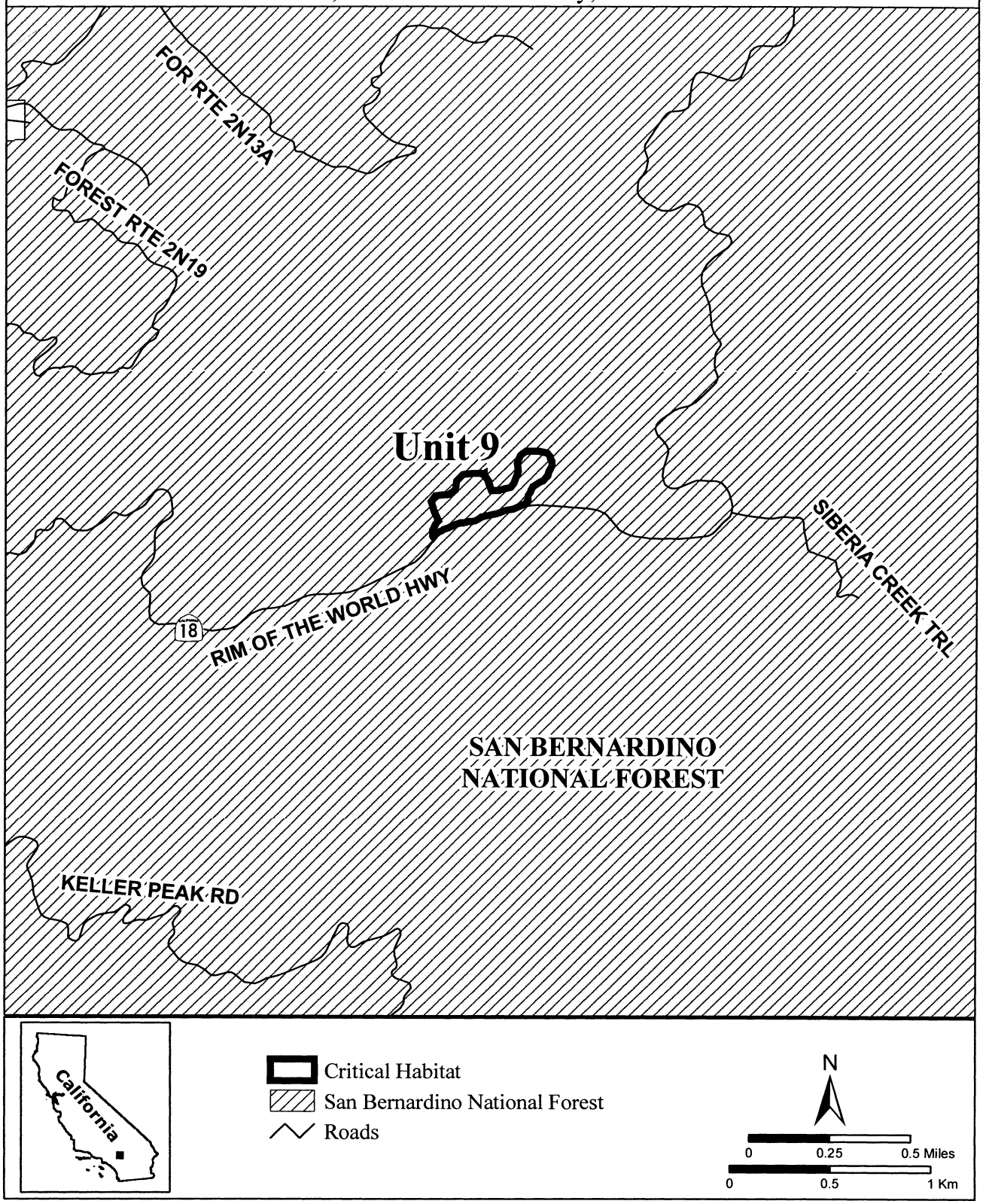
BILLING CODE 4310–55–C

(15) *Unit 9:* Snow Valley, San Bernardino County, California. From USGS 1:24,000 quadrangle map Keller Peak.

(i) Unit 9. Land bounded by the following UTM NAD27 coordinates (E,N): 496377, 3786874; 496368, 3786876; 496360, 3786876; 496349, 3786874; 496333, 3786868; 496319, 3786861; 496300, 3786853; 496289, 3786849; 496273, 3786842; 496263, 3786836; 496249, 3786830; 496241, 3786825; 496236, 3786822; 496232, 3786816; 496224, 3786804; 496222, 3786803; 496219, 3786810; 496219, 3786838; 496219, 3786840; 496235, 3786873; 496248, 3786886; 496226, 3786935; 496210, 3786983; 496232, 3787012; 496268, 3787015; 496296, 3787018; 496331, 3787041; 496338, 3787085; 496370, 3787117; 496411, 3787124; 496459, 3787124; 496464, 3787118; 496465, 3787118; 496473, 3787122; 496473, 3787120; 496476, 3787110; 496481, 3787104; 496484, 3787099; 496484, 3787098; 496484, 3787098; 496483, 3787098; 496491, 3787088; 496498, 3787069; 496500, 3787067; 496500, 3787063; 496510, 3787038; 496549, 3787038; 496559, 3787041; 496606, 3787054; 496622, 3787073; 496644, 3787133; 496638, 3787175; 496638, 3787175; 496642, 3787184; 496654, 3787213; 496666, 3787223; 496682, 3787235; 496743, 3787235; 496787, 3787226; 496797, 3787213; 496800, 3787210; 496805, 3787196; 496809, 3787184; 496809, 3787184; 496809, 3787184; 496809, 3787159; 496809, 3787159; 496809, 3787159; 496799, 3787139; 496797, 3787133; 496790, 3787111; 496782, 3787102; 496768, 3787086; 496758, 3787082; 496746, 3787076; 496717, 3787057; 496713, 3787050; 496708, 3787041; 496704, 3787032; 496701, 3787025; 496692, 3787013; 496692, 3786994; 496692, 3786994; 496692, 3786994; 496689, 3786987; 496685, 3786978; 496673, 3786968; 496644, 3786956; 496622, 3786946; 496609, 3786944; 496584, 3786940; 496568, 3786934; 496552, 3786927; 496533, 3786923; 496511, 3786917; 496479, 3786910; 496460, 3786905; 496449, 3786898; 496428, 3786886; 496404, 3786884; 496393, 3786883; 496376, 3786876; 496377, 3786875; 496376, 3786875; 496377, 3786874.

(ii) *Note:* Map of Unit 9 (Map 9) follows:

Map 9
Critical Habitat for Pebble Plain Plants
Unit 9, San Bernardino County, California

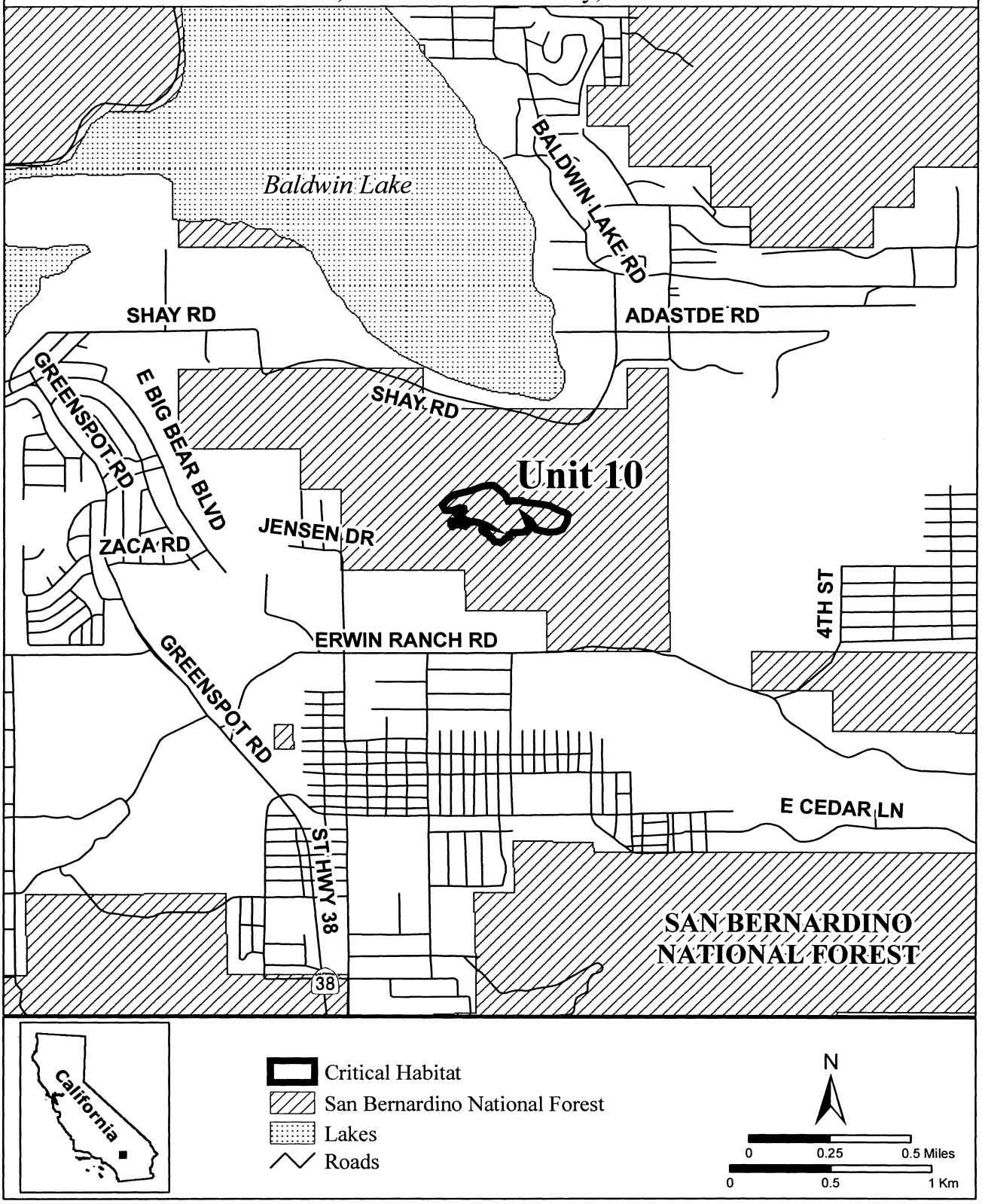


(16) *Unit 10:* South Baldwin Ridge/Erwin Lake, San Bernardino County, California. From USGS 1:24,000 quadrangle map Big Bear City.

(i) Unit 10. Land bounded by the following UTM NAD27 coordinates (E,N): 518798, 3790531; 518814, 3790499; 518836, 3790501; 518883, 3790501; 518891, 3790493; 518942, 3790490; 519022, 3790477; 519063, 3790455; 519104, 3790439; 519114, 3790429; 519108, 3790395; 519085, 3790359; 519057, 3790347; 519012, 3790344; 518955, 3790357; 518923, 3790404; 518900, 3790419; 518911, 3790389; 518923, 3790370; 518907, 3790346; 518876, 3790342; 518839, 3790342; 518822, 3790331; 518821, 3790331; 518820, 3790320; 518800, 3790313; 518797, 3790307; 518792, 3790302; 518776, 3790291; 518766, 3790295; 518764, 3790297; 518763, 3790296; 518744, 3790298; 518740, 3790308; 518737, 3790313; 518724, 3790318; 518725, 3790327; 518714, 3790333; 518716, 3790337; 518707, 3790343; 518699, 3790340; 518697, 3790342; 518695, 3790345; 518693, 3790346; 518691, 3790351; 518685, 3790353; 518683, 3790359; 518682, 3790364; 518683, 3790368; 518698, 3790377; 518704, 3790378; 518712, 3790375; 518707, 3790379; 518666, 3790392; 518637, 3790398; 518629, 3790391; 518618, 3790391; 518613, 3790387; 518613, 3790385; 518611, 3790382; 518605, 3790378; 518600, 3790374; 518591, 3790377; 518580, 3790376; 518568, 3790381; 518553, 3790380; 518545, 3790386; 518540, 3790382; 518541, 3790379; 518541, 3790375; 518542, 3790373; 518540, 3790371; 518538, 3790371; 518535, 3790374; 518533, 3790378; 518531, 3790382; 518530, 3790387; 518529, 3790392; 518530, 3790397; 518532, 3790400; 518536, 3790400; 518542, 3790399; 518550, 3790401; 518553, 3790401; 518563, 3790404; 518567, 3790405; 518568, 3790403; 518570, 3790401; 518574, 3790401; 518577, 3790399; 518583, 3790401; 518590, 3790403; 518596, 3790399; 518596, 3790397; 518597, 3790397; 518602, 3790395; 518604, 3790398; 518607, 3790400; 518609, 3790402; 518610, 3790404; 518602, 3790406; 518597, 3790409; 518586, 3790409; 518562, 3790429; 518582, 3790445; 518597, 3790453; 518595, 3790463; 518574, 3790467; 518561, 3790460; 518541, 3790453; 518503, 3790453; 518490, 3790477; 518517, 3790511; 518551, 3790531; 518632, 3790551; 518686, 3790571; 518720, 3790579; 518740, 3790579; 518764, 3790562; 518798, 3790531.

(ii) *Note:* Map of Unit 10 (Map 10) follows:

Map 10
Critical Habitat for Pebble Plain Plants
Unit 10, San Bernardino County, California



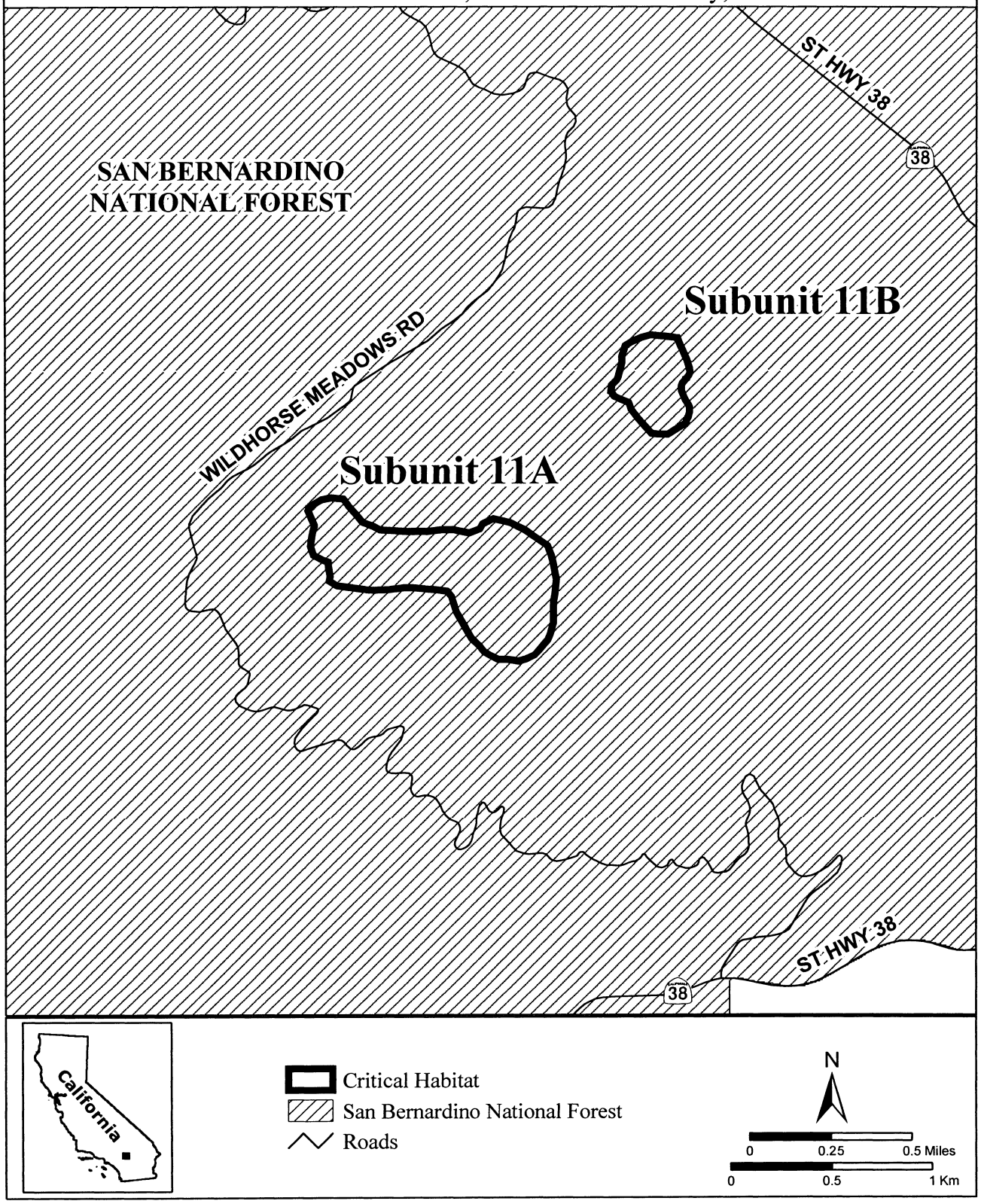
(17) *Unit 11:* Sugarloaf Ridge, San Bernardino County, California. From USGS 1:24,000 quadrangle map Moonridge.

(i) Subunit 11A. Land bounded by the following UTM NAD27 coordinates (E,N): 521244, 3783525; 521340, 3783525; 521411, 3783533; 521470, 3783533; 521550, 3783517; 521601, 3783537; 521617, 3783561; 521669, 3783589; 521752, 3783569; 521824, 3783533; 521883, 3783493; 521939, 3783453; 521959, 3783406; 521971, 3783351; 521982, 3783287; 521975, 3783203; 521970, 3783181; 521967, 3783152; 521967, 3783101; 521967, 3783072; 521951, 3783015; 521939, 3782987; 521897, 3782936; 521875, 3782911; 521831, 3782891; 521793, 3782882; 521739, 3782888; 521694, 3782888; 521650, 3782911; 521624, 3782926; 521602, 3782955; 521561, 3782993; 521520, 3783066; 521485, 3783126; 521462, 3783203; 521440, 3783228; 521380, 3783237; 521323, 3783241; 521266, 3783247; 521228, 3783247; 521151, 3783237; 521075, 3783234; 521040, 3783237; 520939, 3783250; 520894, 3783257; 520859, 3783279; 520862, 3783301; 520856, 3783336; 520853, 3783371; 520852, 3783374; 520828, 3783382; 520780, 3783410; 520764, 3783453; 520776, 3783521; 520784, 3783549; 520784, 3783557; 520752, 3783628; 520764, 3783652; 520820, 3783684; 520867, 3783692; 520927, 3783688; 520955, 3783652; 520994, 3783605; 521022, 3783573; 521078, 3783549; 521109, 3783533; 521244, 3783525.

(ii) Subunit 11B. Land bounded by the following UTM NAD27 coordinates (E,N): 522459, 3784505; 522475, 3784502; 522490, 3784501; 522542, 3784497; 522570, 3784493; 522573, 3784489; 522582, 3784489; 522598, 3784448; 522601, 3784441; 522629, 3784382; 522640, 3784339; 522641, 3784335; 522641, 3784333; 522645, 3784318; 522637, 3784302; 522627, 3784289; 522625, 3784287; 522623, 3784285; 522621, 3784283; 522607, 3784265; 522602, 3784251; 522602, 3784227; 522613, 3784195; 522622, 3784177; 522637, 3784156; 522641, 3784144; 522640, 3784127; 522641, 3784116; 522638, 3784107; 522637, 3784097; 522633, 3784091; 522621, 3784064; 522586, 3784040; 522552, 3784021; 522534, 3784009; 522531, 3784009; 522530, 3784009; 522486, 3784009; 522455, 3784013; 522427, 3784044; 522387, 3784088; 522351, 3784135; 522347, 3784153; 522340, 3784168; 522292, 3784188; 522268, 3784200; 522258, 3784217; 522252, 3784223; 522256, 3784247; 522256, 3784255; 522280, 3784279; 522289, 3784297; 522292, 3784306; 522308, 3784366; 522308, 3784397; 522324, 3784449; 522327, 3784451; 522328, 3784454; 522339, 3784459; 522359, 3784473; 522403, 3784493; 522447, 3784505; 522455, 3784504; 522459, 3784505.

(iii) *Note:* Map of Unit 11, Subunits 11A and 11B (Map 11), follows:

Map 11
Critical Habitat for Pebble Plain Plants
Unit 11: Subunits 11A and 11B, San Bernardino County, California



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* * * * *

Family Polygonaceae: Eriogonum kennedyi var. *austromontanum* (Southern mountain wild-buckwheat)

(1) Critical habitat units for this species are found in San Bernardino County, California. The critical habitat units designated for this species are related to those set forth elsewhere in this section for Family Caryophyllaceae: *Arenaria ursina* (Bear Valley sandwort) and Family Orobanchaceae: *Castilleja cinerea* (Ash-gray Indian paintbrush). Because all of critical habitat units for these three species are designated for Family Orobanchaceae: *Castilleja cinerea* (Ash-gray Indian paintbrush), the units are set forth in text and depicted on the maps in the critical habitat entry for that species.

(2) The primary constituent elements of critical habitat for *Eriogonum kennedyi* var. *austromontanum* are the habitat components that provide:

(i) Pebble plains or dry meadows in openings within upper montane coniferous forest, pinyon-juniper woodlands, or Mojavean desert scrub in the San Bernardino Mountains of San Bernardino County, California, at elevations between 5,900 to 9,800 feet (1,830 to 2,990 meters) that provide space for individual and population growth, reproduction, and dispersal; and

(ii) Seasonally wet clay or sandy, clay soils, generally containing quartzite pebbles, subject to natural hydrological processes that include water hydrating the soil and freezing in winter and drying in summer causing lifting and churning of included pebbles, to provide adequate water, air, minerals, and other nutritional or physiological requirements to the species.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they are located existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) The applicable units and subunits of critical habitat for *Eriogonum kennedyi* var. *austromontanum* are 1A, 1B, 2B, 3A, 4A, 4B, 5A, 5B, 6A, 6B, 7A, 8A, 8B, and 10 in the critical habitat entry for Family Orobanchaceae: *Castilleja cinerea* (Ash-gray Indian paintbrush).

* * * * *

Dated: November 1, 2006.

David M. Verhey,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–9194 Filed 11–21–06; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Wednesday,
November 22, 2006

Part III

Department of Education

Grants and Cooperative Agreements—Notice of Funding Availability; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services and Overview Information; Personnel Development To Improve Services and Results for Children With Disabilities—Special Education Preservice Training Improvement Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.325T.

Dates: Applications Available: November 22, 2006.

Deadline for Transmittal of Applications: January 8, 2007.

Deadline for Intergovernmental Review: March 7, 2007.

Eligible Applicants: Institutions of Higher Education (IHEs).

Note: Programs in IHEs that are preparing preschool teachers are not eligible to apply under this competition.

Estimated Available Funds: The Administration has requested $90,626,000 for the Personnel Development to Improve Services and Results for Children with Disabilities program for FY 2007, of which we intend to use an estimated $3,054,944 for the Special Education Preservice Training Improvement Grants competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $90,000–$100,000.

Estimated Average Size of Awards: $95,000.

Maximum Award: We will reject any application that proposes a budget exceeding $100,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 32.

Note: No more than one cooperative agreement will be awarded per IHE. Programs in minority institutions that are preparing special education teachers of children with high incidence disabilities are eligible to apply under this competition. For purposes of this competition, the term ''minority institutions'' include IHEs with a minority student enrollment of 25 percent or more, which may include Historically Black Colleges and Universities, Tribal Colleges, and Predominantly Hispanic Serving Colleges and Universities. Six awards under this competition will be set aside for minority institutions.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for highly qualified personnel—in special education, related services, early intervention, and regular education—to work with infants or toddlers with disabilities, or children with disabilities; and (2) ensure that those personnel have the skills and knowledge—derived from practices that have been determined through research and experience to be successful—that are needed to serve those children.

Priorities: In this competition, we are establishing one absolute priority and one competitive preference priority. In accordance with 34 CFR 75.105(b)(2)(v), these priorities are from allowable activities specified in the statute (see sections 662 and 681(c) of the Individuals with Disabilities Education Act).

Absolute Priority: For FY 2007 this priority is, except as otherwise specified, an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Special Education Preservice Training Improvement Grants Background

State educational agencies, IHEs, and local districts consistently report that it is necessary to restructure or redesign most preparation programs for kindergarten through grade 12 (K–12) special education teachers to ensure that graduates of these programs are able to meet the highly qualified teacher (HQT) requirements in the No Child Left Behind Act of 2001 (NCLB), and the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). To accomplish this goal, preparation programs need to ensure that their graduates who expect to be providing instruction in core content areas are not only able to meet State certification or licensure requirements, but that they also have the necessary content knowledge, consistent with the HQT requirements in NCLB and IDEA.

Children with disabilities are now expected to meet high standards for learning in core academic subjects, regardless of classroom setting. Because this is the case, K–12 special education teacher preparation programs must address content knowledge, standards, assessments, and evidence-based practices. Federal support can assist in improving the quality of IHE programs that prepare special education teachers, and help to ensure that these teachers have the knowledge and skills needed to teach students with disabilities using evidence-based interventions.

Priority

The purpose of this priority is to improve the quality of K–12 special education teacher preparation programs to ensure that preparation program graduates are able to meet the HQT requirements under sections 602(10) and 612(14) of IDEA and are well prepared to serve children with high incidence disabilities. For purposes of this priority, the term ''high incidence disabilities'' refers to learning disabilities, emotional disturbance, or mental retardation. In order to be eligible under this priority, applicants must currently prepare personnel (at the baccalaureate or master's level) to serve school-age children with high incidence disabilities.

To be considered for an award under this priority, applicants must—

(a) Demonstrate, in the narrative section of the application under ''Quality of Project Services,'' how—

(1) The first year of the project period will be used for planning an improved or restructured K–12 teacher preparation program that includes induction and mentoring components; revising curriculum for, and integrating evidence-based interventions that improve outcomes for children with high incidence disabilities into the improved or restructured program (including providing research citations for those evidence-based interventions); and coordinating with the National Center to Enhance the Professional Development of School Personnel on the use of its web-based training modules. Applicants must describe first year activities and include a five-year timeline and implementation plan in their applications. This plan must describe the proposed project activities associated with implementation of the improved or restructured program that includes the induction and mentoring components. Prior to the actual implementation of this plan (if the applicant receives a cooperative agreement under this competition), the Office of Special Education Programs (OSEP) must approve it;

(2) The improved or restructured program is designed to offer integrated training and practice opportunities that will enhance the skills of beginning special education teachers who share responsibility with general education teachers and other personnel for

providing effective services and academic content to children with high incidence disabilities in K–12 classrooms;

(3) The improved or restructured program is designed to prepare special education teachers to address the specialized needs of children with high incidence disabilities from diverse cultural and language backgrounds, including limited English proficient children with disabilities, by identifying the skills that special education teachers need to work effectively with culturally and linguistically diverse populations;

(4) The improved or restructured program is designed to provide extended clinical learning opportunities, field experiences, or supervised practica and ongoing high quality mentoring and induction opportunities in local schools. Applicants also must demonstrate how they will coordinate with the National Center on Policy and Practice in Special Education in designing the program to provide extended clinical learning opportunities, field experiences, or supervised practica;

(5) The improved or restructured program is designed to include field-based training opportunities in diverse settings including schools and settings in high-need communities and in schools not making Adequate Yearly (AYP) Progress under NCLB, especially those schools not making AYP for children with high incidence disabilities;

(6) Upon completion of the improved or restructured program, graduates will be able to meet the HQT requirements in accordance with section 602(10) of IDEA and section 300.18 of the regulations implementing part B of IDEA (34 CFR 300.18); and will be equipped with the knowledge and skills necessary to assist children in achieving State learning standards;

(7) The improved or restructured program is designed to provide support systems (including tutors, mentors, and other innovative practices) to enhance retention and success in the program; and

(8) The improved or restructured program will be maintained once Federal funding ends;

(b) Include in the narrative section of the application under ''Quality of Project Evaluation'', a clear, effective plan for collecting data on the extent to which graduates of the improved or restructured program have the knowledge and skills necessary to provide evidence-based instruction and services that result in improved outcomes for children with high incidence disabilities. Projects will be expected to report data in the Annual Performance Report on the extent to which this objective is achieved;

(c) Meet the following statutory requirements of IDEA:

(1) Demonstrate how the proposals for restructuring the teacher preparation program described in the application will be designed to enable graduates of the program to meet State special education teacher licensure standards and HQT requirements in State law or regulation for personnel serving children with disabilities (see section 662(f)(1) and (2) of IDEA). Letters from one or more States that the applicant serves could be one method for addressing this requirement.

(2) Demonstrate how the project involves individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

(3) Demonstrate how the project funded under this competition makes positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA); and

(d) Meet the following additional requirements:

(1) Budget for planning and improvement activities, including consultants. This priority does not provide for financial support of scholars.

(2) Budget for a three-day Project Director's meeting in Washington, DC, during each year of the project.

(3) If the project maintains a Web site, include relevant information and documents in a form that meets a government or industry-recognized standard for accessibility.

(4) Include, in the application Appendix, all course syllabi for the existing teacher preparation program.

(5) Agree to submit an Annual Performance Report which is required of each grantee for continuation funding (34 CFR 75.590).

Competitive Preference Priority: For FY 2007, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application depending on the extent to which the application meets this priority.

This priority is:

Competitive Preference Points Based on Number of Special Education Teacher Graduates from Program in a Recent Year

In order to earn competitive preference points under this priority, applicants must document the number of K–12 special education teachers who have graduated from a preparation program that prepares personnel (at the baccalaureate or master's level) to serve school-age children with high incidence disabilities in any recent year, regardless of whether the graduates received support from a Federal grant. For purposes of this competitive preference priority, the term ''recent year'' is defined as any of the past three fiscal years (i.e., FY 2003, FY 2004, or FY 2005). For example, an applicant that documents 10 graduates during FY 2005 earns 2 competitive preference points. An applicant that documents 16 graduates during FY 2003 earns 6 competitive preference points. An applicant that documents 24 or more graduates during FY 2004 earns 10 competitive preference points.

Number of students graduating (new K–12 special education teachers) from program in a recent year (including non-OSEP funded graduates)	Number of competitive preference points awarded
8–11 graduates	2 points.
12–15 graduates	4 points.
16–19 graduates	6 points.
20–23 graduates	8 points.
24+ graduates	10 points.

The number of students graduating from the program must be documented in the application.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. However, section 681(d) of IDEA makes the public comment requirements of the APA inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1462 and 1481.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 304.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: The Administration has requested $90,626,000 for the Personnel Development to Improve Services and Results for Children with Disabilities program for FY 2007, of which we intend to use an estimated $3,054,944 for the Special Education Preservice Training Improvement Grants

competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $90,000–$100,000.

Estimated Average Size of Awards: $95,000.

Maximum Award: We will reject any application that proposes a budget exceeding $100,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 32.

Note: No more than one cooperative agreement will be awarded per IHE. Programs in minority institutions that are preparing special education teachers of children with high incidence disabilities are eligible to apply under this competition. For purposes of this competition, the term ''minority institutions'' include IHEs with a minority student enrollment of 25 percent or more, which may include Historically Black Colleges and Universities, Tribal Colleges, and Predominantly Hispanic Serving Colleges and Universities. Six awards under this competition will be set aside for minority institutions.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs.

Note: Programs in IHEs that are preparing preschool teachers are not eligible to apply under this competition.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.325T.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: November 22, 2006.

Deadline for Transmittal of Applications: January 8, 2007.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: March 7, 2007.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new governmentwide Grants.gov Apply site in FY 2007. The Special Education Preservice Training Improvement Grants competition—CFDA number 84.325T is one of the competitions included in this project. We request your participation in *Grants.gov.*

If you choose to submit your application electronically, you must use the *Grants.gov* Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Special Education Preservice Training Improvement Grants competition—CFDA number 84.325T at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30

p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp).* These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf).* You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You may submit all documents electronically, including all information typically included on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance). If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register or submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.325T), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier:
U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.325T), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.325T), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8

a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of SF 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Treating A Priority As Two Separate Competitions:* In the past, there have been problems in finding peer reviewers without conflicts of interest for competitions in which many entities throughout the country submit applications. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific group. This procedure will ensure the availability of a much larger group of reviewers without conflicts of interest. It also will increase the quality, independence and fairness of the review process and permit panel members to review applications under discretionary competitions for which they have also submitted applications. However, if the Department decides to select for funding an equal number of applications in each group, this may result in different cut-off points for fundable applications in each group.

Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has developed annual performance measures that will yield information on various aspects of the effectiveness of the Personnel Development to Improve Services and Results for Children with Disabilities program. These measures include: (1) The percentage of projects that incorporate scientifically-based or evidence-based practices; (2) the percentage of scholars who exit training programs prior to completion due to poor academic performance; (3) the percentage of degree or certification recipients employed upon program completion who are working in the area(s) for which they were trained; and (4) the percentage of degree or certification recipients employed upon program completion who are working in the area(s) for which they were trained and are fully qualified under IDEA.

The Department also has developed long-term measures that are designed to yield information on various aspects of program quality. These measures include: (1) The percentage of scholars completing IDEA-funded training programs who are knowledgeable and skilled in scientifically-based or evidence-based practices for infants, toddlers, children and youth with disabilities; and (2) the percentage of program graduates who maintain employment for three or more years in the area(s) for which they were trained). Grantees may be asked to participate in assessing and providing information on these long-term aspects of program quality.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Bonnie Jones, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4153, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–7395.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: November 15, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–19706 Filed 11–21–06; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday,
November 22, 2006

Part IV

Securities and Exchange Commission

17 CFR Part 230

Covered Securities Pursuant to Section 18 of the Securities Act of 1933; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–8754; File No. S7–18–06]

RIN 3235–AJ73

Covered Securities Pursuant to Section 18 of the Securities Act of 1933

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') proposes for comment an amendment to a Rule under Section 18 of the Securities Act of 1933 (''Securities Act''), as amended, to designate certain securities listed on The NASDAQ Stock Market LLC (''Nasdaq'') as covered securities for purposes of Section 18 of the Securities Act. Covered securities under Section 18 of the Securities Act are exempt from state law registration requirements.

DATES: Comments should be received on or before December 22, 2006.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–18–06 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–18–06. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Heather Seidel, Senior Special Counsel, (202) 551–5608, Hong-anh Tran, Special Counsel, (202) 551–5637 or Michou Nguyen, Special Counsel, (202) 551–5634, Division of Market Regulation (''Division''), Commission, 100 F Street, NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION:

I. Introduction

In 1996, Congress amended Section 18 of the Securities Act to exempt from state registration requirements securities listed, or authorized for listing, on the New York Stock Exchange LLC (''NYSE''), the American Stock Exchange LLC (''Amex''), or the National Market System of The NASDAQ Stock Market LLC (''Nasdaq/NGM'') [1] (collectively, the ''Named Markets''), or any national securities exchange designated by the Commission to have substantially similar listing standards to those markets.[2] More specifically, Section 18(a) of the Securities Act provides that ''no law, rule, regulation, or order, or other administrative action of any State * * * requiring, or with respect to, registration or qualification of securities * * * shall directly or indirectly apply to a security that—(A) is a covered security.'' [3] Covered securities are defined in Section 18(b)(1) of the Securities Act to include those securities listed, or authorized for listing, on the Named Markets, or securities listed, or authorized for listing, on a national securities exchange (or tier or segment thereof) that has listing standards that the Commission determines by rule are ''substantially similar'' to the Named Markets.[4]

Pursuant to Section 18(b)(1)(B) of the Securities Act, the Commission adopted Rule 146.[5] Rule 146(b) lists those national securities exchanges, or segments or tiers thereof, that the Commission has determined to have listing standards substantially similar to those of the Named Markets and thus securities listed on such exchanges are deemed covered securities.[6] Nasdaq has petitioned the Commission to amend Rule 146(b) to determine that its listing standards for securities listed on the Nasdaq Capital Market (''NCM'') [7] are substantially similar to those of the Named Markets and, accordingly, that securities listed pursuant to such listing standards are covered securities for purposes of Section 18(b) of the Securities Act.[8] If the Commission makes this determination, then securities listed on the NCM would be exempt from state law registration requirements.[9]

II. Background

In 1998, the Chicago Board Options Exchange, Incorporated (''CBOE''), Pacific Exchange, Inc. (''PCX'') (now known as NYSE Arca, Inc.), the Philadelphia Stock Exchange, Inc. (''Phlx''), and the Chicago Stock Exchange (''CHX'') petitioned the Commission to adopt a rule determining that specified portions of the exchanges' listing standards were substantially similar to the listing standards of the Named Markets.[10] In response to the petitions, and after extensive review of the petitioners' listing standards, the Commission adopted Rule 146(b), determining that the listing standards of the CBOE, Tier 1 of the PCX, and Tier 1 of the Phlx were substantially similar to those of the Named Markets and that securities listed pursuant to those standards would be deemed covered securities for purposes of Section 18 of the Securities Act.[11] Further, in 2004, the International Stock Exchange, Inc. (''ISE'') petitioned the Commission to amend Rule 146(b) to determine that its listing standards for securities listed on ISE are substantially similar to those of the Named Markets and, accordingly,

[1] As of July 1, 2006, the National Market System of The NASDAQ Stock Market LLC is known as the National Global Market. *See* Securities Exchange Act Release Nos. 53799 (May 12, 2006), 71 FR 29195 (May 19, 2006) and 54071 (June 29, 2006), 71 FR 38922 (July 10, 2006).

[2] *See* National Securities Markets Improvement Act of 1996, Pub. L. 104–290, 110 Stat. 3416 (October 11, 1996).

[3] 15 U.S.C. 77r(a).

[4] 15 U.S.C. 77r(b)(1)(A) and (B). In addition, securities of the same issuer that are equal in seniority or senior to a security listed on a Named Market or national securities exchange designated by the Commission as having substantially similar listing standards to a Named Market are covered securities for purposes of Section 18 of the Securities Act. 15 U.S.C. 77r(b)(1)(C).

[5] Securities Exchange Act Release No. 39542 (January 13, 1998), 63 FR 3032 (January 21, 1998).

[6] 17 CFR 230.146(b).

[7] The Nasdaq Capital Market was previously named the Nasdaq SmallCap Market.

[8] *See* letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Nancy M. Morris, Secretary, Commission, dated March 1, 2006 (File No. 4–513).

[9] 15 U.S.C. 77r.

[10] *See* letter from David P. Semak, Vice President, Regulation, PCX, to Arthur Levitt, Jr., Chairman, Commission, dated November 15, 1996; letter from Alger B. Chapman, Chairman, CBOE, to Jonathan G. Katz, Secretary, Commission, dated November 18, 1996; letter from J. Craig Long, Esq., Foley & Lardner, Counsel to CHX, to Jonathan G. Katz, Secretary, Commission, dated February 4, 1997 (''CHX Petition''); and letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to Jonathan G. Katz, Secretary, Commission, dated March 31, 1997.

[11] Securities Exchange Act Release No. 39542, *supra* note 5.

that securities listed pursuant to such listing standards are covered securities for purposes of Section 18(b) of the Securities Act.[12] The Commission subsequently amended Rule 146(b) to designate options listed on ISE as covered securities.[13]

Nasdaq has petitioned the Commission to amend Rule 146(b) with a determination that its listing standards for securities listed on the NCM are substantially similar to those of the Named Markets, and that NCM securities are ''covered securities'' under Section 18(b) of the Securities Act.

III. Discussion

Under Section 18(b)(1)(A) of the Securities Act,[14] the Commission has the authority to compare the listing standards of a petitioner with those of either the NYSE, Amex, or Nasdaq/NGM. The Commission initially has compared Nasdaq's listing standards for all NCM securities with only one of the Named Markets. If the listing standards in a particular category did not meet the standards of that market, the Commission compared the standards to the other two markets.[15] In addition, the Commission has interpreted the ''substantially similar'' standard to require listing standards at least as comprehensive as those of the Named Markets.[16] If a petitioner's listing standards are higher than the Named Markets, then the Commission may still determine that the petitioner's listing standards are substantially similar to the Named Markets. Finally, the Commission notes that differences in language or approach would not necessarily lead to a determination that the listing standards of the petitioner are not substantially similar to those of a Named Market.

The Commission has reviewed listing standards for securities traded on NCM[17] and, for the reasons discussed below, preliminarily believes that the standards overall are not substantially similar to those of a Named Market. However, Nasdaq has filed a proposed rule change to amend its quantitative listing standards for NCM securities.[18] In view of Nasdaq's proposed rule change, the Commission preliminarily believes that it could make a finding that the NCM's listing standards are substantially similar to those of a Named Market, and thus amend Rule 146(b) to include securities listed on the NCM. The Commission also notes that Nasdaq's qualitative listing standards for NCM securities are identical to the qualitative listing standards for Nasdaq/NGM securities.[19]

A. Common Stock

As discussed below, the Commission preliminarily believes that some, but not all, of the requirements in Nasdaq's quantitative initial listing standards for common stock listing on the NCM are substantially similar to those of Amex's common stock listing standards. The Commission therefore preliminarily believes that the NCM common stock initial listing standards are not currently substantially similar to those of Amex's common stock listing standards.

Specifically the Commission preliminarily believes that the NCM listing requirements are substantially similar to Amex Standard 1 through 3 requirements relating to operating history, bid price, round lot holders,[20] and shares held by the public.[21] However, under the NCM standards, an issuer may qualify for listing by satisfying either a shareholder equity requirement (at least $5 million),[22] a market value of listed securities test (at least $50 million),[23] or an income test (at least $750,000 in after tax net income from continuing operations in the last fiscal year or two out of the last three fiscal years).[24] Amex's common stock listing Standards 1 and 3 not only require the satisfaction of an equity test, but Standard 1 also requires the satisfaction of an income test (at least $750,000 in pre-tax income from continuing operations in the last fiscal year or two of the last three fiscal years),[25] and Standard 3 also requires the satisfaction of a market value test (at least $50 million).[26] Amex Standard 2 does not require an income test or a market value test but does require an operating history of two years[27] as compared to the NCM, which requires only one year.[28] An additional difference is that Amex Standards 2 and 3 require the aggregate market value of publicly held shares to be $15 million, whereas Nasdaq's requirement is $5 million.[29] The Commission preliminarily believes that these differences preclude the Commission from making a determination that the NCM common stock initial listing standards are substantially similar to those of the Amex.

Nasdaq has filed a proposed rule change under Section 19 of the Exchange Act[30] to modify its NCM initial listing standards for common stock. Specifically, Nasdaq's proposal would require an issuer to have: (i) Shareholder's equity of $4 million and net income from continuing operations of $750,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years; (ii) shareholder's equity of $4 million and a market value of listed securities of $50 million; or (iii) shareholder's equity of $5 million and a two-year operating history.[31] Moreover, Nasdaq's proposal also would increase the aggregate market value of publicly held shares from $5 million to $15

[12] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Jonathan G. Katz, Secretary, Commission, dated October 9, 2003.

[13] Securities Act Release No. 8442 (July 14, 2004), 69 FR 43295 (July 20, 2004).

[14] 15 U.S.C. 77r(b)(1)(A).

[15] This approach is consistent with the approach that the Commission has previously taken. *See* Securities Act Release Nos. 7422 (June 9, 1997), 62 FR 32705 (June 17, 1997) and 7494 (January 13, 1998), 63 FR 3032 (January 21, 1998).

[16] Securities Act Release No. 7422, *supra* note 15.

[17] *See* generally Nasdaq Rules 4310, 4320, and 4350.

[18] *See* Securities Exchange Act Release No. 54378 (August 28, 2006), 71 FR 52351 (September 5, 2006) (''Nasdaq Proposed Rule Change''); *see also* letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Heather Seidel, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated August 11, 2006 (''Nasdaq Letter'').

[19] Such qualitative listing standards relate to, among other things, the number of independent directors required, conflicts of interest, composition of the audit committee, executive compensation, shareholder meeting requirements, voting rights, quorum, code of conduct, proxies, shareholder approval of certain corporate actions, and the annual and interim reports requirements. *See* Nasdaq Rule 4350.

[20] The Commission notes that the NCM listing standards require at least 300 round lot holders, while Amex's listing standards require 400 or 800 (depending upon the number of shares held by the public), or 300 or 600 for its alternate listing standards. The Commission preliminarily does not believe this difference precludes a determination of substantial similarity between the standards.

[21] *See* generally Section 101 of the Amex Company Guide and Nasdaq Rule 4310.

[22] Nasdaq Rule 4310(c)(2)(A)(i).

[23] Nasdaq Rule 4310(c)(2)(A)(ii). The market value of listed securities refers to the closing bid price multiplied by the number of securities listed on Nasdaq or listed on another self-regulatory organization (''SRO''). *See* Nasdaq Rule 4200.

[24] Nasdaq Rule 4310(c)(2)(A)(iii).

[25] *See* Amex Rule 101(a)(1)–(2).

[26] *See* Amex Rule 101(c)(1)–(2).

[27] *See* Amex Rule 101(b)(1).

[28] *See* Nasdaq Rule 4310(c)(3).

[29] Specifically, Amex Standard 3, which allows an issuer to meet a requirement for the market value of listed securities of $50 million (rather than an income test), requires an aggregate market value of publicly held shares of $15 million (Amex Standard 2, which requires a two-year operating history, also requires an aggregate market value of publicly held shares of $15 million). The NCM standard, which permits an issuer to meet either a market value of listed securities test or an income test, in either instance only requires an aggregate market value of publicly held shares of $5 million. *See* Sections 101(b)(4) and (c)(3) of the Amex Company Guide and Nasdaq Rule 4310(c)(7)(A).

[30] 15 U.S.C. 78s.

[31] *See* Nasdaq Proposed Rule Change, *supra* note 18.

million in scenario (ii) and (iii) above.[32] If these rule changes were approved prior to Commission action on this rule proposal, the Commission preliminarily believes it could find the NCM listing standards for common stock to be substantially similar to those of Amex.

The Commission preliminarily believes that the continued listing requirements for common stock listed on the NCM, while not identical, are substantially similar to those of Amex. Amex's delisting criteria are triggered by poor financial conditions or operating results of the issuer.[33] Specifically, Amex will consider delisting an equity issue if: (i) Stockholders' equity is less than $2 million and such issuer has sustained losses from continuing operations and/or net losses in two of its three most recent fiscal years; (ii) stockholders' equity is less than $4 million and such issuer has sustained losses from continuing operations and/or net losses in three of its four most recent fiscal years; (iii) stockholders' equity is less than $6 million if such issuer has sustained losses from continuing operations and/or net losses in its five most recent fiscal years; or (iv) the issuer has sustained losses which are so substantial in relation to its overall operations or its existing financial resources, or its financial condition has become so impaired that it appears questionable, in the opinion of the Exchange, as to whether such company will be able to continue operations and/or meet its obligations as they mature.[34]

Although the NCM does not have the same continued listing provisions, Nasdaq also looks at the financial condition and operating results of the issuer. Specifically, for continued inclusion, Nasdaq requires shareholder's equity of at least $2.5 million, market value of listed securities of at least $35 million, or net income of $500,000 from continuing operations in the past fiscal year or two out of three past fiscal years.[35] Further, Nasdaq requires a minimum bid price for continued listing of $1 per share.[36] In addition, for continued listing, Nasdaq requires an issuer to have a minimum number of publicly held shares of at least 500,000 shares with a market value of at least $1 million.[37]

The Commission preliminarily believes that the differences in the maintenance criteria for common stock listed on Amex and on the NCM are not material and that, taken as a whole, the criteria are substantially similar.[38]

The Commission requests comment on whether the NCM's common stock listing rules are ''substantially similar'' to Amex's rules.

B. Secondary Classes of Common Stock and Preferred Stocks

The Commission notes that only Nasdaq has listing standards for the trading of a secondary class of common stock. A secondary class of common stock is a class of common stock of an issuer that has another class of common stock listed on an exchange. The Commission compared the secondary classes of common stock listing standards of the NCM with the listing standards of the Nasdaq/NGM. The Commission also compared the NCM listing standards for preferred stocks with those of Nasdaq's NGM.

With respect to the number of round lot holders,[39] bid price,[40] and number of publicly held shares[41] requirements,[42] the Commission preliminarily believes that Nasdaq's initial and continued listing requirements for secondary classes of common stock and preferred stocks listing on the NCM are substantially similar to the listing standards for the Nasdaq/NGM. The Commission preliminarily believes, however, that the initial and continued listing requirements for market value of publicly held shares for NCM are not substantially similar to Nasdaq/NGM standards. In particular, the NCM listing standards require that there be at least 200,000 publicly held shares having a market value of at least $2 million for initial listing and 100,000 publicly held shares having a market value of $500,000 for continued listing.[43] The Nasdaq/NGM standards require that there shall be at least 200,000 publicly held shares having a market value of at least $4 million for initial listing and 100,000 publicly held shares having a market value of $1 million for continued listing.[44]

Nasdaq has filed a proposed rule change to increase the requirements for its NCM listing standards for both preferred and secondary classes of common stock for the market value of publicly held shares to $3.5 million for initial listing and $1 million for continued listing.[45] Nasdaq also has proposed to amend its initial and continued NCM listing rules for secondary classes of common stock and preferred stock to require that the common stock or common stock equivalent of the issuer either be listed on Nasdaq or be a covered security as defined in Rule 146(b).[46] Given these proposed revisions to the NCM's initial and continued listing standards for secondary classes of common stock and preferred stocks, the Commission preliminarily believes it could find that

[32] *Id.*

[33] *See* generally Sections 1001 through 1006 of the Amex Company Guide.

[34] *See* Section 1003(a) of the Amex Company Guide. Amex also will consider delisting if: (i) an issuer has sold or otherwise disposed of its principal operating assets or has ceased to be an operating company or has discontinued a substantial portion of its operations or business; (ii) if substantial liquidation of the issuer has been made; or (iii) if advice has been received, deemed by the Exchange to be authoritative, that the security is without value, or in the case of a common stock, such stock has been selling for a substantial period of time at a low price. *See* Section 1003(c) and (f)(v) of the Amex Company Guide.

[35] Nasdaq Rule 4310(c)(2)(B)(i)–(iii).

[36] Nasdaq Rule 4310(c)(4). Amex will consider delisting if the price per share is ''low.'' *See* Amex Rule 1003(f)(v).

[37] Nasdaq Rule 4310(c)(7)(A). Amex will consider delisting the common stock of an issuer if the aggregate market value of such publicly held shares is less than $1 million for more than 90 consecutive days, the number of publicly held shares is less than 200,000 shares, or the number of its public stockholders is less than 300. *See* Section 1003(b) of the Amex Company Guide.

[38] As noted above, the Commission has interpreted the substantially similar standard to require listing standards at least as comprehensive as those of the Named Markets, and differences in language or approach of the listing standards are not dispositive.

[39] Both Nasdaq NCM and NGM require 100 round lot holders. *See* NASD Rules 4310(c)(6)(B) and 4420(k)(4). Nasdaq/NGM also requires 100 round lot holders for continued listing. Although the NCM requirements do not explicitly require a continuing number of round lot holders, Nasdaq has filed a proposed rule change to clarify that the 100 round lot holders requirement also will apply as a continued listing requirement for the NCM preferred and secondary classes of common stock standards. *See* Nasdaq Proposed Rule Change, *supra* note 18.

[40] While the NCM bid price requirement for initial listing is $4 and the Nasdaq/NGM requirement is $5, the Commission preliminary does not believe this difference is material. Both NGM and NCM require a $1 bid price for continued listing. *See* Nasdaq Rules 4310(c)(4), 4420(k)(3), and 4450(h)(3).

[41] Both Nasdaq NCM and NGM require 200,000 publicly held shares for initial listing, and 100,000 publicly held shares for continued listing. *See* Nasdaq Rules 4310(c)(7)(B), 4420(k)(1), and 4450(h)(1).

[42] The Commission notes that these requirements apply to instances when the common stock or common stock equivalent security of the issuer is listed on Nasdaq/NGM, NCM, Global Select Market (''GSM'') (the GSM is a segment of the NGM, *see* Securities Exchange Act Release Nos. 53799 and 54071, *supra* note 1), or another national securities exchange. If the common stock or common stock equivalent is not listed on one of these markets then the security must meet the common stock listing requirements for the relevant market (either Nasdaq/NGM or NCM). *See* generally NASD Rules 4310(c)(6)(B) and 4420(k).

[43] *See* Nasdaq Rules 4310(c)(7)(B).

[44] *See* NASD Rules 4420(k)(1)–(2) and 4450(h)(1)–(2).

[45] *See* Nasdaq Proposed Rule Change, *supra* note 18.

[46] *Id.*

such standards are substantially similar to those of Nasdaq's NGM.

The Commission requests comment on whether the NCM secondary classes of common stock and preferred stock rules are ''substantially similar'' to Nasdaq/NGM's rules.

C. Convertible Debt

The Commission has compared the NCM listing standards for convertible debt to Amex's listing standards for debt.[47] The Commission preliminarily does not believe that Nasdaq's standards are substantially similar to Amex's standards. Although the NCM's initial listing standards require a higher level of principal amount outstanding (the NCM standards require $10 million versus $5 million for Amex), Amex also requires that either (i) the issuer of the debt security (or an issuer that controls or is under common control with such issuer or that has guaranteed such issuer's debt) have equity securities listed on Amex, the NYSE, or Nasdaq/NGM, or (ii) that the debt security have a certain level of rating.[48]

Specifically, Amex will not list a debt security unless one of the following conditions is met: (i) The issuer of the debt security also has equity securities listed on Amex, the NYSE, or Nasdaq/NGM; (ii) an issuer of equity securities listed on Amex, the NYSE, or Nasdaq/NGM directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; (iii) an issuer of equity securities listed on Amex, the NYSE, or Nasdaq/NGM has guaranteed the debt security; (iv) a nationally recognized securities rating organization (an ''NRSRO'') has assigned a current rating to the debt security that is no lower than an S&P Corporation ''B'' rating or equivalent rating by another NRSRO; or (v) if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned an investment grade rating to an immediately senior issue or a rating that is no lower than an S&P Corporation ''B'' rating, or an equivalent rating by another NRSRO, to a *pari passu* or junior issue.[49] This requirement is designed to ensure that the issuer (or guarantor) of a debt security listed on Amex is in reasonably sound financial condition, while also providing Amex with considerable flexibility in determining which debt issues qualify for listing on the Exchange.[50] The Commission preliminarily believes that the absence of these provisions would make the NCM's initial listing standards for debt securities not substantially similar to those of Amex.

Nasdaq has filed a proposed rule change to adopt a debt rating provision similar to Amex's provision to make its NCM initial listing standards more comparable to Amex's initial listing standards.[51] In light of this proposal, the Commission preliminarily believes it could find that the NCM's listing standards for convertible debt are substantially similar to those of Amex.

The Commission preliminarily believes that the continued listing requirements for convertible debt securities listed on the NCM are substantially similar to the Amex requirements. The NCM requires that the principal amount outstanding be maintained at $5 million.[52] Amex generally will delist a bond if the aggregate market value or the principal amount of the bond publicly held is less than $400,000, or if the issuer is not able to meet its obligations on the listed debt.[53] Although not identical, the Commission preliminarily believes that both standards are designed to ensure the continued liquidity of the debt security, and are substantially similar.

The Commission requests comment on whether the NCM convertible debt listing rules are ''substantially similar'' to Amex's listing standards for debt securities.

D. Warrants

The Commission has compared the NCM's standards for warrants to Nasdaq's NGM standards, and preliminarily believes that the NCM standards are not substantially similar to the Nasdaq/NGM standards. The NCM initial listing standards require that 100,000 warrants be outstanding for initial listing, whereas Nasdaq/NGM requires that there be 450,000 warrants outstanding.[54] Further, the NCM standards require the issuer's underlying security to be traded on Nasdaq/NGM, NCM, GSM or any national securities exchange.[55] Nasdaq therefore allows the underlying security to be traded on markets that the Commission has not determined to be substantially similar to Amex, the NYSE, or Nasdaq/NGM under Rule 146(b).[56] In addition, the NCM does not have any continuing maintenance standards for warrants whereas Nasdaq/NGM requires that the underlying security of the issuer must continue to be listed on Nasdaq/NGM.[57]

Nasdaq has filed a proposed rule change with the Commission to increase the required number of warrants outstanding for initial listing on the NCM from 100,000 to 400,000.[58] Nasdaq's proposal also would require for initial listing that the security underlying the warrant that is to be listed on the NCM be a covered security as defined in Rule 146(b) (if it is listed on a market other than Nasdaq).[59] Further, Nasdaq would require that the security of the issuer underlying the warrant continue to be listed on Nasdaq or be a covered security as defined in Rule 146(b).[60] Given these proposed revisions to the NCM's warrant listing standards, the Commission preliminarily believes it could find the NCM's listing standards for warrants to be substantially similar to those of Nasdaq/NGM.

The Commission requests comment on whether the NCM's listing rules for warrants are ''substantially similar'' to Nasdaq/NGM's listing rules.

E. Index Warrants

For index warrants traded on the NCM, Nasdaq has adopted the same standards (both initial and continuing) that it applies to index warrants traded

[47] *See* generally Nasdaq Rule 4310(c)(5) and Sections 104 and 1003 of the Amex Company Guide.

[48] *See* Section 104 of the Amex Company Guide and Nasdaq Rule 4310(c)(5). Amex also will generally not list a convertible bond or debenture unless current last sale information is available in the United States, with respect to the underlying security into which the bond or debenture is convertible. Further, Amex will not list a convertible debt issue containing a provision permitting an issuer discretion to reduce the conversion price unless the issuer establishes a minimum 10-day period within which such price reduction will be in effect. *See* Section 104 of the Amex Company Guide. The Commission preliminarily believes that these provisions are not material to its determination. *See* Securities Act Releases No. 7494, *supra* note 15 (the Commission found PCX listing standards to be substantially similar to Amex even with the absence of these provisions).

[49] *See* Section 104 of the Amex Company Guide.

[50] *See* Securities Exchange Act Release No. 7422, *supra* note 15.

[51] *See* Nasdaq Proposed Rule Change, *supra* note 18.

[52] *See* Nasdaq Rule 4310(c)(5).

[53] *See* Section 1003(b)(iv) of the Amex Company Guide. Section 1003(e) of the Amex Company Guide states that convertible bonds will be reviewed when the underlying security is delisted and will be delisted when the underlying security is no longer the subject of real-time reporting in the United States. The Commission does not believe that this is material because although Nasdaq does not have an identical rule, it does have the discretion to delist beyond its standards.

[54] *See* Nasdaq Rules 4310(c)(9)(A)–(B) and 4420(d).

[55] *See* Nasdaq Rule 4310(c)(9)(A)–(B).

[56] In contrast, Nasdaq's NGM standards require the issuer of the warrant to meet its common stock ''price and earnings'' listing requirements. *See* Nasdaq Rule 4420(d).

[57] *See* Nasdaq Rule 4450(d).

[58] *See* Nasdaq Proposed Rule Change, *supra* note 18.

[59] *Id.*

[60] *Id.*

on the Nasdaq/NGM market.[61] Therefore, the Commission preliminarily believes that the listing standards for index warrants traded on the NCM are substantially similar to the standards applicable to index warrants traded on the Nasdaq/NGM market.

F. Units

The NCM, Amex, and Nasdaq/NGM all evaluate the initial and continued listing of a unit by looking to its components.[62] If all of the components of a unit individually meet the standards for listing, then the unit would meet the standards for listing.[63] The Commission preliminarily believes that it would be able to make a finding that the NCM listing standards for units are substantially similar to a Named Market in light of Nasdaq's proposed revisions to its NCM's listing standards for the different categories of securities that could make up the components of a unit, as discussed above.[64]

G. Other Changes

Sections (b)(1) and (b)(2) of Rule 146 use the term ''Nasdaq/NMS'' to refer to the National Market System of The NASDAQ Stock Market LLC. In addition, Rule 146(b)(1)(i) refers to the Pacific Exchange Incorporated, Rule 146(b)(1)(ii) refers to the Philadelphia Stock Exchange, Incorporated, and Rule 146(b)(1)(iv) refers to the International Securities Exchange, Incorporated. As noted above, on July 1, 2006, what was the National Market System of The NASDAQ Stock Market LLC became known as the Nasdaq Global Market.[65] Further, in April 2006, the Pacific Exchange, Incorporated was renamed NYSE Arca, Inc.,[66] and in September 2006, the International Securities Exchange, Incorporated was renamed the International Securities Exchange, LLC. The proposed rule change includes changes to Rule 146(b) to account for these name changes. Finally, the proposal includes a change to reflect the legal name of the Philadelphia Stock Exchange, Inc.

H. Comments

The Commission has received three comment letters on Nasdaq's petition.[67] The State Regulation of Securities Committee of the American Bar Association Section of Business Law (''ABA Committee'') expressed support of the petition, assuming that Nasdaq's representation of the data and analysis contained in the petition is accurate.[68] The North American Securities Administrator's Association (''NASAA''), stated that it does not oppose the Nasdaq petition but is concerned generally about what it perceives to be deficiencies in listing standards at several of the Named Markets and encourages the Commission to undertake an SRO oversight initiative to set uniform principles for these Named Markets.[69]

IV. Solicitation of Comments

The Commission seeks comment generally on the desirability of amending Rule 146(b) to include securities of the NCM. As discussed above, based on its review of Nasdaq's listing rules for its NCM, the Commission preliminarily believes that the current original and continued listing standards for the NCM are not substantially similar to those of the Amex, the NYSE, or Nasdaq/NGM. The Commission seeks comments on its preliminary analysis. The Commission also seeks comments on whether the proposed changes to its NCM standards that Nasdaq has filed would make the NCM's initial listing and continued listing standards substantially similar to those of a Named Market.

In addition, if the NCM securities are designated as covered securities under Rule 146(b)(1), then the NCM's listing standards would be subject to Rule 146(b)(2) under the Securities Act. Rule 146(b)(2) conditions the designation of securities as ''covered securities'' under Rule 146(b)(1) on the identified exchange's listing standards continuing to be substantially similar to those of the Named Markets. Thus, under Rule 146(b)(2), the designation of certain securities as covered securities would be conditioned on Nasdaq maintaining listing standards for NCM securities that were found to be substantially similar to those of the Named Markets. Commenters may wish to address the application and effect of Rule 146(b)(2) on the proposal.

The Commission also invites commenters to provide views and data as to the costs, benefits, and effects associated with the proposed amendments. In addition to the questions posed above, commenters are welcome to offer their views on any other matter raised by the proposed amendment to Rule 146(b). Finally, the Commission requests comment on whether it could use a different methodology to determine whether the NCM's listing standards are ''substantially similar'' to the Named Markets.

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 does not apply because the proposed amendment to Rule 146(b) does not impose recordkeeping or information collection requirements or other collection of information, which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

VI. Cost and Benefits of Proposed Rulemaking

Congress amended Section 18 of the Securities Act to exempt covered securities from state registration requirements. These securities are listed on the Named Markets or any other national securities exchange determined by the Commission to have substantially similar listing standards to the Named Markets.[70] Consistent with statutory authority, the Commission proposes to determine (if the Commission were to approve the rule changes that Nasdaq has filed) that the listing standards for securities listed on the NCM are substantially similar to those of either Amex, the NYSE, or Nasdaq/NGM. Securities listed on the NCM therefore would be covered securities subject only to federal regulation.

By exempting securities listed on the NCM from state law registration requirements, the Commission expects that the listing process for those securities would become easier as one layer of regulation is eliminated. Moreover, the Commission also expects

[61] *See* generally Nasdaq Rule 4310(c)(9)(C).

[62] A unit is a type of security consisting of two or more different types of securities (*e.g.*, a combination of common stocks and warrants). *See* Securities Exchange Act Release No. 48464 (September 9, 2003), 68 FR 54250 (September 16, 2003).

[63] *See* generally Section 101(g) of the Amex Company Guide and Nasdaq Rules 4310(c)(10) and 4420(h)(1)(a)–(c).

[64] *See* Nasdaq Proposed Rule Change, *supra* note 18.

[65] The NGM includes a new segment known as the Nasdaq Global Select Market. *See* Securities Exchange Act Release Nos. 53799 and 54071, *supra* note 1.

[66] *See* Securities Exchange Act Release No. 53615 (April 7, 2006), 71 FR 19226 (April 13, 2006).

[67] *See* File No. 4–513, *supra* note 8.

[68] *See* letter to Nancy M. Morris, Secretary, Commission, from Alan M. Parness, Vice Chair, ABA Committee, dated April 3, 2006.

[69] *See* letter to Nancy M. Morris, Secretary, Commission, from Patricia D. Struck, NASAA President and Wisconsin Securities Administrator, dated March 29, 2006; and electronic mail to Robert L.D. Colby, Acting Director, Division Commission, from Randall Schumann, Legal Counsel, Wisconsin DFI-Division of Securities, NASAA Corporation Finance Section Member, dated June 1, 2006. In addition, the Commission's Advisory Committee on Smaller Public Companies recommended on April 23, 2006 that the Commission make NCM stocks ''covered securities.'' SEC Advisory Committee on Smaller Public Companies, Final Report, at 97–100 (2006).

[70] 15 U.S.C. 77r(b)(1)(B).

adoption of the rule would reduce the administrative burden the issuers of covered securities face inasmuch as compliance with state blue sky law requirements would be preempted.[71]

The Commission also preliminarily believes that the proposed amendment to Rule 146(b) should permit Nasdaq to compete with other markets whose listed securities are exempt from state law registration requirements for new securities products and listings. This result would likely enhance competition and, potentially, liquidity, thus benefiting market participants and the public. The proposed amendment would eliminate state registration of securities listed on the NCM. There may be a cost to investors through the loss of benefits of state registration and oversight, although the cost is difficult to quantify. The Commission believes that Congress contemplated these costs in relation to the economic benefits of exempting covered securities from state regulation. The Commission, however, is considering the costs and benefits of the proposed amendment to Rule 146(b) and requests commenters to provide views and supporting information as to the costs and benefits associated with this proposal.

VII. Consideration of Promotion of Efficiency, Competition, and Capital Formation

As required under the Securities Act,[72] the Commission has preliminarily considered the proposed rule's impact on efficiency, competition, and capital formation. National securities exchanges compete for the listing of securities. Thus, the Commission preliminarily believes that amending Rule 146(b) to designate securities traded on the NCM as covered securities (if the Commission were to approve the rule changes that Nasdaq has filed) would offer potential benefits for investors because it would facilitate the ability of Nasdaq to compete for listings, which should increase competition and enhance the overall liquidity, and thus the efficiency of the U.S. securities markets. The Commission also preliminarily believes that the proposed rule would serve to reduce the cost of raising capital because it would streamline the registration process for issuers listing on the NCM. In addition, the Commission believes that the proposed rule amendment, consistent with Congressional action, is designed to promote efficiency by removing a layer of duplicative regulation. The Commission also preliminarily believes that the proposed amendment to Rule 146(b) should permit Nasdaq to compete with other markets whose securities are exempt from state law registration requirements for new securities products and listings. Finally, the proposed amendment to Rule 146(b) should not impair efficiency, competition, and capital formation because it would impose no recordkeeping or compliance burdens, but would provide a limited purpose exemption under the federal securities laws.

Thus, the Commission preliminarily believes that the proposed amendment to Rule 146(b) would promote efficiency, competition, and capital formation. Commenters should consider the proposed amendment's effect on efficiency, competition, and capital formation.

VIII. Regulatory Flexibility Act Certification

Section 603(a) of the Regulatory Flexibility Act[73] requires the Commission to undertake an initial regulatory flexibility analysis of the proposed amendment to Rule 146 on small entities, unless the Commission certifies that the proposed amendment, if adopted, would not have a significant economic impact on a substantial number of small entities.[74] For purposes of Commission rulemaking in connection the Regulatory Flexibility Act, an issuer is a small business if its ''total assets on the last day of its most recent fiscal year were $5 million or less.''[75] An exchange is a small business if it has been exempt from the reporting requirements of Rule 601[76] and it is not affiliated with any person other than a natural person that is not a small business.[77]

The Commission believes that the proposal to amend Rule 146(b) would not affect a substantial number of small entities because to list its securities on the NCM, an issuer's aggregate market value of publicly held shares must be at least $5 million.[78] If an entity's market value of publicly held shares is at least $5 million, it is reasonable to believe that its assets are worth at least $5 million. Therefore, an entity seeking to list securities on the NCM generally will have assets with a market value of at least equal to $5 million and thus would not be considered a small entity. Further, Nasdaq itself is not a small entity for purposes of the RFA.[79]

Accordingly, the Commission hereby certifies, pursuant to Section 605(b) of the Regulatory Flexibility Act,[80] that amending Rule 146(b) as proposed would not have a significant economic impact on a substantial number of small entities. The Commission encourages written comments regarding this certification. The Commission solicits comment as to whether the proposed amendment to Rule 146(b) could have an effect that has not been considered. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

IX. Small Business Regulatory Enforcement Fairness Act of 1996

For purposes of the Small Business Enforcement Fairness Act of 1996, a rule is ''major'' if it results or is likely to result in:

(i) An annual effect on the economy of $100 million or more;

(ii) a major increase in costs or prices for consumers or individual industries; or

(iii) significant adverse effects on competition, investment, or innovation.[81]

The Commission requests comment regarding the potential impact of the proposed amendment on the economy on an annual basis. Commenters should provide empirical data to support their views to the extent possible.

X. Statutory Authority

The Commission is proposing an amendment to Rule 146 pursuant to the Securities Act of 1933,[82] particularly Sections 18(b)(1)(B) and 19(a).[83]

Text of the Proposed Rule

List of Subjects in 17 CFR Part 230

Securities.

For the reasons set forth in the preamble, Title 17, Chapter II of the *Code of Federal Regulations* is proposed to be amended as follows:

[71] A 1996 Report relating to Securities Market Reform: State Registration of Securities—Costs and Benefits stated that up to 1 percent of an issue's cost, which is generally covered by the offering's underwriter, could be apportioned to the legal/administrative costs of state level regulation. One benefit of this proposal would be to eliminate this type of legal/administrative cost with respect to NCM securities.

[72] 15 U.S.C. 77b(b).

[73] 5 U.S.C. 603(a).

[74] 5 U.S.C. 605(b).

[75] 17 CFR 230.157. *See also* 17 CFR 240.0–10(a).

[76] 17 CFR 242.601 (formerly Rule 11Aa3–1 under the Act).

[77] 17 CFR 240.0–10(e).

[78] As of June 30, 2006, the Division estimates that there were 557 listed issuers of securities on the NCM.

[79] 17 CFR 240.0–10(e).

[80] 5 U.S.C. 605(b).

[81] Pub. L. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601).

[82] 15 U.S.C. 77a *et seq.*

[83] 15 U.S.C. 77r(b)(1)(B) and 77s(a).

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The general authority citation for Part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.146 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 230.146 Rules under Section 18 of the Act.

* * * * *

(b) * * *

(1) For purposes of Section 18(b) of the Act (15 U.S.C. 77r), the Commission finds that the following national securities exchanges, or segments or tiers thereof, have listing standards that are substantially similar to those of the New York Stock Exchange (''NYSE''), the American Stock Exchange (''Amex''), or the National Market System of the Nasdaq Stock Market (''Nasdaq/NGM''), and that securities listed on such exchanges shall be deemed covered securities:

(i) Tier I of the NYSE Arca, Inc.;

(ii) Tier I of the Philadelphia Stock Exchange, Inc.;

(iii) The Chicago Board Options Exchange, Incorporated;

(iv) Options listed on the International Securities Exchange, LLC; and

(v) The Nasdaq National Capital Market.

(2) The designation of securities in paragraphs (b)(1)(i) through (v) of this section as covered securities is conditioned on such exchanges' listing standards (or segments or tiers thereof) continuing to be substantially similar to those of the NYSE, Amex, or Nasdaq/NGM.

Dated: November 16, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E6–19740 Filed 11–21–06; 8:45 am]

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Federal Register

Wednesday,
November 22, 2006

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1 and Parts 2, 4, et al.
Federal Acquisition Regulation; Interim and Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR—2006–0023, Sequence 7]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–14; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–14. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov*.

DATES: For effective dates and comment dates, see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2005–14 and specific FAR case number(s). For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–14

Item	Subject	FAR case	Analyst
I	Common Identification Standard for Contractors	2005–015	Jackson.
II	Removal of Sanctions Against Certain EU Countries	2005–045	Olson.
III	Free Trade Agreements—Bahrain and Guatemala (Interim)	2006–017	Parnell.
IV	Free Trade Agreements—Morocco	2006–001	Parnell.
V	Technical Amendments		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–14 amends the FAR as specified below:

Item I—Common Identification Standard for Contractors (FAR Case 2005–015)

This rule converts the interim rule published at 71 FR 208, January 3, 2006, to a final rule with changes. The rule amends the Federal Acquisition Regulation (FAR) by addressing the contractor personal identification requirements in Homeland Security Presidential Directive (HSPD) 12, ''Policy for a Common Identification Standard for Federal Employees and Contractors,'' and Federal Information Processing Standards Publication (FIPS PUB) Number 201, ''Personal Identity Verification (PIV) of Federal Employees and Contractors.'' The primary objectives of HSPD–12 are to establish a process to enhance security, increase Government efficiency, reduce identity fraud, and protect personal privacy by establishing a mandatory, Governmentwide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractors who require routine physical access to Federally-controlled facilities, and/or routine access to Federally-controlled information systems.

Item II—Removal of Sanctions Against Certain EU Countries (FAR Case 2005–045)

This rule converts the interim rule published at 71 FR 20305, April 19, 2006, to a final rule without change. The interim rule removed the sanctions in FAR Part 25 against Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom on acquisitions not covered by the World Trade Organization Government Procurement Agreement. These sanctions did not apply to small business set-asides, to acquisition below the simplified acquisition threshold using simplified acquisition procedures, or to acquisitions by the Department of Defense. Contracting officers may now consider offers of end products, services, and construction that were previously prohibited by the sanctions.

Item III—Free Trade Agreements—Bahrain and Guatemala (FAR Case 2006–017) (Interim)

This interim rule allows contracting officers to purchase the goods and services of Guatemala and Bahrain without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. These trade agreements with Guatemala and Bahrain join the North American Free Trade Agreement (NAFTA), the Australia, Chile, Morocco, and Singapore Free Trade Agreements, and the CAFTA-DR with respect to El Salvador, Honduras, and Nicaragua, which are already in the FAR. The threshold for applicability of the Dominican Republic—Central America-United States Free Trade Agreement is $64,786 for supplies and services (the same as other Free Trade Agreements to date except Morocco and Canada) and $7,407,000 for construction (the same as all other Free Trade Agreements to date except NAFTA). The threshold for applicability of the Bahrain Free Trade Agreement is $193,000 (the same as the Morocco FTA and the WTO GPA) and $8,422,165 for construction (the same as NAFTA).

Item IV—Free Trade Agreements—Morocco (FAR Case 2006–001)

This final rule converts the interim rule published in the **Federal Register** at 71 FR 20306, April 19, 2006, to a final rule without change. This rule allows contracting officers to purchase the products of Morocco without application of the Buy American Act if the acquisition is subject to the Morocco Free Trade Agreements. The U.S. Trade Representative negotiated a Free Trade Agreement with Morocco, which went into effect January 1, 2006. This agreement joins the North American Free Trade Agreement (NAFTA) and the Australia, Chile, and Singapore Free Trade Agreements, which are already in the FAR. The threshold for applicability of the Morocco Free Trade Agreement is

$193,000 for supplies and services and $7,407,000 for construction.

Item V—Technical Amendments

Editorial changes are made at FAR 15.404–1, 22.1006, 22.1304, 28.202, 52.212–5, 52.222–43, 52.228–15, and 52.228–16, in order to update references.

Dated: November 15, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-14 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-14 is effective November 22, 2006.

Dated: November 12, 2006.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: November 8, 2006.

Roger D. Waldron,

Acting Senior Procurement Executive, General Services Administration.

Dated: November 6, 2006.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 06–9309 Filed 11–21–06; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 7, and 52

[FAC 2005–14; FAR Case 2005–015; Item I; Docket 2006–0020, Sequence 19]

RIN 9000–AJ91

Federal Acquisition Regulation; FAR Case 2005–015, Common Identification Standard for Contractors

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to convert the interim rule published in the **Federal Register** at 71 FR 208 on January 3, 2006, to a final rule with changes. This final rule is amending the Federal Acquisition Regulation (FAR) to add the contractor personal identification requirements identified in the Homeland Security Presidential Directive (HSPD) 12, ''Policy for a Common Identification Standard for Federal Employees and Contractors,'' and Federal Information Processing Standards (FIPS) Number 201, ''Personal Identity Verification (PIV) of Federal Employees and Contractors,'' as amended.

DATES: *Effective Date:* November 22, 2006.

Applicability Date: This rule applies to solicitations and contracts issued or awarded on or after November 22, 2006. Contracts awarded before October 27, 2005 requiring contractors to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system must be modified to ensure that credentials are issued by October 27, 2007, pursuant to FAR Subpart 4.13 in accordance with agency implementation of FIPS PUB 201 and OMB guidance M–05–24, as amended.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAC 2005–14, FAR case 2005–015. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Acquisition Regulation to require contracting officers to incorporate the requirement for contractors to comply with agency verification procedures that implement Homeland Security Presidential Directive–12 (HSPD–12), Office of Management and Budget (OMB) guidance M–05–24, and Federal Information Processing Standards Publication (FIPS PUB) Number 201 when applicable to the work to be performed under the contract.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 71 FR 208 on January 3, 2006. The 60-day comment period for the interim rule ended March 6, 2006. Five respondents provided comments. Most comments pointed out areas of concern and language that required clarification. The substantive comments are discussed below.

Public Comments

Comment: One respondent requested the Government clarify/elaborate on the requirements to have subcontractors properly cleared.

Response: Implementation of Homeland Security Presidential Directive (HSPD) 12 required by OMB memorandum M–05–24, Policy for a Common Identification Standard for Federal Employees and Contractors, follows the Federal Information Processing Standard Publication (FIPS PUB) 201 when individuals under contract with a Federal department or agency, requiring routine access to Federally-controlled facilities and/or Federally-controlled information systems, require identity credentials consistent with existing agency security policies. The need to have contactors meet the requirements of FIPS PUB 201, including background investigations, applies equally to contractors and subcontractors to the extent that subcontractors require routine access to Federally-controlled facilities and/or Federally-controlled information systems. As such, the Councils have revised the final rule to add the term ''routine'' to clarify that personal identity verification does not apply to all contractors and/or subcontractors.

Comment: One respondent stated there is an overlap with Department of Defense Instruction (DoDI) 3020.41 (October 3, 2005) paragraph 6.2.7.3 which states ''contingency contractor personnel shall be issued a standard Geneva Convention Card...U.S. citizens and selected other CDF will be issued a DoD Uniformed Services Identification and Privilege Card...'', and points out that FAC 2005–07 requires agencies to adopt and accredit a registration process consistent with the identity proofing, registrations and accreditation requirements in section 2.2 of FIPS [PUB] 201. The respondent asks will the requirement in DoDI 3020.41 satisfy the requirements of FAC 2005–07 for providing a personal identity card for contingency contractors? The respondent also asks does FAC 2005–07 duplicate or supplement the requirement in DoDI 3020.41 or does it depend on the contingency status of the contractor?

Response: Those contingency contractor personnel who receive a common access card (CAC), including those who receive a CAC based on the eligibility for a Geneva Conventions card, must comply with the identity proofing and vetting requirements of FIPS PUB 201, as the CAC represents DoD's implementation of the Personal Identity Verification (PIV) for Federal

Employees and Contractors standard. Policy change is currently in staffing to modify and update existing documents to comply with the heightened requirements. The current DoDI 3020.41 does not satisfy FIPS PUB 201 requirements; pending publication of the policy changes, FIPS PUB 201 must be considered additive to the requirements of DoDI 3020.1.

Comment: One respondent highlights that the FIPS PUB 201 will be implemented in two phases, that the documents referenced in the interim rule are lengthy and a small business may not have the capability to download them, and that SBA may need to assist small businesses and/or provide training to make them competent in this arena. The respondent also stated that added administrative time is required for businesses and Federal agencies to incorporate the required contract modifications. The respondent also recommends that the standards required by parts 1 and 2 of the OMB memorandum (M–05–24) be outlined in the FAR clause at 52.204–9, and that the clause be added to solicitations and contracts in full text versus incorporation by reference.

Response: The rule permits modifications to be executed according to agency procedures for FIPS PUB 201 implementation. The Councils consider the October 2007 date to be in full compliance with FIPS PUB 201 and allow adequate time for agencies to establish a completion date to modify contracts thereby lessening any administrative burden. Agencies will establish their own procedures for complying with FIPS PUB 201, therefore the Councils do not want to give the appearance that the outline encompasses all facets of identity verification by including an outline in the clause. Because agency policy will implement FIPS PUB 201, agency resources should be available to assist small businesses with questions or concerns regarding their procedures. Adding the clause in solicitations and contracts by reference is the proper prescription, and the full text of clause 52.204–9 is available using the Internet. Nonetheless, a small business can receive clarification or a copy of the clause by contacting the contracting officer.

Comment: One respondent commented that the interim rule is a significant regulatory action and suggested that the budgetary and administrative impact is so significant it should be a ''major rule'' that is subject to congressional review pursuant to 5 U.S.C. 801 *et seq.* and to the regulatory planning and review process under Executive Order 12866.

Response: The budgetary and administrative resources to implement HSPD–12 are provided by the Government. The Councils have appropriately complied with the determination made by OMB's Office of Information and Regulatory Affairs that this rule is not significant, nor economically significant, nor a major rule.

Comment: One respondent commented that the HSPD–12 requires agencies to ''complete and receive notification of results of the FBI National Criminal History check prior to credential issuance.'' Both requirements will significantly increase the demands placed on Government investigative services far beyond their current budgetary and manpower capabilities. The respondent provided an overview of the backlog OPM is currently experiencing. The respondent indicates that hundreds of thousands more investigations will be required by HSPD–12 for government personnel, contractors, and subcontractors, and questions how the Government will handle the influx of contractor personnel. The respondent also stated the rule will cause an artificial increase in the number of investigations to ensure that personnel that may become critical to the contract performance are not excluded only because they do not have a government-issued I.D.

Response: Attachment A to the OMB Memo M–05–24 dated August 5, 2005, states that agencies should receive notification of results of the National Agency Checks before issuing a credential. However, the memo provides that the identity credential can be issued based on the FBI National Criminal History Check (fingerprint check) if the results are not received in 5 days. Because of this provision, the Councils have concluded that flexibilities exist to allow credentialing which may mitigate the impact of an increase in demand placed on investigative services. OPM is responsible for the investigative services and has procedures in place to handle the associated workload.

Comment: One respondent expressed that a concern for industry is the potential impact of this rule on the performance of contracts by contractors and subcontractors, because the rule is silent on the consequences of Government investigative services not being completed in a timely fashion. The respondent questions if an agency is allowed beyond October 27, 2005 to continue to provide access to ''federally-controlled facilities'' and/or ''federal information systems'' for contractors and subcontractors who are not yet adjudicated. Additional concern was expressed that a contractor or subcontractor would be barred from performing on a contract because the Government is unable to provide a final identity verification and successful criminal background check.

Response: In reference to the OMB Memo M–05–24, agencies are instructed to initiate National Agency Checks by October 27, 2005. Full completion will occur over a specified time period. The guidance includes instruction for distinguishing adjudicated individuals from those that have not yet been adjudicated; it does not prohibit access. Each agency will follow its own implementation policy for access authorization when a final identity verification and successful criminal background check are pending. Therefore, the Councils do not anticipate that contractors or subcontractors will be barred from performing their contractual obligations.

Comment: Two respondents question the course of action for contractors and subcontractors, including small and disadvantaged businesses, needing to obtain identity verification for their employees. It appears that the agency will be responsible for ensuring all contractor and subcontractor employees are able to complete the process, but such a sequence would indicate that verification occurs after award and employers who do not currently have adjudicated personnel would be required to delay performance on the contract until such time as a sufficient number of personnel can be adjudicated.

Response: As stated in the response above, implementation of HSPD–12 does not prohibit access to a Federally-controlled facility and/or Federally-controlled information system pending a final identity verification and successful criminal background check. Contractors must comply with agency procedures for access authorization when a final adjudication has not been issued. There is no intent to delay contract performance until a sufficient number of personnel can be adjudicated.

Comment: One respondent stated the prospect of investigative delays would drive businesses that can offer the Government successful commercial solutions from the marketplace because the delays would impact performance, and suggests a solution is to start verifying identity before contract award. However, this option would exacerbate the problem of workload delays that

already plague the Government investigative services.

Response: The Councils have been informed by OPM that the full extent to which HSPD–12 will create investigative delays is unknown. It is anticipated that cases received by OPM because of HSPD–12 implementation, that would not otherwise have been received, will be almost exclusively for uncleared contractors. While the true size of this population is unknown, what is known is that a large number of agencies have been investigating uncleared contractors on a regular basis and the workload increase will be significantly smaller than if no activity had ever occurred. National Agency Check with Inquiries (NACI), the minimum investigation required for HSPD–12 compliance and personal identity verification (PIV) issuance, are not labor intensive. Once the case is data-entered, it is processed by automated systems. NACIs do not, other than in rare cases, require the use of field investigators. Further, PIV credentials can be issued upon favorable completion of the fingerprint portion of the NACI, which in most cases will be accomplished in a matter of days. The option of allowing contractors to begin the investigative process before contract award would create a far greater burden on the process. OPM is the authority on handling workload for investigative services, and has procedures to support implementation of HSPD–12.

Comment: One respondent stated it supports the need for secure and reliable forms of identification, but it is not clear that the Government has sufficiently anticipated the full scale of the impact on investigative services, historical delays, nor the potential impact on contractors and subcontractor and Government contracting as a whole on the Government's ability to verify the personnel for every contractor and subcontractor requiring access to ''federal information systems'' and/or ''federally-controlled facilities.''

Response: As stated in the above response, the Councils have been informed by OPM that the full extent to which HSPD–12 will create investigative delays is unknown, however, it is anticipated that cases received by OPM because of HSPD–12 implementation, that would not otherwise have been received, will almost exclusively be for uncleared contractors. OPM is responsible for handling investigative requests regarding HSPD–12 and has existing procedures to manage this type of workload.

Comment: One respondent stated the Councils must require as part of the rule that agencies submit information to the Government investigative services. Citing the November 9, 2005 testimony of Linda Springer, Director of the Office of Personnel Management, to the Senate Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia, this information will at least provide the bases for adequate, reasonable and accurate annual estimates of the personnel and costs demands they will place upon the process.

Response: In her November 9, 2005 testimony, Ms. Springer indicated that ''OPM will assist agencies in improving their workload forecasting by collecting quarterly data comparing agencies' annual workload projections with actual requests,'' and that OPM will continue to work toward reducing the time it takes to complete the process for investigative cases. The Councils support OPM's role in managing resources to perform investigations and OPM's procedures for gathering information for investigative services, and do not believe it is necessary to add further implementation requirements to this rule.

Comment: One respondent states the FAR interim rule sets a mechanism for requiring contractors to comply with HSPD–12 that differs from the OMB guidance. Because DOE has implemented the appropriate mechanism to assure contractors comply with HSPD–12, implementation of the FAR rule will cause hardship to the Department. The FAR policy requires agencies to follow HSPD–12 and its associated guidance. The policy states ''agencies must follow FIPS 201 and OMB guidance for personal identity verification for *all affected contractor and subcontractor personnel...*'' This policy language indicates that the FAR interim rule is intended to further the requirements of FIPS 201 and OMB guidance. This language clearly implies that for contractors which are not affected by HSPD–12, contracting officers do not have to include this clause.

Response: The Councils did not intend to overstate requirements to implement FIPS PUB 201 and the OMB guidance and agree that contracting officers do not have to include the clause if contract performance does not require compliance with HSPD–12. The final rule clarifies that HSPD–12 applies when contractors and subcontractors require routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

Comment: One respondent recommends that the FAR Interim Rule be modified for consistency with established HSPD–12 guidance, because the FAR requirement is not consistent with the recently amended FIPS PUB 201 and the OMB memorandum M–05–24. In particular, promulgation of the final rule as written could result in substantial confusion among the Federal agency employees and contractors who are assigned to implement HSPD–12 at large Federal agencies. The respondent listed items in the FAR interim rule which are different from the OMB memo including the definition of Federally-controlled facilities; the use of ''Federal Information System'' instead of ''Federally Controlled Information System''; the omission of ''facilities under a management and operation contract''; the exception for ''education institution''; and the expansion of the definition of ''Federally owned buildings and leased space'' to include property interests controlled by any department or agency.

Response: The Councils have reviewed updated FIPS PUB 201 guidance and have revised the definitions in the final rule for Federally-controlled facilities and Federally-controlled information systems to be consistent with the OMB Memo M–05–24, dated August 5, 2005.

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

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because all entities that hold contracts or wish to hold contracts that require their personnel to have access to Federally-controlled facilities or information systems will be required to employ on Government contracts only employees who meet the standards for being credentialed and expend resources necessary to help employees fill out the forms for credentialing. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

1. Statement of need for, and objectives of, the rule.

This rule amends the Federal Acquisition Regulation to implement the Homeland Security Presidential Directive (HSPD) 12, ''Policy for a Common Identification Standard for Federal Employees and Contractors,'' dated August 27, 2004. HSPD 12 requires the development and agency implementation of a mandatory

Governmentwide standard for secure and reliable forms of identification for Federal employees and contractors, including contractor employees.

2. Summary of significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the assessment of the agency of such issues, and a statement of any changes made in the interim rule as a result of such comments.

An interim rule was published in the **Federal Register** at 71 FR 208 on January 3, 2006. The Councils considered all of the comments in finalizing the rule. An Initial Regulatory Flexibility Analysis was performed. One respondent highlights that the FIPS PUB 201 will be implemented in two phases, that the documents referenced in the interim rule are lengthy and a small business may not have the capability to download them, and that SBA may need to assist small businesses and/or provide training to make them competent in this arena. The respondent also stated that added administrative time is required for businesses and Federal agencies to incorporate the required contract modifications. The councils consider the October 2007 date to be in full compliance with FIPS PUB 201 and allow adequate time for agencies to establish a completion date to modify contracts thereby lessening any administrative burden. Because agency policy will implement FIPS PUB 201, agency resources should be available to assist small businesses with questions or concerns regarding their procedures.

3. Description of, and an estimate of the number of, small entities to which the rule will apply or an explanation of why no such estimate is available.

This rule will apply to all large and small businesses that seek awards when contract performance requires contractors and/or subcontractors to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. A precise estimate of the number of small entities that fall within the rule is not currently feasible because it would include both contractors who perform in Government-owned space as well as those who perform in Government-leased space (including employees of the lessor and its contractors).

The Councils did not receive any comments on this issue from small business concerns or other interested parties in response to the Initial Regulatory Flexibility Analysis.

4. Description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The rule does not directly require reporting, recordkeeping or other compliance requirements within the meaning of the Paperwork Reduction Act (PRA). The rule does require that any entity, including small businesses that will be performing a contract that requires its employees to have access to Federal facilities or information systems, submit information on their employees. Such information will include a personnel history for each employee having access to a Federal facility or information system for a period exceeding 6 months. Although the forms involved are similar to a standard application for employment that is used by many companies, it is envisioned that some employers, especially those using non-skilled or semi-skilled laborers, will need to help their employees complete the form. It is estimated that each applicant will spend approximately 30 minutes completing the form.

Five respondents provided public comments in response to the interim rule. The public expressed concern that downloading large documents may be problematic for small business concerns, there will be a significant increase workload for OPM resources who provide investigative services that may cause a delay and prohibit a contractor's ability to start performance while awaiting adjudication, and the interim rule overstated the credentialing requirements by referencing all contractors and subcontractors. The responses to public comments in the final rule preamble address these comments.

Agencies must adopt the technical standards for an approved identity proofing and registration process established by Federal Information Processing Standard Publication (FIPS PUB) 201, and establish their own implementation policy. The real implementation of this directive will occur at the agency level. Agencies should be prepared to assist contractors with questions or concerns about the agency policy.

5. Description of steps the agency has taken to minimize significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency was rejected.

There are no known significant alternatives that will accomplish the objectives of the rule. No alternatives were proposed during the public comment period.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 4, 7, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–14, FAR Case 2005–015), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 4, 7, and 52

Government procurement.

Dated: November 15, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

Interim Rule Adopted as Final with Changes

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 2, 4, 7, and 52, which was published in the **Federal Register** at 71 FR 208, January 3, 2006, as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 2, 4, 7, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by removing the definition ''Federal information system''; revising the definition ''Federally-controlled facilities''; and adding the definition ''Federally-controlled information system'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Federally-controlled facilities means—

(1) Federally-owned buildings or leased space, whether for single or multi-tenant occupancy, and its grounds and approaches, all or any portion of which is under the jurisdiction, custody or control of a department or agency;

(2) Federally-controlled commercial space shared with non-government tenants. For example, if a department or agency leased the 10th floor of a commercial building, the Directive applies to the 10th floor only;

(3) Government-owned, contractor-operated facilities, including laboratories engaged in national defense research and production activities; and

(4) Facilities under a management and operating contract, such as for the operation, maintenance, or support of a Government-owned or Government-controlled research, development, special production, or testing establishment.

Federally-controlled information system means an information system (44 U.S.C. 3502(8) used or operated by a Federal agency, or a contractor or other

organization on behalf of the agency (44 U.S.C. 3544(a)(1)(A)).

* * * * *

PART 4—ADMINISTRATIVE MATTERS

■ 3. Revise section 4.1300 in paragraphs (a) and (b) and section 4.1301 to read as follows:

4.1300 Policy.

(a) Agencies must follow Federal Information Processing Standards Publication (FIPS PUB) Number 201, ''Personal Identity Verification of Federal Employees and Contractors,'' as amended, and the associated Office of Management and Budget (OMB) implementation guidance as amended, for personal identity verification for all affected contractor and subcontractor personnel when contract performance requires contractors to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

(b) Agencies must include their implementation of FIPS PUB 201 as amended, and OMB guidance M–05–24, dated August 5, 2005, as amended, in solicitations and contracts that require the contractor to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

* * * * *

4.1301 Contract clause.

The contracting officer shall insert the clause at 52.204–9, Personal Identity Verification of Contractor Personnel, in solicitations and contracts when contract performance requires contractors to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. The clause shall not be used when contractors require only intermittent access to Federally-controlled facilities.

PART 7—ACQUISITION PLANNING

■ 4. Amend section 7.105 by revising the last sentence in paragraph (b)(17) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(17) *Security considerations.* * * * For acquisitions requiring routine contractor physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system, discuss how agency requirements for personal identity verification of contractors will be met (see Subpart 4.13).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 52.204–9 by revising the date of the clause to read ''(NOV 2006)''; and revising paragraphs (a) and (b) to read as follows:

52.204–9 Personal Identity Verification of Contractor Personnel.

* * * * *

(a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive–12 (HSPD–12), Office of Management and Budget (OMB) guidance M–05–24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended.

(b) The Contractor shall insert this clause in all subcontracts when the subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

(End of clause)

[FR Doc. 06–9308 Filed 11–21–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005–14; FAR Case 2005–045; Item II; Docket 2006–0020, Sequence 20]

RIN 9000–AK43

Federal Acquisition Regulation; FAR Case 2005–045, Removal of Sanctions Against Certain EU Countries

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to adopt as final, without change, an interim rule that amended the Federal Acquisition Regulation (FAR) to remove the sanctions against certain European Union (EU) countries.

DATES: *Effective Date:* November 22, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Jeremy Olson, at (202) 501–3221. Please cite FAC 2005–14, FAR case 2005–045. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 71 FR 20305 on April 19, 2006. The interim rule deleted FAR Subpart 25.6, Trade Sanctions, and the clauses at FAR 52.225–15, Sanctioned European Union Country End Products, and FAR 52.225–16, Sanctioned European Union Country Services, and other associated references in FAR Part 25.

No comments were received by the close of the public comment period on June 19, 2006. Therefore, the Councils have agreed to convert the interim rule to a final rule without change.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule only removes sanctions from—

- End products from sanctioned EU countries with an estimated acquisition value less than $193,000;
- Sanctioned EU country construction with an estimated acquisition value less than $7,407,000; or
- Sanctioned EU country services with an estimated acquisition value less than $193,000 or that are excluded from coverage by the World Trade Organization Government Procurement Agreement.

These sanctions did not apply to small business set-asides, to acquisitions below the simplified acquisition threshold using simplified acquisition procedures, or to acquisitions by the Department of Defense.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the

FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: November 15, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 25 and 52, which was published at 71 FR 20305, April 19, 2006, is adopted as a final rule without change.

[FR Doc. 06–9307 Filed 11–21–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005–14; FAR Case 2006–017; Item III; Docket 2006–0020, Sequence 11]

RIN 9000–AK61

Federal Acquisition Regulation; FAR Case 2006–017, Free Trade Agreements—Bahrain and Guatemala

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Dominican Republic—Central America—United States Free Trade Agreement with respect to Guatemala and the United States—Bahrain Free Trade Agreement.

DATES: *Effective Date:* November 22, 2006.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before January 22, 2007.

ADDRESSES: Submit comments identified by FAC 2005–14, FAR case 2006–017, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Search for any document by first selecting the proper document types and selecting ''Federal Acquisition Regulation'' as the agency of choice. At the ''Keyword'' prompt, type in the FAR case number (for example, FAR Case 2006–001) and click on the ''Submit'' button. You may also search for any document by clicking on the ''Advanced search/document search'' tab at the top of the screen, selecting from the agency field ''Federal Acquisition Regulation'', and typing the FAR case number in the keyword field. Select the ''Submit'' button.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–14, FAR case 2006–017, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082. Please cite FAC 2005–14, FAR case 2006–017. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends FAR Part 25 and the corresponding clauses in Part 52 to implement the Dominican Republic—Central America—United States Free Trade Agreement (CAFTA-DR) with respect to Guatemala and the United States—Bahrain Free Trade Agreement (FTA). Congress approved these trade agreements in the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (Public Law 109–53) and the United States—Bahrain Free Trade Agreement Implementation Act (Pub. L. 109–169), respectively. These trade agreements waive the applicability of the Buy American Act for some foreign supplies and construction materials from Guatemala and Bahrain and specify procurement procedures designed to ensure fairness in the acquisition of supplies and services.

This interim rule adds Bahrain and Guatemala to the definition of ''Free Trade Agreement country.'' The rule also deletes Guatemala from the definition of ''Caribbean Basin country'' because, in accordance with Section 201(a)(3) of Pub. L. 109–53, when the CAFTA-DR agreement enters into force with respect to a country, that country is no longer designated as a beneficiary country for purposes of the Caribbean Basin Economic Recovery Act.

The excluded services for the Bahrain FTA are the same as for the CAFTA-DR, Chile FTA, and NAFTA. Guatemala has the same thresholds as the other CAFTA-DR countries. The Bahrain FTA threshold for supply and service contracts is $193,000. For construction contracts, the Bahrain FTA threshold is $8,422,165.

Like the Morocco FTA, the Bahrain FTA threshold for supplies and services is higher than the thresholds for the other FTAs. Therefore, Bahrainian end products are not covered by the Buy American Act—Free Trade Agreements—Israeli Trade Act provision and clause (FAR 52.225–3 and 52.225–4). Similarly, like NAFTA, the Bahrain FTA threshold for construction is higher than the thresholds of the other FTAs. Therefore Bahrainian construction material is excluded from coverage under the Buy American Act—Construction Materials under Trade Agreements provision and clause (52.225–11 and 52.225–12) for acquisitions less than $8,422,165 (Alternate I).

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

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule opens up Government procurement to the goods and services of Guatemala and Bahrain, the Councils do not anticipate any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401–70, and acquisitions that are set aside for small businesses are exempt. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 25 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5

U.S.C. 601, *et seq.* (FAC 2005–14, FAR case 2006–017), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply, because the interim rule affects the certification and information collection requirements in the provisions at FAR 52.212–3, 52.225–4, 52.225–6, and 52.225–11 currently approved under OMB clearances 9000–0136, 9000–0130, 9000–0025, and 9000–0141 respectively. The impact, however, is negligible.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the CAFTA-DR took effect with respect to Guatemala on July 1, 2006, and the Bahrain FTA took effect on August 1, 2006. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: November 15, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

■ 2. Amend section 25.003 by—

■ a. Removing from the definition ''Caribbean Basin country'', ''Guatemala,'';

■ b. Adding to the definition in paragraph (2) of ''Designated country'', ''Bahrain,'' after ''Australia,'' and ''Guatemala,'' after ''El Salvador,'', and removing from paragraph (4), ''Guatemala,''; and

■ c. Adding to the definition ''Free Trade Agreement country'', ''Bahrain,'' after ''Australia,'' and ''Guatemala,'' after ''El Salvador,''.

■ 3. Amend section 25.400 by removing from the end of paragraph (a)(2)(v) ''and''; adding at the end of paragraph (a)(2)(vi) ''and''; and adding a new paragraph (a)(2)(vii) to read as follows:

25.400 Scope of subpart.

(a) * * *

(2) * * *

(vii) United States-Bahrain Free Trade Agreement, as approved by Congress in the United States-Bahrain Free Trade Agreement Implementation Act (Pub. L. 109–169);

* * * * *

■ 4. Amend section 25.401(b) by revising the third column of the table heading to read as follows:

25.401 Exceptions.

* * * * *

(b) * * *

* * *	* * *	Bahrain FTA, CAFTA-DR, Chile FTA, and NAFTA	* * *

* * * * *

25.402 [Amended]

■ 5. Amend section 25.402(b), in the table, by adding after ''Australia FTA'' the entry ''Bahrain FTA'' and in its corresponding line items ''$193,000'', ''$193,000'', and ''$8,422,165'', respectively; and adding ''Guatemala,'' after ''El Salvador,''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–3 [Amended]

■ 6. Amend section 52.212–3 by—

■ a. Revising the date of the clause to read ''(NOV 2006)'';

■ b. Adding in the second sentence of paragraph (g)(1)(i), ''Bahrainian end product,'' after ''The terms''; and

■ c. Removing from paragraph (g)(1)(ii), ''(other than Moroccan end products)'' and adding ''(other than Bahrainian or Moroccan end products)'' in its place, and removing from the table heading ''(Other than Moroccan End Products)'' and adding ''(Other than Bahrainian or Moroccan End Products)'' in its place.

■ 7. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Revising paragraph (b)(24)(i); and

■ c. Removing from paragraph (b)(25) ''(JUN 2006)'' and adding ''(NOV 2006)'' in its place.

The revised text reads as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (NOV 2006)

* * * * *

(b) * * *

(24)(i) 52.225–3, Buy American Act—Free Trade Agreements—Israeli Trade Act (NOV 2006) (41 U.S.C. 10a–10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, Pub. L 108–77, 108–78, 108–286, 109–53 and 109–169).

* * * * *

■ 8. Amend section 52.225–3 by—

■ a. Revising the date of the clause;

■ b. Adding in paragraph (a), in alphabetical order, the definition ''Bahrainian end product'';

■ c. Adding in the definition ''Free Trade Agreement country'' ''Bahrain,'' after ''Australia,'' and ''Guatemala,'' after ''El Salvador,''; and

■ d. Removing from the first sentence of paragraph (c) ''(except the Morocco FTA)'' and adding ''(except the Bahrain and Morocco FTA)'' in its place; removing from the fourth sentence ''(other than a Moroccan end product)'' each time it appears (twice); and adding ''(other than a Bahrainian or Moroccan end product)'' in its place.

The revised text reads as follows:

52.225–3 Buy American Act—Free Trade Agreements—Israeli Trade Act.

* * * * *

BUY AMERICAN ACT—FREE TRADE AGREEMENTS—ISRAELI TRADE ACT (NOV 2006)

(a) *Definitions.* * * *

Bahrainian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Bahrain; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain 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 transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

* * * * *

52.225–4 [Amended]

■ 9. Amend section 52.225–4 by—

■ a. Revising the date of the clause to read ''(NOV 2006)'';

■ b. Adding to the second sentence in paragraph (a) ''Bahrainian end product,'' after ''The terms''; and

■ c. Removing from paragraph (b), ''(other than Moroccan end products)''

and adding ''(other than Bahrainian or Moroccan end products)'' in its place, and removing from the table heading ''(Other than Moroccan End Products)'' and adding ''(Other than Bahrainian or Moroccan End Products)'' in its place.

■ 10. Amend section 52.225–5 by—

■ a. Revising the date of the clause;

■ b. Revising paragraph (2) of the definition ''Designated country''; and

■ c. Removing from paragraph (4) of the definition ''Designated country'', ''Guatemala,''.

The revised text reads as follows:

52.225–5 Trade Agreements.

* * * * *

TRADE AGREEMENTS (NOV 2006)

* * * * *

(a) * * *

Designated country * * *

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

* * * * *

■ 11. Amend section 52.225–11 by—

■ a. Revising the date of the clause;

■ b. Revising paragraph (2) of the definition ''Designated country'';

■ c. Removing ''Guatemala'' from paragraph (4) of the definition ''Designated country''; and

■ d. Revising Alternate I.

The revised text reads as follows:

52.225–11 Buy American Act—Construction Materials under Trade Agreements.

* * * * *

BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (NOV 2006)

* * * * *

(a) * * *

Designated country * * *

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

* * * * *

Alternate I (NOV 2006). As prescribed in 25.1102(c)(3), add the following definitions of ''Bahrainian construction material'' and ''Mexican construction material'' to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

Bahrainian construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of Bahrain; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different construction material distinct from the materials from which it was transformed.

Mexican construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of Mexico; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Mexico into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all the Free Trade Agreements except NAFTA apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials other than Bahrainian or Mexican construction materials.

(2) The Contractor shall use only domestic or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

■ 12. Amend section 52.225–12 in Alternate II, by revising the date of the alternate, the introductory text, paragraph (d)(1), and the first sentence of the introductory text of paragraph (d)(3) to read as follows:

52.225–12 Notice of Buy American Act Requirement—Construction Materials Under Trade Agreements.

* * * * *

Alternate II (NOV 2006). As prescribed in 25.1102(d)(3), add the definitions of ''Bahrainian construction material'' and ''Mexican construction material'' to paragraph (a) and substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) *Alternate offers.* (1) When an offer includes foreign construction material, except foreign construction material from a designated country other than Bahrain or Mexico, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225–11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material other than Bahrainian or Mexican construction material.

* * * * *

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225–11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material other than Bahrainian or Mexican construction material. * * *

* * * * *

[FR Doc. 06–9306 Filed 11–21–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005–14; FAR Case 2006–001; Item IV; Docket 2006–0020, Sequence 18]

RIN 9000–AK45

Federal Acquisition Regulation; FAR Case 2006–001, Free Trade Agreements—Morocco

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) agree to adopt as final, without change, an interim rule that amended the Federal Acquisition Regulation (FAR) to implement the new Free Trade Agreement with Morocco as approved by Congress (Public Law 108–302).

DATES: *Effective Date*: November 22, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082. Please cite FAC 2005–14, FAR case 2006–001. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 71 FR 20306 on April 19, 2006, to implement the new Free Trade Agreement with Morocco as approved by Congress (Public Law 108–302). This Free Trade Agreement waives the

applicability of the Buy American Act for some foreign supplies and construction materials from Morocco, and specifies procurement procedures designed to ensure fairness, applicable to the acquisition of supplies and services.

No comments were received by the close of the public comment period on June 19, 2006. Therefore, the Councils agreed to convert the interim rule to a final rule without change.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule opens up Government procurement to the products of Morocco, the Councils do not anticipate any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401–70, and acquisitions that are set aside for small businesses are exempt.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 9000–0025 and 9000–0141.

List of Subjects in 48 CFR Parts 25 and 52.

Government procurement.

Dated: November 15, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 25 and 52, which was published at 71 FR 20306 on April 19, 2006, is adopted as a final rule without change.

[FR Doc. 06–9305 Filed 11–21–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15, 22, 28, and 52

[FAC 2005-14; Item V; Docket FAR-2006-0021; Sequence 5]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial changes.

DATES: Effective Date: November 22, 2006

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–14, Technical Amendments.

List of Subjects in 48 CFR Parts 15, 22, 28, and 52

Government procurement.

Dated: November 15, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 15, 22, 28, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 15, 22, 28, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

■ 2. Amend section 15.404–1(a)(7) by revising the last sentence to read as follows:

15.404–1 Proposal analysis techniques.

(a) * * *

(7) * * * They are available via the internet at *http://www.acq.osd.mil/dpap/contractpricing/index.htm.*

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1006 [Amended]

■ 3. Amend section 22.1006 in the fourth sentence of paragraph (c)(1) by removing ''(c)(1)'' and adding ''(d)(1)'' in its place.

■ 4. Amend section 22.1304 by revising paragraph (a) to read as follows:

22.1304 Procedures.

* * * * *

(a) Query the Department of Labor's VETS-100 Database via the Internet at *http://www.vets100.com/Vets100Search.htm* using the validation code ''vets'' to proceed with the search in the database; or

* * * * *

PART 28—BONDS AND INSURANCE

■ 5. Amend section 28.202 by revising paragraph (d) to read as follows:

28.202 Acceptability of corporate sureties.

* * * * *

(d) The Department of the Treasury Circular 570 may be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 3700 East West Highway, Room 6F01, Hyattsville, MD 20782. Or via the internet at *http://www.fms.treas.gov/c570/.*

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–5 [Amended]

■ 6. Amend section 52.212–5 by revising the date of the clause to read ''(NOV 2006)''; removing from paragraph (b)(1) ''(JUL 1995)'' and adding ''(SEP 2006)'' in its place, and removing ''(SEP 2006)'' and adding ''(OCT 1995)'' in its place; and removing from paragraph (c)(3) ''(MAY 1989)'' and adding ''(NOV 2006)'' in its place.

52.222–43 [Amended]

■ 7. Amend section 52.222–43 by revising the date of the clause to read ''(NOV 2006)''; and removing from paragraph (e) ''(c)'' and adding ''(d)'' in its place.

■ 8. Amend section 52.228–15 by revising the date of the clause and paragraph (d) to read as follows:

52.228–15 Performance and Payment Bonds—Construction.

* * * * *

PERFORMANCE AND PAYMENT BONDS—CONSTRUCTION (NOV 2006)

* * * * *

(d) *Surety or other security for bonds.* The bonds shall be in the form of firm

commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the **Federal Register** or may be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 3700 East West Highway, Room 6F01, Hyattsville, MD 20782. Or via the internet at *http://www.fms.treas.gov/c570/*.

* * * * *

■ 9. Amend section 52.228–16 by revising the date of the clause and paragraph (e) to read as follows:

52.228–16 Performance and Payment Bonds—Other Than Construction.

* * * * *

PERFORMANCE AND PAYMENT BONDS—OTHER THAN CONSTRUCTION (NOV 2006)

* * * * *

(e) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the **Federal Register**, or may be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 3700 East West Highway, Room 6F01, Hyattsville, MD 20782. Or via the internet at *http://www.fms.treas.gov/c570/*.

(End of clause)

* * * * *

[FR Doc. 06–9303 Filed 11–21–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR—2006—0023, Sequence 7]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–14; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This Small Entity Compliance Guide has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–14 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–14 which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Laurieann Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2005–14

Item	Subject	FAR case	Analyst
*I	Common Identification Standard for Contractors	2005–015	Jackson.
II	Removal of Sanctions Against Certain EU Countries	2005–045	Olson.
III	Free Trade Agreements—Bahrain and Guatemala (Interim)	2006–017	Parnell.
IV	Free Trade Agreements—Morocco	2006–001	Parnell.
V	Technical Amendments		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–14 amends the FAR as specified below:

Item I—Common Identification Standard for Contractors (FAR Case 2005–015)

This rule converts the interim rule published at 71 FR 208, January 3, 2006, to a final rule with changes. The rule amends the Federal Acquisition Regulation (FAR) by addressing the contractor personal identification requirements in Homeland Security Presidential Directive (HSPD) 12, ''Policy for a Common Identification Standard for Federal Employees and Contractors,'' and Federal Information Processing Standards Publication (FIPS PUB) Number 201, ''Personal Identity Verification (PIV) of Federal Employees and Contractors.'' The primary objectives of HSPD–12 are to establish a process to enhance security, increase Government efficiency, reduce identity fraud, and protect personal privacy by establishing a mandatory, Governmentwide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractors who require routine physical access to Federally-controlled facilities, and/or routine access to Federally-controlled information systems.

Item II—Removal of Sanctions Against Certain EU Countries (FAR Case 2005–045)

This rule converts the interim rule published at 71 FR 20305, April 19, 2006, to a final rule without change. The interim rule removed the sanctions in FAR Part 25 against Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom on acquisitions not covered by the World Trade Organization Government Procurement Agreement. These sanctions did not apply to small business set-asides, to acquisition below the simplified acquisition threshold using simplified acquisition procedures, or to acquisitions by the Department of Defense. Contracting officers may now consider offers of end products,

services, and construction that were previously prohibited by the sanctions.

Item III—Free Trade Agreements—Bahrain and Guatemala (FAR Case 2006–017) (Interim)

This interim rule allows contracting officers to purchase the goods and services of Guatemala and Bahrain without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. These trade agreements with Guatemala and Bahrain join the North American Free Trade Agreement (NAFTA), the Australia, Chile, Morocco, and Singapore Free Trade Agreements, and the CAFTA-DR with respect to El Salvador, Honduras, and Nicaragua, which are already in the FAR. The threshold for applicability of the Dominican Republic—Central America-United States Free Trade Agreement is $64,786 for supplies and services (the same as other Free Trade Agreements to date except Morocco and Canada) and $7,407,000 for construction (the same as all other Free Trade Agreements to date except NAFTA). The threshold for applicability of the Bahrain Free Trade Agreement is $193,000 (the same as the Morocco FTA and the WTO GPA) and $8,422,165 for construction (the same as NAFTA).

Item IV—Free Trade Agreements—Morocco (FAR Case 2006–001)

This final rule converts the interim rule published in the **Federal Register** at 71 FR 20306, April 19, 2006, to a final rule without change. This rule allows contracting officers to purchase the products of Morocco without application of the Buy American Act if the acquisition is subject to the Morocco Free Trade Agreements. The U.S. Trade Representative negotiated a Free Trade Agreement with Morocco, which went into effect January 1, 2006. This agreement joins the North American Free Trade Agreement (NAFTA) and the Australia, Chile, and Singapore Free Trade Agreements, which are already in the FAR. The threshold for applicability of the Morocco Free Trade Agreement is $193,000 for supplies and services and $7,407,000 for construction.

Item V—Technical Amendments

Editorial changes are made at FAR 15.404–1, 22.1006, 22.1304, 28.202, 52.212–5, 52.222–43, 52.228–15, and 52.228–16, in order to update references.

Dated: November 15, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

[FR Doc. 06–9302 Filed 11–21–06; 8:45 am]

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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.

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To clarify the provision of nutrition services to older Americans. (Nov. 17, 2006; 120 Stat. 2641)

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